

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

In the Matter of: Bradford S. Fornoff Former President and Director The First National Bank of Brewster Brewster, Minnesota)))))	AA-EC-06-92
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CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate these cease and desist and civil money penalty proceedings against Bradford S. Fornoff (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent’s activities while a Director and the President of The First National Bank of Brewster, Brewster, Minnesota (“Bank”) for violations of 12 C.F.R. § 215 (“Regulation O”), breach of fiduciary duties, and unsafe and unsound banking practices relating to abuse of his overdraft protection line of credit; 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, Respondent, without admitting or denying any wrongdoing, desires to enter into this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(b) and (i);

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

Initials _____
Date _____

ARTICLE I

JURISDICTION

(1) The First National Bank of Brewster, Brewster, Minnesota (“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 was a Director and the 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), 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

PERSONAL CEASE AND DESIST ORDER

(4) 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, whenever Respondent is

employed by, or is offered employment at, an insured depository institution or becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

- (a) Disclose to the board of directors of the insured depository institution a copy of this Order; and Provide written notice of such acceptance to the Director of the Enforcement and Compliance Division (“Enforcement Director”) along with a written certification of his compliance with paragraph (4) within ten (10) days from and after his acceptance of any position described in paragraph (4).
- (b) Abstain from engaging in any personal deposit or lending transactions, including overdraft lines of credit, with the insured depository institution. The provisions of this paragraph do not apply to an account at the insured depository institution maintained solely to collect salary and bonus direct deposits, as required by the Bank for payroll purposes, so long as the only transactions in that account are the receipt and subsequent transfer of the full amount of each direct deposit to an account at another financial institution within thirty (30) business days.
- (c) In a timely manner, disclose to the board of directors (or CEO) of the insured depository institution all information in his/her possession relevant to any matter before the board if Respondent may experience a direct or indirect benefit in connection with the matter, apart from the benefit

experienced by directors, employees, or stockholders generally of the institution;

- (d) Abstain from all discussions of the merits of the matter and recuse himself from all votes and decisions on any matter before the board if Respondent may experience a direct or indirect benefit in connection with the matter, apart from the benefit experienced by directors, employees, or stockholders generally of the institution and take all reasonable steps to ensure that his/her disclosure, abstention and recusal are reflected in the board minutes of the insured depository institution.
- (e) Comply fully with all laws, regulations, and policies applicable to any insured depository institution which employs him.
- (f) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code.
- (g) Not breach the 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.
- (h) Adhere to the written policies and procedures of any insured depository institution or agency to which he may become affiliated, or seek and receive written permission from appropriate authorized individuals to do otherwise.

(5) If, at any time, Respondent is uncertain whether a situation implicates paragraph (4) 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 who is in no way affiliated with the institution; and who has never been subject to any formal sanctions by any Federal banking agency, either by agency order or consent, as disclosed on the banking agencies' web sites.

(6) 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

(7) Respondent hereby consents to the payment of a civil money penalty in the amount of five thousand dollars (\$5,000), which shall be paid according to the following payment schedule:

(a) Respondent shall make payments of at least \$200 due on the 20th of the month, for twenty five (25) consecutive months, commencing on November 20, 2006, and continuing until November 20, 2008.

(8) Respondent shall make payment in full according to the payment schedule set forth above by check made payable to the Treasurer of the United States and shall

deliver the payment to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case shall be entered on all checks.

(9) Respondent shall deliver a copy of each check to Director, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 250 E St., S.W., Washington, D.C. 20219. To ensure prompt receipt, Respondent may also fax a copy of each payment to the Enforcement Director at (202) 874-5301.

(10) If Respondent fails to comply with any provision of this Order, then the entire balance of the civil money penalty amount described in this Article shall become immediately due and payable.

(11) 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).

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

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

ARTICLE IV

BANKRUPTCY

(14) If Respondent files for bankruptcy protection, Respondent shall notify the Enforcement Director within ten (10) days of the filing and shall provide a copy of the filing to the Enforcement Director.

(15) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay a civil money penalty pursuant to this Order is subject to discharge, Respondent will in no manner contest the assertion of the Comptroller or any agent, officer or representative of the United States, pursuant to 11 U.S.C. § 523(a) or otherwise, that the civil money penalty obligation in the Order arises out of acts which result in claims not dischargeable in bankruptcy.

ARTICLE V

WAIVERS

- (16) By executing this Order, Respondent waives:
- (a) the right to the issuance of a Notice of Charges and a Notice of Civil Money Penalty Assessment 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.

(17) 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.

(18) Any failure by Respondent to comply with this Order shall be subject to enforcement for the longer of (a) the period allowed by the applicable statute of limitations, or (b) five (5) years following the failure to comply.

(19) 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 Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(20) 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 referenced in the first whereas clause, hereof, unless such acts, omissions, or violations reoccur.

(21) 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 in paragraph (20), shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting 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.

(22) Respondent further agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, the specific acts, omissions, or violations referenced in this Order, or otherwise creating the impression that this Order is without factual basis. If Respondent violates this provision, the OCC may set aside this settlement and commence administrative proceedings on the actions alleged herein. Nothing in this paragraph shall affect Respondent's testimonial obligations.

(23) 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
Director
Special Supervision Division

11/6/06

Date

/s/ _____
Bradford S. Fornoff

10/26/06

Date

Initials _____
Date _____