

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

In the Matter of:)	
)	
Shaun L. McKinsey)	AA-EC-2006-85
Former Credit Analyst)	
American National Bank)	
Denver, Colorado)	
)	

STIPULATION AND 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 Shaun L. McKinsey (“Respondent”), former Credit Analyst of American National Bank, Denver, Colorado (“Bank”); 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 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 that:

Article I

JURISDICTION

(1) American National Bank, Denver, Colorado (“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 Credit Analyst of the Bank until November 2005 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 enforcement proceedings against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain cease and desist proceedings and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(b) and (i).

Article II

COMPTROLLER’S FINDINGS

(1) Pursuant to the authority invested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby finds, and Respondent neither admits nor denies, that:

- (a) In violation of Bank policy, Respondent e-mailed himself customer nonpublic personal and Bank proprietary information (“information”) with the intent to use such information at his new employer;
- (b) Respondent’s removal of the information from the Bank was without Bank authorization or knowledge and was contrary to Bank policies and procedures;
- (c) Respondent’s removal of the information constituted a breach of Respondent’s fiduciary duty to the Bank; and
- (d) Respondent’s removal of the information constituted an unsafe or unsound banking practice.

Article III

ORDER FOR CIVIL MONEY PENALTY

(1) Respondent hereby consents to the payment of a civil money penalty in the amount of one thousand five hundred dollars (\$1,500.00), which shall be paid upon execution of this Order.

(2) The amount of the civil money penalty has been reduced or mitigated based on the Respondent’s submission of a sworn personal financial statement disclosing his current financial condition as of June 26, 2006. If the Comptroller subsequently learns that such financial statement is materially incorrect or misleading, the Comptroller may consider the imposition of a greater civil money penalty.

(3) 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 979012, St. Louis, Missouri 63197-9000. The docket number of this case shall be entered on the check. Respondent shall provide a photocopy of the check along with the signed original copy of this Order to the attention of the Director of Enforcement and Compliance Division of the Office of the Comptroller of the Currency (the "OCC"), 250 E Street, SW, Washington, DC 20219.

(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).

Article IV

PERSONAL CEASE AND DESIST ORDER

FOR AFFIRMATIVE ACTION

(1) Pursuant to the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), Respondent hereby consents that:

- (a) Respondent shall immediately disclose a copy of this Order to the Chief Executive Officer of Heartland Bank, St. Louis, Missouri, where he is currently employed, and provide written notice of this disclosure to the Director of the Enforcement and Compliance Division ("Enforcement Director") within ten (10) days of Respondent's disclosure;

- (b) Prior to accepting any position that would cause him to become an “institution-affiliated party” (as defined in 12 U.S.C. § 1813(u)) of any other institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), Respondent shall provide the chief executive officer of any such employer with a copy of this Order; and
- (c) Within ten (10) days from and after his acceptance of any position described in paragraph (1)(b) of this article, Respondent shall provide written notice of such acceptance to the Director of Enforcement and Compliance for the OCC, along with a written certification of his compliance with paragraph (1)(b) of this article. All such written notices and certifications required by this Order shall be sent to: Director, Enforcement and Compliance Division, 250 E Street, SW, Washington, DC 20219.

(2) It is further ordered that, in connection with any existing or future employment subject to this Article IV, paragraph (1)(b) above, whenever Respondent comes into contact with nonpublic customer or Bank proprietary information, Respondent shall:

- (a) At all times comply with all applicable laws and regulations relating to nonpublic customer or Bank proprietary information;
- (b) Adhere to all written policies and procedures of his employer relating to nonpublic customer or Bank proprietary information;

- (c) Not breach his fiduciary duties of loyalty or care owed to any employer with which he may become affiliated and shall, at all times, avoid placing his own interests above those of the employer; and
- (d) Never use, or otherwise handle, nonpublic customer or Bank proprietary information in any manner not explicitly or implicitly permitted by the provider or owner of such information.

(3) To comply with paragraph (2) of this Article, Respondent shall, among other things, be diligent to ensure that – within the scope of Respondent’s duties and influence – adequate and appropriate controls are in place and any employees reporting to Respondent are adequately trained and supervised to ensure that nonpublic customer or Bank proprietary information is not used, or otherwise handled, in any manner not explicitly or implicitly permitted by the provider or owner of such information.

(4) If, at any time, Respondent is uncertain whether a situation implicates any of the obligations or requirements of this Order, or if Respondent is uncertain about the obligations or requirements imposed by this Order, 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 has not been subject to any order or agreement imposing sanctions on such counsel by any Federal banking agency, as that term is used in 12 U.S.C. § 1813(q).

(5) 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 V

WAIVERS

- (1) 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;
 - (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
 - (f) 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) 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), or Heartland Bank, with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359.

(3) 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, violations or breaches set forth in Article II above, unless such acts, omissions, violations or breaches reoccur, or the Comptroller learns that Respondent has made any false statement or misrepresentation to the Comptroller or any of his agents or employees in connection with the investigation or review of this matter.

(4) Except as set forth in paragraph (3) of this article, it is further agreed that the provisions of this Order 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.

(5) 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.

(6) Respondent expressly acknowledges that no officer or employee of the OCC has statutory or other authority to bind the United States, the United States Department of the Treasury, the OCC, any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

/s/ Ronald G. Schneck
Ronald G. Schneck
Director
Special Supervision Division

1/5/2007
Date

/s/ Shaun L. McKinsey
Shaun L. McKinsey

12/22/2006
Date