

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

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**In the Matter of:** )  
Charles Cleveland )  
Senior Vice President )  
First National Bank of Lubbock )  
Lubbock, Texas )

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**STIPULATION AND CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate this civil money penalty proceeding against Charles Cleveland (“Respondent”) pursuant to 12 U.S.C. § 1818(i) (as amended); and

**WHEREAS**, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, the Comptroller and Respondent desire to enter into this Stipulation and 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 that:

Article I -- **JURISDICTION**

(1) First National Bank of Lubbock (“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 Senior Vice 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).

(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 this civil money penalty proceeding against him pursuant to 12 U.S.C. § 1818(i).

## Article II -- **FINDINGS OF FACT**

(1) Respondent approved the issuance of cashiers checks without receiving payment for them. This practice began prior to January, 2000, and continued through July, 2002. At all times during this period, Respondent was Senior Vice President of the Bank. He also served on the Board’s Audit Committee from May 23, 2000, through July, 2002.

(2) The majority of the cashiers checks were issued for incoming drafts on the accounts of automobile dealers which did not have sufficient funds in their accounts to cover the cashiers checks. Rather than overdrawing the accounts, or originating a loan to the account holder, Respondent authorized the issuance of a cashiers check.

(3) Although the cashiers checks were issued, they were not processed through the Bank’s regular system. When a payee presented the cashiers check for payment, the Bank would pay the check even though funds had not yet been received to cover it. By paying the cashiers check, the Bank made an extension of credit to the customer upon whose account the check was to be drawn.

(4) The amounts to be received from the account holders were reflected as an offset against the liability for the outstanding cashiers checks. When the cashiers check general ledger account was balanced, the amount of the offset would be added back so that the account would

balance. Then, when the Bank received payment for the cashiers checks from the account holders, the general ledger account would be adjusted for the payment.

(5) The practice of issuing cashiers checks without receiving payment for them was identified as a problem by the Bank's external auditors in their August 28, 2001, audit report. The auditors' report was presented to the Board's Audit Committee at its March 26, 2002 meeting. Neither Respondent, nor the other members of the Audit Committee, took action to ensure that the practice was stopped.

(6) Because the practice of honoring cashiers checks for which payment had not been received results in an extension of credit, the addition of the outstanding check amounts to one account holder's other debt caused its total debt to exceed the Bank's lending limit.

#### 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 one thousand dollars (\$ 1,000.00), 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 shall deliver the payment to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150.

(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] under 12 U.S.C. § 1818(i);

(b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(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 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 except in accordance with 12 C.F.R. § 7.2014 and Part 359; and 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 except in accordance with 12 C.F.R. § 7.2014 and Part 359.

(3) Respondent acknowledges that he 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 this civil money penalty proceeding contemplated by the Comptroller. The Comptroller agrees not to institute additional civil money penalty 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.

*/s/ Mark R. Holder*

*3-17-03*

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Mark R. Holder  
Assistant Deputy Comptroller

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Date

Signed

3/11/03

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Charles Cleveland

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Date