

**#2007-055**

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

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**In the Matter of:** )  
Penny R. Domingue )  
Former Teller )  
Bank of America, N.A. )  
Charolette, NC )

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AA-EC-07-19

**CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate this prohibition proceeding against Penny R. Domingue (“Respondent”) pursuant to 12 U.S.C. § 1818(e) on the basis of Respondent’s activities while employed as a Teller at Bank of America’s Nederland, Texas Branch (“Bank”) during December 2001 through April 2005; 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(e);

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) Bank of America, N.A. (“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 formerly a Teller 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 removal proceeding against her pursuant to 12 U.S.C. § 1818(e).

ARTICLE II

COMPTROLLER’S FINDINGS

The Comptroller finds the following:

(1) During the period of about May 2001 until April 2005, Respondent was employed as a teller with the Bank.

(2) During such time, Respondent had access to customer accounts in order to carry out her assigned duties.

(3) During the period of December 2002 through April 2005, Respondent began withdrawing various funds from the accounts of a customer of the Bank.

(4) During such time as provided in paragraph (3), Respondent forged the customer's name on withdrawal slips and then withdrew the funds from the customer's various accounts for Respondent's personal use and benefit.

(5) During such time as provided in paragraph (3), Respondent also took cash advances on the customer's VISA account.

(6) By reason of the foregoing conduct, Respondent violated a law or regulation and engaged in unsafe and unsound banking practices.

(7) By reason of the foregoing conduct, Respondent received personal financial gain in the amount of \$27,750.

(8) By reason of the foregoing conduct, Respondent engaged in personal dishonesty and willful and continuing disregard for the safety and soundness of the Bank.

(9) On May 17, 2006, Respondent pleaded guilty in the United States District Court for the Eastern District of Texas to one count of embezzlement, in violation of 18 U.S.C. 656, stemming from the activity described above, and has agreed to forfeiture of the moneys from the embezzlement.

### ARTICLE III

#### ORDER OF PROHIBITION

(1) With respect to the institutions and agencies set forth in paragraph 2 of this Article, Respondent hereby agrees that she 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 depository institution under 12 U.S.C. §§ 1818(b)(3), (b)(4) or (b)(5), including, but not limited to, any subsidiary of such institution, or treated as a savings and loan holding company or subsidiary 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 IV

##### WAIVERS

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

(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 restitution and 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.

(3) Respondent acknowledges that she 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.

(4) It is hereby agreed that the provisions of this Order constitute a settlement of this prohibition proceeding arising out of specific acts, omissions, or violations described in the Comptroller's Findings (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.

(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 in paragraph 4, 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.

(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  
Director  
Special Supervision Division

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5/3/2007  
Date

\_\_\_\_\_  
/s/  
Penny R. Domingue

\_\_\_\_\_  
4/30/2007  
Date

Initials: \_\_\_\_\_  
Date: \_\_\_\_\_