

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

_____)	
In the Matter of:)	
)	AA-EC-09-26
Mark E. Fox,)	
Former Loan Officer)	
)	
Albany Bank & Trust, N.A. (n/k/a AB&T National)	
Bank), Albany, Georgia)	
_____)	

CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate proceedings for an order to cease & desist and assessment of a civil money penalty against Mark E. Fox (“Respondent”) pursuant to 12 U.S.C. §§ 1818(b) and (i), on the basis of Respondent’s activities during February 2004 through October 2005 while serving as a loan officer at Albany Bank & Trust, N.A., Albany, Georgia (n/k/a AB&T National Bank) (collectively the “Bank”), for unsafe or unsound banking practices; 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 consents to the issuance of this Consent Order (“Order”) without an adjudication on the merits and without admitting or denying any wrongdoing;

NOW, THEREFORE, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

Article I

JURISDICTION

(1) Albany Bank & Trust, N.A. merged into its affiliate, AB&T National Bank, in March 2009. During all times relevant to this action, the 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*, and an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was a 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 cease and desist and civil money penalty actions against him pursuant to 12 U.S.C. §§ 1818(b) and (i).

Article II

COMPTROLLER'S FINDINGS

The Comptroller finds the following:

(1) During the period February 2004 through October 2005, Respondent caused the Bank to make at least five nominee loans to friends and/or family members of a troubled borrower. Respondent knew the proceeds of those loans would be transferred for the use of the troubled borrower. He made the loans to nominees to avoid the Directors Loan Committee review, which was necessary to make additional Bank loans to the troubled borrower. Respondent also failed to obtain adequate collateral for the loans and misapplied proceeds upon the sale of collateral.

(2) By reason of the foregoing conduct, Respondent caused the Bank to suffer substantial losses.

(3) By reason of the foregoing conduct, Respondent engaged in reckless unsafe or unsound practices, breached his fiduciary duty to the Bank, engaged in a pattern of misconduct, and caused more than a minimal loss to the Bank.

Article III

PERSONAL CEASE AND DESIST ORDER

Respondent consents to, and it is ORDERED that:

(1) Whenever Respondent is employed by, or is offered employment at, an insured depository institution (as defined in 12 U.S.C. § 1813(c)(2)) or otherwise becomes an institution-affiliated party (“IAP”) within the meaning of 12 U.S.C. § 1813(u),

Respondent shall:

- (a) Prior to becoming an IAP, or within ten (10) days of consenting to this Order if currently an IAP, provide a copy of this Order to the board of directors or chief executive officer or any other senior management officer, provided that such officer has been approved by the OCC for this purpose, of the insured depository institution.
- (b) Provide written certification of his compliance with the foregoing disclosure requirement to the Director of the Enforcement and Compliance Division, 250 E Street, S.W. Washington, DC 20219 (“Enforcement Director”) within ten (10) days of compliance.
- (c) Not participate in the approval of, or influence the approval of any extension of credit, as defined in 12 C.F.R. § 32.2(k), made by any insured depository institution or agency to which he is or may become affiliated.
- (d) Comply fully with all laws, rules, and regulations while employed, directly or indirectly, by any insured depository institution (as defined in 12 U.S.C. § 1813(c)(2)), as well as all other laws,

regulations, and policies pertaining to such insured depository institution.

- (e) Not engage in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code.
- (f) Fulfill the fiduciary duties of loyalty and care owed to any insured depository institution with which he is or may become affiliated and, at all times, not place his own interests above those of the institution.
- (g) Adhere to the written policies and procedures of any insured depository institution or agency to which he may become affiliated, or seek and receive written permission from appropriate authorized individuals to do otherwise.

(2) 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.

Article IV

ORDER FOR CIVIL MONEY PENALTY

Respondent consents to, and it is ORDERED that:

(1) Respondent shall pay a civil money penalty in the amount of seven thousand five hundred dollars (\$7,500), to be paid according to the following payment schedule,

upon conclusion of Respondent's bankruptcy proceeding filed in the U.S. Bankruptcy Court for the Middle District of Georgia, case #09-11298. Respondent shall pay \$500 within ten days of the entry of any court order concluding Respondent's bankruptcy proceeding, with the remaining balance (\$7,000) payable in equal quarterly installments thereafter for the period of two years (\$875 per quarter), beginning with the calendar quarter after the initial \$500 payment is made and due upon the first month in which each successive quarter begins; *i.e.* January 1, April 1, July 1, or October 1, provided that payment of the quarterly installments shall commence no earlier than the first quarter following one year from execution of this Order.

(2) Respondent shall make payment by check or money order, according to the payment schedule set forth above, 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, MO 63197-9000. The docket number of this case, (AA-EC-09-26), shall be entered on all checks.

(3) If Respondent fails to comply with any provision of this Order, then the entire balance of the civil money penalty amount described in this Article shall become immediately due and payable.

(4) Respondent shall notify the Enforcement Director of the address of his current place of residence, by completing the appropriate section of the form attached hereto as Appendix A and returning it with this Order.

(5) Until the civil money penalty is paid in full, upon each and every subsequent change in place of residence, if any, Respondent shall notify the Enforcement Director of his new address within seven (7) days of such change in address.

(6) 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.

Article V

BANKRUPTCY

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

Article VI

OTHER PROVISIONS

(1) By consenting to the issuance of this Order, Respondent waives:

- (a) the right to the issuance of Notice(s) 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 acknowledges that:

- (a) He 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 he 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.

- (b) He has read 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 or to execute this Order.

(3) This Order constitutes 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 of this Order). 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.

(4) This Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph (3), 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.

(5) 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.

(6) Nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and 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 has hereunto set his hand.

/s/Mark E. Fox
Mark E. Fox

9/4/09
Date

IT IS SO ORDERED.

/s/Ronald G. Schneck
Ronald G. Schneck
Director for Special Supervision

9/10/09
Date