

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

<b>In the Matter of:</b>	)	
David Fox	)	
Member, Board of Directors	)	AA-EC-2004-39
Home National Bank	)	
Racine, Ohio	)	

**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 David Fox (“Respondent”) pursuant to 12 U.S.C. § 1818(i) (as amended) for certain violations of law or regulation and breaches of fiduciary duty as more fully described in Article II herein; 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 Respondent desires 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) Home National Bank (“Bank”) is a national banking association, chartered and examined by the Office of the Comptroller of the Currency (“OCC”), 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 and was a director of the Bank during the period relevant to this Order 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)). Pursuant to 12 U.S.C. § 1813(q), the OCC is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, Respondent is subject to the authority of the OCC 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) In January 1999 Respondent entered into a Formal Agreement (“Agreement”) on behalf of the Bank with the OCC, which was intended to curtail several unsafe and unsound practices existing at the Bank. Respondent violated or caused the Bank to violate numerous provisions of the Agreement.

(2) The Agreement required the formation of a Compliance Committee. The Compliance Committee was to meet regularly to evaluate the Bank’s progress and present a written report to the OCC. The Compliance Committee did not meet regularly, which Respondent as a member of the board of directors at the time, was in a position to ensure.

(3) The Agreement required the Board to create a Management Review Committee to evaluate the management team of the Bank. This Management Review Committee was charged with evaluating the ability of current management, addressing management succession, identifying present and future management staffing needs, identifying objectives by which management will be measured, identifying any needed changes in or augmentation of senior management, and evaluating the extent of responsibility of current management and the board for weaknesses in the Bank’s condition.

(4) The Management Review Committee was also charged with implementing a plan to correct any deficiencies in management. The Management Review Committee delayed for over four months in crafting acceptable targets.

(5) The Management Review Committee also failed to meet regularly, rather only meeting twice in two years. At one of these meetings, the Management Review Committee minutes reflect two specific missed targets and overall unsatisfactory delinquency numbers. As an officer and member of the board, Respondent failed in his duty to ensure effective operation of the Management Review Committee.

(6) The Agreement, at Article IV, required that all extensions and renewals of credit in excess of \$50,000 shall be supported by current and complete financial information, current and complete financial information shall be obtained on all commercial and agricultural borrowers with aggregate debt in excess of \$100,000, all extensions of new money to classified borrowers be certified by the full board that the extension is in the best interest of the Bank, and that the loan policy exceptions be approved by the full board. All three provisions of Article IV were violated as follows:

- (a) Several new and renewed loans in excess of \$50,000 were noted that did not have current and complete financial information, which means that the board approved loans without the financial condition of the borrower first being analyzed.
- (b) Thirty-three percent of the loans reviewed at the February 20, 2001 examination did not have satisfactory credit and collateral documentation.
- (c) Loan policy exceptions continued to be made without going through the proper approval channels.

- (d) Numerous cases of capitalized interest and the rebooking of previously charged-off loans were identified during the examination, despite being strictly forbidden by the Bank's loan policy.
- (e) In its August 20, 1999 Letter to the Board, the OCC detailed five specific loans that violated this provision of the Agreement. These violations illustrate the continued failure of the board to implement internal controls, thereby further contributing to violation of the Agreement.

(7) Article V of the Agreement required that current and satisfactory credit information shall be obtained on all loans lacking such information. The Bank violated this provision by continuing to extend credit without current and satisfactory information, and as of the February 20, 2001 examination the Bank did not have satisfactory credit and collateral documentation on 33% of the loans reviewed

(8) Respondent breached his fiduciary duty to the Bank by failing to maintain systems to supervise activities of subordinate executive officers. As a member of the board of directors of the Bank at the time, Respondent owed to the Bank a fiduciary duty to exercise ordinary care and diligence in supervising the Bank's officers, and is not justified in dispensing with the usual safeguards of inquiry, examination, and audit in reliance upon the officers and their reports and statements. Although not directly responsible for the violations committed by other officers, Respondent failed to maintain a system of internal controls that would have acted as a deterrent to other officers' activities or enabled the Bank to detect such activities. Respondent's failure to implement these internal control systems after auditor and examiner recommendations constitutes a breach of fiduciary duty to the Bank and caused losses of at least \$1,358,000 to the Bank as a result of other officers' activities.

(9) Respondent's violations and breaches of fiduciary duty caused more than minimal loss to the Bank. In originating loans that violated the Agreement and failing to maintain proper oversight of subordinates, Respondent caused or contributed to losses totaling over \$1.3 million.

### Article III

#### CIVIL MONEY PENALTY ORDER

(1) Without admitting or denying any of the allegations in Article II, Respondent hereby consents to the payment of a civil money penalty in the amount of five thousand dollars (\$ 5,000.00), 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. The docket number of this case should be entered on all checks.

(2) Respondent shall deliver a copy of the check to: Director, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 250 E St., S.W., Washington, D.C. 20219.

(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(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

(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.

(4) 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.

(5) It is hereby agreed that the provisions of this Order constitute a settlement of this civil money penalty proceeding contemplated by the Comptroller.

(6) The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations contained in the letter dated June 25, 2003, unless such acts, omissions, or violations reoccur.

(7) 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.

(8) 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*

*5/12/04*

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Ronald G. Schneck  
Director  
Special Supervision

\_\_\_\_\_  
Date

*4/28/04*

Signed  
\_\_\_\_\_  
David Fox

\_\_\_\_\_  
Date