

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

In the Matter of: Kurt J. Dempster Vice President and Loan Officer First National Bank, USA Boutte, Louisiana))))))	AA-SO-09-05
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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 Kurt J. Dempster (“Respondent”), Vice President and Loan Officer at First National Bank USA, Boutte, Louisiana (“Bank”), pursuant to 12 U.S.C. § 1818(b) and (i), based upon the Comptroller’s Findings contained in Article II of this Consent Order (which Respondent neither admits nor denies);

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:

Initials: KJD
Date: 3/10/09

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 is a Vice President and Loan Officer 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

COMPTROLLER’S FINDINGS

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

(1) During approximately 2000 through 2004, Respondent was the Bank’s assigned loan officer for extensions of credit to fund a residential construction

development project known as Catfish Cove (the “Development”) in Des Allemands, Louisiana.

(2) In 2004, Respondent became an investor in and one of the owners of the Development through a company he controlled (DL3 Investments, LLC). Also in 2004, DL3 Investments, LLC became one of the named borrowers on a Bank line of credit to fund the Development, and Respondent personally guaranteed that line of credit. During 2004 through 2006, the Bank funded a line of credit to the Development's owners that ultimately exceeded \$1.6 million. During this time, Respondent was no longer the assigned loan officer for this credit but was employed by the Bank as a loan officer.

(3) In 2005, Respondent personally participated in the underwriting of certain loans that the Bank made to borrowers who purchased residential lots in the Development by helping borrowers to complete various forms, and by collecting and synthesizing information from borrowers, appraisers and other sources that was transmitted to Bank decisionmaking personnel. Respondent obtained information from borrowers, completed forms, and performed some market valuations on the lots. Respondent (through DL3 Investments, LLC) received a portion of the proceeds from the lot sales.

(4) In 2006, Respondent personally requested a Bank clerk to initiate two draws on the line of credit to the Development that together exceeded \$75,000, without notifying or receiving pre-approval from the Bank’s assigned loan officer. Based on the terms of the loan, these funds exceeded the amount then available on the line of credit. These funds were used to make payments that were due on the line of credit.

(5) By reason of the foregoing conduct, Respondent engaged in unsafe or unsound practices and breached his fiduciary duty to the Bank.

Article III

PERSONAL CEASE AND DESIST ORDER

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, 12 U.S.C. § 1818, the Comptroller hereby Orders, and Respondent consents, that:

(1) During all times in which Respondent is an “institution-affiliated party” (as defined by 12 U.S.C. § 1813(u)) of any “insured depository institution” (as defined by 12 U.S.C. § 1813(c)(2)), Respondent shall:

- (a) Comply fully with all laws, regulations, and policies applicable to any insured depository institution which employs him;
- (b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code;
- (c) Observe his fiduciary duties of loyalty and 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;
- (d) Familiarize himself with and adhere to the lawful written policies and procedures of any insured depository institution with which he may become affiliated, or seek and receive written permission from

appropriate authorized individuals to do otherwise. In the event that Respondent is affiliated with an insured depository institution that has written policies and procedures that are more stringent than the provisions of this Order, the Respondent shall adhere to the written policies and procedures of such insured depository institution; and

- (e) Recuse himself from involvement in any manner (including but not limited to participating in loan application, approval, disbursement, collection and servicing) in loans or extensions of credit from an insured depository institution of which he is an institution-affiliated party to (or for the benefit of): (1) himself, (2) a Family Member of Respondent (defined as any spouse, father, mother, brother, sister, child, stepchild, grandparent, or grandchild, or any father, mother, brother, sister, or grandparent of his spouse, or any member of his household); or (3) any Related Interest of Respondent (defined as any corporation, company, firm, partnership or other business enterprise, nonprofit organization, or educational or other institution in which he is an employee, owner (defined as owning 10% or more of any class of stock, shares, or other ownership interest), director, member, trustee, partner, advisor, consultant, or in which he holds any office).

(2) Within ten (10) days of the effective date of this Order, Respondent shall provide a copy of the Order to the chief executive officer and board of directors of any insured depository institution, to which Respondent is an institution-affiliated party. Within ten (10) days thereafter, Respondent shall provide a written certification of his compliance with this paragraph to the Director, Enforcement and Compliance Division, Attention: Director of Enforcement, 250 E Street, S.W., Washington, DC 20219 (“Enforcement Director”).

(3) Prior to accepting any position (or taking any action) that would cause Respondent to become an institution-affiliated party of any other insured depository institution, Respondent shall provide the chief executive officer and board of directors of such institution with a copy of this Order. Within ten (10) days after acceptance of such position, Respondent shall provide a written notification of his acceptance of such position to the Enforcement Director, together with a written certification of his compliance with this paragraph.

(4) Respondent shall transfer any proceeds he receives (or has the right to receive) in any capacity whatsoever (including on behalf of DL3 Investments, LLC or any other entities or persons under his control or at his direction) from any sale, lease, or other paid use of the real estate contained in the Development described in Article II to the Bank. Respondent shall continue to make such transfer payments to the Bank (within ten (10) business days of receipt) until the principal balance of any credit(s) from the Bank related to the Development (and on which Respondent is directly or indirectly a

borrower or guarantor) are repaid in full. Upon written request by the OCC to Respondent and his counsel, Respondent shall provide confirmation of any such transfer payment (to include a HUD-1 or other itemized accounting of the "net proceeds" from any sale, lease, or other paid use of such real estate) to the OCC Assistant Deputy Comptroller, Birmingham Field Office, 100 Concourse Parkway, Suite 240, Birmingham, AL 35244, until the principal balance of the credit(s) described in this paragraph is repaid in full.

(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) or (h).

Article IV

ORDER FOR CIVIL MONEY PENALTY

Respondent hereby consents to and it is Ordered that:

(1) Respondent shall make payment of a civil money penalty in the amount of \$5,000 (five thousand dollars) 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 the check (AA-SO-09-05). Respondent shall simultaneously provide a copy of the check to the Enforcement Director.

(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).

Article V

WAIVERS

- (1) By executing this Order, Respondent waives:
- (a) the right to the issuance of a Notice of Charges or Notice of Assessment of a Civil Money Penalty 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), (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 restitution 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 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 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 further agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, the specific acts, omissions, or violations referenced in this Order, or otherwise creating the impression that this Order is without factual basis. If Respondent violates this provision, the OCC may set aside this settlement and commence administrative proceedings on the actions alleged herein.

Nothing in this paragraph shall affect Respondent's testimonial obligations.

(7) 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

3/27/2009
Date

/s/ Kurt J. Dempster

3/10/2009
Date