

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

<b>In the Matter of:</b> James Blair Barclay Former Branch Manager Surety Bank, N.A. Ft. Worth, Texas	) ) ) ) )	AA-EC-07-17
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**CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) has initiated prohibition and civil money penalty proceedings against James Blair Barclay (“Respondent”), former Branch President and Branch Manager of Surety Bank, N.A., Ft. Worth, Texas (“Bank”), pursuant to 12 U.S.C. §§ 1818(e) and (i) (as amended), by filing and serving a Notice of Charges for Issuance of Orders of Prohibition and to Cease and Desist and Notice of Assessment of a Civil Money Penalty (“Notice”) on September 27, 2007;

WHEREAS, Respondent filed an Answer to the Notice and a request for hearing on November 23, 2007, which Respondent hereby withdraws, 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) and (i);

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

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

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) Surety Bank, N.A., Ft. Worth, Texas (“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 is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was the branch manager of the Bank during March 2004 through August 2004 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 prohibition, and civil money penalty proceedings against him pursuant to 12 U.S.C. §§ 1818(e), and (i).

Article II

COMPTROLLER'S FINDINGS

The Comptroller finds, and Respondent neither admits nor denies, the following:

(1) On or about April 6, 2004, Respondent engaged in violation of law and/or breach of his fiduciary duty to the Bank by completing and signing an Interagency Biographical and Financial Report ("Interagency Report") submitted to the OCC as part of the Bank's April 20, 2004 filing of an Interagency Notice of Change in Director or Senior Executive Officer seeking permission to appoint Respondent as branch president or director pursuant to 12 U.S.C. § 1831i and 12 C.F.R. § 5.51. In signing the Interagency Report, Respondent personally certified that the information contained therein had been carefully examined, was true, correct, and complete and that any misrepresentation or omission of a material fact would constitute fraud in the inducement and may subject him to legal sanctions provided by 18 U.S.C. §§ 1001 and 1007. Respondent knew or recklessly disregarded that the Interagency Report contained misrepresentations or omissions of material facts regarding his credit history, among other things.

(2) On or about March 31, 2004, Respondent breached his fiduciary duty to the Bank by accepting an undisclosed \$10,000 personal loan from Bank Customer A, while serving as Bank branch manager and as the account officer for the customer's account at the Bank.

(3) During the period of May 2004 through July 2004, Respondent engaged in unsafe and unsound banking practices and/or breach of his fiduciary duty to the Bank by authorizing and/or performing three suspicious cash transactions on behalf of Bank Customer A.

### 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 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 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).

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

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

Article IV

ORDER FOR CIVIL MONEY PENALTY

Respondent hereby consents and it is Ordered that:

(1) Respondent shall pay a civil money penalty in the amount of two thousand five hundred dollars (\$2,500), which shall be paid upon execution of this Order.

(2) Respondent shall make the payment 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 (AA-EC-07-17) of this case shall be entered on the payment check.

(3) The amount of the civil money penalty has been reduced or mitigated based on Respondent's submission of a personal financial statement disclosing his current financial condition dated April 2, 2007 and submitted subject to the penalties for false statements provided by 18 U.S.C. § 1001. If the Comptroller subsequently learns that the Respondent's April 2, 2007 personal financial statement is materially incorrect or misleading, the Comptroller may consider imposition of a greater civil money penalty up to and including a total amount of thirty thousand dollars (\$30,000).

(4) Respondent shall provide the Director of the Enforcement & Compliance Division ("Enforcement Director") his social security number and the address of his current place of residence, by completing and returning the form attached hereto as Appendix A upon execution of this Order.

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(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(h) and (i) (as amended).

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 Intention to Prohibit Further Participation, and a Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(b), (e), and (i);

(b) 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;

(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 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.

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§ 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 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.

(4) It is hereby agreed that the provisions of this Order constitute a settlement of these prohibition and civil money penalty proceedings arising out of the 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 in the event Respondent engages in such conduct in the future.

(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  
Ronald G. Schneck  
Director  
Special Supervision

1/8/2008  
Date

/s/ James Blair Barclay  
James Blair Barclay

12/28/2007  
Date

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

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