

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

_____)	
In the Matter of:)	
)	
Adolfo Martinez,)	AA-EC-02-24
former Executive Vice President)	
)	
Hamilton Bank, N.A.,)	
Miami, Florida (closed))	
_____)	

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate cease and desist and civil money penalty proceedings against Adolfo Martinez (“Respondent”) pursuant to 12 U.S.C. §§ 1818(b) and (i) (as amended) through the issuance of a Notice of Charges for a Personal Cease and Desist Order and Notice of Assessment of Civil Money Penalties (hereinafter collectively referred to as the “Notices”); 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 the 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 the

Respondent that:

Article I

JURISDICTION

(1) Hamilton Bank, N.A., Miami, Florida (closed) (“Bank”) was 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 was an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

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

Article II

PERSONAL CEASE AND DESIST 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:

(1) Within ten (10) days of the execution of this Order, the Respondent shall provide a copy of the 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), to which Respondent is an “Institution-affiliated party,” as defined in 12 U.S.C. § 1813(u). Moreover, prior to accepting any position that would cause him 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 the Order.

(2) Within ten (10) days of the execution of this Order, the Respondent shall notify the chief executive officer and board of directors of any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A) , to which Respondent is an “institution-affiliated party”, that when he was employed by the Bank, he engaged in unsafe and unsound practices and violations of a final order issued by the OCC pursuant to 12 U.S.C. § 1818(b) in connection with his approval of a fifteen million dollar (\$15,000,000) loan and the books and records of the Bank. Moreover, prior to accepting any position that would cause him 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 such notification.

(3) The Respondent shall comply with all laws and regulations applicable to insured depository institutions.

(4) The Respondent shall not engage in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code, in the conduct of the affairs of any insured depository institution or agency.

(5) The Respondent shall not breach his fiduciary duties of loyalty or care owed to any insured depository institution with which he is or may become affiliated and shall, at all times, avoid placing his own interests above those of the institution.

(6) The Respondent shall not participate in the approval of, or influence the approval of any extension of credit made by any insured depository institution or agency to which he is or may become affiliated.

(7) The restrictions in paragraph (6) shall not apply in cases where the proposed extension of credit is supported by liquid and “readily marketable collateral” as defined in 12 C.F.R. § 32.2(m)) equal to one hundred percent (100%) of the contemplated extension of credit.

(8) The Respondent shall familiarize himself with, and shall adhere to the written policies and procedures of any insured depository institution or agency to which he is or may become affiliated. In the case that the Respondent is affiliated with an insured depository institution or agency with written policies and procedures that are more stringent than the provisions of this Order, the Respondent shall adhere to the written policies and procedures of such insured depository institution or agency.

Article III

CIVIL MONEY PENALTY

(1) Without admitting or denying any wrongdoing, the Respondent hereby consents to the payment of a civil money penalty in the amount of twenty thousand dollars (\$20,000). The civil money penalty shall be paid in full over five (5) years (sixty payments) in the amount of three hundred and thirty-three dollars and thirty-four cents (\$333.34) per month. The first payment shall be due upon execution of this Order, and the remaining monthly payments shall be due on the tenth day of each month thereafter, for fifty nine (59) months.

- (a) The Respondent shall make each check payable to the Treasurer of the United States, and each check shall be delivered to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. The docket number of this case should be entered on every check.
- (b) The Respondent shall deliver a copy of every check to the Director of Enforcement and Compliance (“Director”), Office of the Comptroller of the Currency, 250 E St., S.W., Washington, D.C. 20219, with reference to the docket number of this case.

(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

NOTIFICATION OF ADDRESS

Upon execution of this Order, the Respondent shall notify the Director of his current address on the form attached hereto as Appendix A.

Article V

WAIVERS

- (1) By executing this Order, the Respondent waives:
 - (a) 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;
 - (b) all rights to seek judicial review of this Order;
 - (c) all rights in any way to contest the validity of this Order;
 - (d) 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
 - (e) 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) The 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; 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) The 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 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 contained in the Notices, 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,

