

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

In the Matter of:

Nancy A. Kinder,
Former President

Clear Lake National Bank
San Antonio, Texas

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) AA-EC-03-27
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STIPULATION AND CONSENT ORDER

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that:

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, examines Lone Star Capital Bank, N.A., San Antonio, Successor in Interest to Clear Lake National Bank, San Antonio, Texas (“Bank”);

WHEREAS, the Bank, through its former vice president and loan officer Michael Kent Muckleroy (“Muckleroy”), offered tax lien loans to Bank customers;

WHEREAS, such tax lien loans included duplicative fees and fees charged for services not performed, and lacked certain disclosures required by law;

WHEREAS, in connection with the conduct engaged in by Muckleroy, the Comptroller is prepared to charge Muckleroy with violations of the consumer protection provisions of the Home Ownership Equity Protection Act (“HOEPA”) and its implementing regulations; with violations of the Truth In Lending Act (“TILA”) and its implementing regulations; with

violations of the Real Estate Settlement Procedures Act (“RESPA”) and its implementing regulations; and with violations of the Federal Trade Commission Act (“FTC Act”) as a result of the unfair practices inherent in the tax lien loans;

WHEREAS, the Respondent, Former Bank President Nancy A. Kinder (“Respondent”), failed to adequately supervise Muckleroy;

WHEREAS, in connection with the conduct engaged in by the Bank through Muckleroy, the Comptroller is prepared to initiate cease and desist and civil money penalty proceedings against the Respondent, pursuant to 12 U.S.C. §§ 1818(b) and (i) (as amended); and

WHEREAS, in the interest of cooperation, compromise, and settlement, and to avoid the costs associated with future administrative and judicial proceedings, the Comptroller and the Respondent desire to enter into this Consent Order (“Order”);

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent, without admitting or denying any of the foregoing violations of law or regulation, that:

Article I

JURISDICTION

(1) The Bank is a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 et seq. Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent is the former president of the Bank and is an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date hereof (see 12 U.S.C. § 1818(i)(3)).

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain cease and desist and civil money penalty proceedings against her pursuant to 12 U.S.C. §§ 1818(b) and (i).

Article II

PERSONAL CEASE AND DESIST ORDER

(1) Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that:

- (a) The Respondent shall not participate in the approval of any extension of credit, in any credit decision, or in the supervision of the lending activities of others, in an insured depository institution or agency to which she is or may become affiliated.
- (b) The Respondent shall comply with all laws and regulations applicable to insured depository institutions.

- (c) The Respondent shall avoid engaging in any unsafe or unsound practices, as that term is used in Title Twelve of the United States Code, in the conduct of the affairs of any insured depository institution or agency.
- (d) The Respondent shall not breach her fiduciary duties of loyalty or care owed to any insured depository institution with which she is or may become affiliated and shall, at all times, avoid placing her own interests above those of the institution.
- (e) Within ten (10) days of the execution of this Order, the Respondent shall provide a copy of this Order to the chief executive officer and board of directors of any institution or agency, as specified in 12 U.S.C. § 1818(e)(7)(A), of which the Respondent is an “institution-affiliated party.” Moreover, prior to accepting any position that would cause her to become an “institution-affiliated party” of any other institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), the Respondent shall provide the chief executive officer and the board of directors of such institution or agency with a copy of this Order.

Article III

CIVIL MONEY PENALTY

- (1) Without admitting or denying any wrongdoing, Respondent hereby consents to the payment of a civil money penalty in the amount of ten thousand dollars (\$10,000), which shall be paid upon execution of this Order. Respondent shall make

payment in full by check made payable to the Treasurer of the United States and delivered to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. A copy of the check shall be sent to the Director of the Enforcement & Compliance Division, 250 E Street S.W., Washington DC 20219. The docket number of this case should be entered on all checks.

(2) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. §§ 1818(h) and (i) (as amended).

Article IV

WAIVERS

- (1) By executing this Order, Respondent waives:
- (a) the right to the issuance of Notice(s) under 12 U.S.C. §§ 1818(b) and (i);
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b) and (i) and 12 C.F.R. Part 19;
 - (c) all rights to seek judicial review of this Order;
 - (d) all rights in any way to contest the validity of this Order;
 - (e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms

of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

(f) all rights to assert a “double jeopardy” claim in the event of a criminal prosecution brought by the Department of Justice for the acts which form the basis for issuance of this Order.

(2) Respondent shall not cause, participate in or authorize the Bank (or any successor in interest, subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of the civil money penalty under this Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order; and, in accordance with 12 C.F.R. § 7.2014, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts.

(3) Respondent acknowledges that she has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents or employees to cause or induce the Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) It is hereby agreed that the provisions of this Order constitute a settlement of the cease and desist and civil money penalty proceedings contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations, unless such acts, omissions, or violations reoccur.

(5) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the Respondent if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(6) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

Ronald G. Schneck for

10/20/03

Timothy W. Long
Senior Deputy Comptroller
Mid-Size/Community Bank Supervision

Date

Signed

October 10, 2003

Nancy A. Kinder

Date