

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

<u>In the Matter of:</u>)	
)	
Michael Kent Muckleroy,)	AA-EC-03-28
Former Vice President and Loan Officer)	
)	
Clear Lake National Bank)	
San Antonio, Texas)	

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, examined Clear Lake National Bank, San Antonio, Texas (“Bank”);

WHEREAS, the Bank, through its former vice president and loan officer Michael Kent Muckleroy (“Respondent”), offered tax lien loans to Bank customers;

WHEREAS, the Comptroller has asserted that such tax lien loans included duplicative fees and fees charged for services not performed, and lacked certain disclosures required by law;

WHEREAS, the Comptroller has initiated removal and prohibition, cease and desist, and civil money penalty proceedings against Respondent pursuant to 12 U.S.C. §§ 1818 (b), (e)(1) and (i), and has charged Respondent with violations of the consumer protection provisions of the Home Ownership Equity Protection Act (“HOEPA”) and its implementing regulations; with violations of the Truth In Lending Act (“TILA”) and its

implementing regulations; with violations of the Real Estate Settlement Procedures Act (“RESPA”) and its implementing regulations; and with violations of the Federal Trade Commission Act (“FTC Act”) as a result of the unfair practices inherent in the tax lien loans;

WHEREAS, Respondent has denied the Comptroller’s charges and has asserted numerous defenses; and

WHEREAS, in the interest of cooperation, compromise, and settlement, and to avoid the costs associated with future administrative and judicial proceedings, 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, without admitting or denying any of the foregoing alleged violations of law or regulation, 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 was an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent is a former vice president and loan officer 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 removal and prohibition, cease and desist, and civil money penalty proceedings against him pursuant to 12 U.S.C. §§ 1818(b), (e), and (i).

Article II

PROHIBITION AND REMOVAL

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, and without admitting or denying any wrongdoing, Respondent hereby agrees that he shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the “appropriate Federal banking agency,” as defined in 12 U.S.C. § 1813(q) (as amended); or

(d) vote for a director, or serve or act as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u) (as amended).

(2) The prohibitions in paragraph (1) of this Article apply to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);
- (b) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9) (as amended);
- (c) any insured credit union under the Federal Credit Union Act;
- (d) any institution chartered under the Farm Credit Act of 1971;
- (e) any appropriate Federal depository institution regulatory agency; and
- (f) the Federal Housing Finance Board and any Federal Home Loan Bank.

(3) The prohibitions of paragraphs (1) and (2) of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the Comptroller and the institution's “appropriate Federal financial institutions regulatory agency,” as defined in 12 U.S.C. § 1818(e)(7)(D) (as amended).

(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(e), (i), (j), and (h) (as amended).

Article III

PERSONAL CEASE AND DESIST ORDER

(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 enter into any agreement, written or oral, to provide services to the institutions and agencies set forth in paragraph (2) of Article II of this Order, including but not limited to the origination, solicitation, marketing, servicing or collection of loans.
- (b) No company, partnership or other enterprise under Respondent's ownership or control, as defined in 12 C.F.R. § 215.2, including but not limited to Encino Financial, Inc. and Muckleroy Financial, Inc., shall enter into any agreement, written or oral, to provide services to the institutions and agencies set forth in paragraph (2) of Article II of this Order, including but not limited to the origination, solicitation, marketing, servicing or collection of loans.

Article IV

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 twenty thousand dollars (\$20,000), which shall be paid in four equal installments as follows:

- (a) Within seven (7) days from the issuance of this Order, Respondent shall make a payment in the amount of five thousand dollars (\$5,000); and
- (b) Within six (6) months from the issuance of this Order, Respondent shall make a payment in the amount of five thousand dollars (\$5,000); and
- (c) Within twelve (12) months from the issuance of this Order, Respondent shall make a payment in the amount of five thousand dollars (\$5,000); and
- (d) Within eighteen (18) months from the issuance of this Order, Respondent shall make a final payment in the amount of five thousand dollars (\$5,000).

(2) Respondent shall make all payments due in connection with this Article by check or money order and made payable to the Treasurer of the United States and delivered to: Office of the Comptroller of the Currency, P.O. Box 9012, St. Louis, Missouri 63197-9012. A copy of each check or money order shall be sent to the Director of the Enforcement & Compliance Division, 250 E Street S.W., Washington DC 20219. The docket number of this case should be entered on each check or money order.

(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 give written notification to the Enforcement Director of his new address within thirty (30) days of such change in address.

Article V

WAIVERS

- (1) By executing this Order, Respondent waives:
 - (a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b), (e), 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.

(2) Respondent shall not cause, participate in or authorize the Bank (or any successor in interest, 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) 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 removal and prohibition, cease and desist, and civil money penalty proceedings initiated by the Comptroller. The Comptroller agrees not to institute additional proceedings for the specific acts, omissions, or violations contained in the Notice of Intention to Prohibit Further Participation, Notice of Charges for Issuance of an Order to Cease and Desist, and a Notice of Assessment of a Civil Money Penalty dated September 8, 2004, 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/ Ronald G. Schneck

4/19/05

Ronald G. Schneck
Director
Special Supervision Division

Date

12 April 05

/s/

Michael Kent Muckleroy

Date