

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

In the Matter of: Marvin D. Achtermann Former President and Director The First National Bank of Germantown Germantown, OH)))))	AA-EC-06-64
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CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”), pursuant to 12 U.S.C. §§ 1818(b)(1) and 1818(i)(2), and 12 C.F.R. §§ 19.18 and 19.20, has served upon Respondent a First Amended Notice of Charges (“First Amended Notice”) on the 12th day of January, 2007; 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)(2);

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 First National Bank of Germantown, Germantown, OH (“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 the President and a director 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 this cease and desist and civil money penalty proceeding against him pursuant to 12 U.S.C. §§ 1818(b) and (i).

Article II

PERSONAL CEASE AND DESIST ORDER

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

(5) Respondent shall, prior to accepting any position that would cause him to become in “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), provide the chief executive officer and the board of directors of such institution or agency with a copy of this Order.

(6) Within ten (10) days from and after his acceptance of any position described in paragraph (5) of this Article, Respondent shall provide written notice of such acceptance to the Director of Enforcement and Compliance for the OCC, together with a written certification of his compliance with paragraph (5) 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, S.W., Washington, D.C. 20219.

(7) Respondent shall, 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 institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), notify the chief executive officer and the board of directors of such institution or agency that when he was employed by the Bank, he recklessly engaged in unsafe or unsound practices and breached his fiduciary duty by:

- (a) directing improper accounting entries be made on the Bank’s books and records to avoid having to report a budget variance to the Bank’s Board of Directors;
- (b) using Bank funds to make an unauthorized purchase of a BMW that he then titled in his own name;

- (c) making a preferential Bank loan to his daughter and son-in-law; and
- (d) making the preferential loan described in paragraph (2)(c) of this Article without first conducting an analysis of the value of the collateral value or conducting a title search on the collateral securing the loan.

(8) Respondent shall not charge any expenses to any credit card, debit card, or other charge card provided to him, as part of his employment, by any insured depository institution or agency with which he is affiliated without first obtaining prior approval from his supervisor. For purposes of this paragraph and paragraphs (9), (10), and (12) the term “supervisor” shall mean:

- (a) a senior officer of the institution who supervises Respondent or the institution’s Board of Directors if Respondent holds the highest officer position in the institution;

(9) Respondent shall not use any funds belonging to any insured depository institution or agency with which he is affiliated, including, but not limited to, cash, cashier’s checks, or money orders, to purchase any item without obtaining prior approval from his supervisor.

(10) Respondent shall not make, or cause to be made, any accounting entries on behalf of the insured depository institution or agency with which he is affiliated, without obtaining prior approval from his supervisor.

(11) Respondent shall not supervise, directly or indirectly, any accountant, bookkeeper, or other employee who makes accounting entries on behalf of the insured depository institution or agency with which Respondent is affiliated. For purposes of this paragraph, the term “supervise” shall mean:

- (a) approving any accounting entries made by any such accountants, bookkeepers, or other employees;
- (b) directing any such accountants, bookkeepers, or other employees to make accounting entries;
- (c) rating the performance of any such accountants, bookkeepers or other such employees.

(12) Respondent shall not originate any loans until his supervisor has ensured that Respondent has:

- (a) obtained complete borrower financial information sufficient to support and document the borrower’s ability to repay the debt under the proposed terms of the loan;
- (b) obtained and documented the value of the collateral, and that the documentation includes a verifiable source of valuation;
and
- (c) not offered the borrower any preferential terms, including, but not limited to, the rate of interest.

(13) Respondent shall comply with all laws and regulations applicable to any insured depository institution or agency with which he is or may become affiliated.

(14) Respondent shall not engaged in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code, in the conduct of the affairs of any insured depository institution or agency with which he is or may become affiliated.

(15) Respondent shall not breach his fiduciary duties of loyalty or care owed to any insured depository institution or agency with which he is or may become affiliated and shall, at all times, avoid placing his own interests above those of the institution or agency.

Article III

ORDER FOR CIVIL MONEY PENALTY

(16) Respondent hereby consents to, and it is ordered, that:

(17) Respondent shall make payment of a civil money penalty in the amount of fifteen thousand dollars (\$15,000), which shall be paid upon execution of this Order.

(18) Respondent shall make payment in full by check payable to the Treasurer of the United States and shall deliver the payments to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case should be entered on the check.

(19) Respondent shall deliver a copy of the check to the Director of Enforcement & Compliance (“Director”), Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219, with reference to the docket number of this case.

Article IV

BANKRUPTCY

(20) 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.

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

Article V

WAIVERS

- (22) 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) 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; and

(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.

Article IV

CLOSING

(23) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(24) This Order shall be enforceable to the same extent and in the same manner as a final order issued pursuant to 12 U.S.C. §§ 1818(b), (h), and (i) (as amended).

(25) 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 or 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.

(26) It is hereby agreed that the provisions of this Order constitute a settlement of these enforcement proceedings arising out of the specific acts, omissions, or violations described in Article II. However, the specific acts, omissions, or violations described in Article II may be used by the OCC in future enforcement actions to establish a pattern or practice of misconduct or the continuation of a pattern or practice of misconduct.

(27) 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 (26), 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.

(28) The invalidity or unenforceability of any provision of this Order shall not affect the validity or enforceability of any other provisions of this Order, which shall remain in full force and effect.

(29) 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

Ronald G. Schneck
Director for Special Supervision

4/4/07

Date

/S/

Marvin D. Achtermann

April -03-2007

Date