

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

In the Matter of: Bernard P. Kenneally Former President Cashgate, Inc., Former Independent Contractor of National State Bank of Metropolis Metropolis, Illinois)))))))	AA-EC-04-05
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**STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO
CEASE AND DESIST FOR AFFIRMATIVE RELIEF AND FOR THE
ASSESSMENT OF CIVIL MONEY PENALTIES**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) contends that Bernard P. Kenneally (“Respondent”), as President of Cashgate, Inc. (“Cashgate”), recklessly engaged in unsafe or unsound banking practices causing more than a minimal loss to the State National Bank of Metropolis, Metropolis, Illinois (“Bank”) by failing to prevent or stop Cashgate, Inc. from: 1) adding risky merchants to the Bank’s merchant processing portfolio contrary to generally accepted standards for merchant underwriting and the Bank’s written policies; 2) failing to adequately monitor the activities of the merchants added to the Bank’s portfolio, increasing the risk of excessive chargebacks; 3) failing to effectively analyze merchant processing data, permitting merchants to continue processing despite initial evidence that they were engaging in risky transactions and experiencing excessive chargebacks; and 4) permitting several risky merchants to continue to operate on the Bank’s merchant processing portfolio despite the Bank’s demands for their removal;

WHEREAS, the Comptroller is prepared to initiate these cease and desist proceedings and civil money penalty proceedings against Respondent pursuant to 12 U.S.C. §§ 1818(b) and (i), with respect to these contentions; and

WHEREAS, Respondent, in the interest of cooperation and without admitting or denying any wrongdoing, consents to the issuance of this Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief and for the Assessment of Civil Money Penalties (“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) The 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 is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was President of Cashgate, former independent contractor 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 these cease and desist and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(b) and (i).

Article II

BUSINESS DEALINGS WITH INSURED DEPOSITORY INSTITUTIONS

(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) Respondent shall not provide goods or services to any insured depository institution, as that term is defined in 12 U.S.C. § 1813(c)(2), including, but not limited to: 1) merchant processing; 2) entering into any contract; 3) providing legal representation or services; 4) consulting; and 5) acting as an agent or independent contractor. Nothing in this paragraph shall prohibit Respondent from receiving goods or services from an insured depository institution as a customer, including, but not limited to, obtaining loans and/or having checking, savings, or other accounts.

Article III

PRIOR NOTICE

It is further ordered that:

(1) If the Respondent is currently an “institution-affiliated party” (as defined in 12 U.S.C. § 1813(u)) of any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), Respondent shall provide the chief executive officer of the institution or agency with a copy of this Order.

(2) Within ten (10) days from the date of the execution of this Order, Respondent shall provide written certification of his compliance with paragraph (1) to the Director of the Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E St. SW, Washington, DC, 20219.

(3) Prior to accepting any new position that causes him to become an “institution-affiliated party” (as defined in 12 U.S.C. § 1813(u)) of any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), Respondent shall provide the chief executive officer of the institution or agency with a copy of this Order.

(4) Within ten (10) days from and after his acceptance of any position described in paragraph (3), Respondent shall provide written notice of such acceptance to the Director of the Enforcement and Compliance Division along with a written certification of his compliance with paragraph (3).

Article IV

DUTIES AND RESPONSIBILITIES

It is further ordered that in the event Respondent is or ever becomes an “institution-affiliated party” as defined in 12 U.S.C. § 1813(u), he shall comply with the following provisions:

- (1) Respondent shall at all times comply with all applicable laws and regulations.
- (2) Respondent shall avoid engaging in any unsafe or unsound practices (as that term is used in 12 U.S.C. § 1818).
- (3) Respondent shall adhere to the written policies and procedures of any insured depository institution or agency with which he may become affiliated, or seek and receive written permission from appropriate authorized individuals to do otherwise.
- (4) Respondent shall not breach his duties of loyalty or care owed to any insured depository institution or agency with which he may become affiliated and shall, at all times, avoid placing his own interests above those of the institution.
- (5) To comply with paragraphs (1) through (4) of this Article, Respondent shall (among other things):
 - (a) be diligent to ensure that – within the scope of Respondent’s duties and influence at any insured depository institution or agency – customers or other third parties are not using the institution (or the

services of the institution) or agency to facilitate or perpetuate unsafe or unsound activity; and

(b) be diligent to ensure that – within the scope of Respondent’s duties and influence at any insured depository institution or agency – adequate and appropriate controls are in place and that any employees reporting to Respondent are adequately trained and supervised.

(c) If, at any time, Respondent is uncertain whether a situation implicates paragraphs (1) through (5) of this Article, or if Respondent is uncertain about his duties arising from such paragraphs, he shall obtain, at his own expense, and abide by the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel:

(i) who is in no way affiliated with the institution or agency; and

(ii) who has never been subject to any sanctions by any Federal banking agency, either by agency order or consent.

Article V

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 two thousand five hundred dollars (\$2,500), which shall be paid according to the schedule set forth in Paragraph (2) of this Article.

(2) Respondent agrees to make a payment of one thousand dollars (\$1,000) on or before March 22, 2004 and two payments of seven hundred and fifty dollars (\$750) each, one on or before April 19, 2004 and the other on or before May 17, 2004.

(3) Respondent shall make each payment described in this Article by a check made payable to the Treasurer of the United States and shall deliver each payment to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150.

Respondent shall deliver a copy of each check to the Director of the Enforcement and Compliance Division.

(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) Until the civil money penalty is paid in full, upon each and every subsequent change in address, if any, Respondent shall notify the Director of the Enforcement and Compliance Division of his new address within seven (7) days of such

change in address by completing the form attached hereto as Appendix A and shall deliver the form to the Enforcement Director.

Article VI

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; and
 - (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.

- (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 as permitted by 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 as permitted by 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 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 set forth in the first paragraph of this Order, 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 in Paragraph (4) of this Article, 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/ Ronald G. Schneck

4/2/04

Ronald G. Schneck
Director
Special Supervision Division

Date

Signed _____
Bernard P. Kenneally

3/20/04

Date