

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

In the Matter of: Brian Burns Director First National Bank Lubbock, Texas)))))	AA-EC-04-51
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STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) intends to initiate these cease-and-desist and civil money penalty proceedings against Brian Burns (“Respondent”) in connection with his activities as director of First National Bank, Lubbock, Texas (formerly Haskell, Texas) (“Bank”), pursuant to 12 U.S.C. §§ 1818(b) and (i) (as amended);

WHEREAS, the Comptroller is of the opinion that Respondent engaged in unsafe and unsound practices, violated the law, and breached his fiduciary duty, by: (a) allowing the Bank’s president to dominate the Bank’s decision-making process; and (b) failing to ensure that the Bank took appropriate actions to correct the Bank’s deficient risk management practices and internal controls, and continuing violations of law, thereby causing substantial loss to the Bank;

WHEREAS, Respondent neither admits nor denies any wrongdoing; 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 (“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 a director 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, the Comptroller has the authority to initiate and maintain these cease-and-desist and civil money penalty proceedings against Respondent pursuant to 12 U.S.C. §§ 1818(b) and (i).

ARTICLE II

CEASE-AND-DESIST ORDER FOR AFFIRMATIVE ACTION

(1) The Comptroller hereby orders that, in the event that Respondent is or becomes an “institution-affiliated party,” as that term is defined in 12 U.S.C. § 1813(u), Respondent shall comply with each of the following provisions:

- (a) Respondent shall at all times comply with all applicable laws and regulations;
- (b) Respondent shall not participate in any unsafe or unsound practices;
- (c) Respondent shall adhere to the written policies and procedures of any depository institution or agency with which he is an institution-affiliated party, or shall seek and receive written permission from appropriate authorized individuals to do otherwise; and
- (d) Respondent shall act in accordance with the fiduciary duties of loyalty and care owed to any depository institution with which he is an institution-affiliated party, and, at all times, shall avoid placing his own interests above those of such institution.

(2) Within ten (10) days of the execution of this Order, Respondent shall provide a copy of this Order to the chief executive officer and board of directors of any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), or subsidiary thereof, of which Respondent is an institution-affiliated party. Moreover, so long as this Order remains in effect, prior to accepting any position or engaging in activities that would cause him to become an institution-affiliated party of any other institution or agency

specified in Section 1818(e)(7)(A), or subsidiary thereof, Respondent shall provide a copy of this Order to the chief executive officer and board of directors of any such institution, agency, or subsidiary.

(3) 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(b).

ARTICLE III

ORDER FOR CIVIL MONEY PENALTY

(1) It is further ordered that Respondent shall pay a civil money penalty in the amount of five thousand dollars (\$5,000) according to the following schedule:

- (a) \$1,000 shall be paid upon the execution of this Order;
- (b) the remaining \$4,000 shall be paid in 8 quarterly payments of at least \$250 each, due on the 10th day of the month, commencing in January 2005, followed by 3 quarterly payments of at least \$500 each, and a final payment of \$500 (or the outstanding balance of the civil money penalty); and
- (c) payment shall be made in full by October 1, 2007.

(2) Payment of the civil money penalty shall be made by check made payable to the Treasurer of the United States and shall be delivered to: Comptroller of the Currency, P.O. Box 73150, Chicago, IL 60673-7150. The case number, AA-EC-04-51, should be entered on the memo line of each check.

(3) If Respondent fails to make any payment as provided in this Article, the entire balance of the civil money penalty amount described in this Article shall become immediately due and payable.

(4) 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).

(5) Within seven (7) days from the issuance of this Order, Respondent shall notify the Director of the Enforcement & Compliance Division (“Enforcement Director”) of his current address, by completing the form attached hereto as Appendix A.

(6) Until the civil money penalty is paid in full, upon each and every subsequent change in address, if any, Respondent shall notify the Enforcement Director of his new address within seven (7) days of such change in address by sending the new information to Director, Enforcement & Compliance Division, OCC, 250 E Street, S.W., Washington, DC 20219.

ARTICLE IV

WAIVERS

- (1) By executing this Order, Respondent waives:
 - (a) the right to the issuance of Notices 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.

ARTICLE V

CLOSING

(1) 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.

(2) 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 his employees to cause or induce the Respondent to agree to consent to the issuance of this Order or to execute this Order.

(3) It is hereby agreed that the provisions of this Order constitute a settlement of these 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 contained in the letter from the OCC to Respondent dated January 14, 2004, unless such acts, omissions, or violations reoccur.

(4) 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.

(5) 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/ Ronald G. Schneck

Ronald G. Schneck
Director
Special Supervision Division

10/13/04

Date

/s/

Brian Burns

9/21/04

Date