

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

In the Matter of:	)	
	)	
Stephen Souky,	)	AA-EC-08-76
Former Senior Vice President of Finance	)	
	)	
NBT Bank, N.A.	)	
Norwich, New York	)	

CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate cease and desist and civil money penalty proceedings against Stephen Souky (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i); and

WHEREAS, the Comptroller alleges that while associated with NBT Bank, N.A., Norwich, New York (“Bank”) as a senior vice president of finance, Respondent engaged in unsafe and unsound banking practices and breaches of fiduciary duty in conducting the affairs of the Bank during the period of January 2002 through May 2006; 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:

Article I

JURISDICTION

(1) The 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 senior vice president of finance for 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 cease and desist and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(b) and (i).

Article II

COMPTROLLER’S FINDINGS

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

(1) During the period January 2002 through February 2006, Respondent directed changes to be made to the income and expense accounts that affected the budget of the Chief Information Officer. The changes, which were made at the request of the

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Chief Information Officer, were designed to improperly defer expenses in the books and records of the Bank.

(2) As a result of the conduct described in paragraph (1), above, the Bank's expenses were understated and its assets overstated in the years 2002 -2005. Corrective entries were made in the year 2006.

(3) As a result of the conduct described in paragraph (1), above, the Bank expended \$11,000 in investigative costs in connection with identifying and correcting irregularities in the Bank's books and records relating to this matter.

(4) By reason of the foregoing conduct, Respondent engaged in unsafe or unsound practices and breached his fiduciary duty to the Bank. His practices and breach of duty were part of a pattern of misconduct.

### Article III

#### PERSONAL CEASE AND DESIST ORDER

Respondent hereby consents to, and it is Ordered that:

(1) Within ten (10) days of the execution and issuance of this Order, the Respondent shall provide a copy of the Order to the board of directors of any institution, as specified in 12 U.S.C. § 1818(e)(7)(A), of which respondent is currently an "institution-affiliated party," as defined in 12 U.S.C. § 1813(u), and shall provide a written certification of his compliance with this paragraph to the Director, Enforcement and Compliance Division, 250 E Street, S.W., Washington, D.C. 20219 ("Director").

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(2) Prior to accepting any position that would cause him to become an “institution-affiliated party” of any institution specified in 12 U.S.C. § 1818(e)(7)(A), the Respondent shall provide a copy of this Order to: (i) the chief executive officer and the board of directors of such institution; or (ii) where appropriate, another senior official of such institution, provided that such official has been approved by the OCC for this purpose. Respondent shall provide a written certification of his compliance with this paragraph to the Director within ten (10) days of his acceptance of any position as an institution-affiliated party.

(3) Whenever Respondent is an institution-affiliated party, as that term is defined in 12 USC 1813(u), and he makes or causes to be made any entry of a credit or debit to an income, expense, asset or liability account on or off a balance sheet, including entries made in regulatory reports, on behalf of an insured depository institution, he shall ensure that the entry is reviewed and approved by his supervisor. For the purposes of this paragraph, the term “supervisor” shall mean a senior officer of the institution who supervises Respondent or an appropriate executive officer of the board of directors if Respondent holds the highest officer position in the institution.

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

(5) Respondent shall not engage 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 with which he is or may become affiliated.

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(6) Respondent shall observe his fiduciary duties of loyalty and/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.

(7) 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 IV

#### ORDER FOR CIVIL MONEY PENALTY

Respondent hereby consents to, and it is Ordered that:

(1) Respondent shall pay a civil money penalty in the amount of five thousand dollars (\$5,000.00) upon execution of this Order.

(2) 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 all checks.

(3) 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:

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- (a) the right to the issuance of Notice of Charges for Issuance of an Order to Cease and Desist and 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.

(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) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359.

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(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 the cease and desist 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.

(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 for Special Supervision

3/20/2009  
Date

/s/ Stephen Souky  
Stephen Souky

2/23/2009  
Date