

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

In the Matter of:

James F. Clifford, former director of Marshall Bank
N.A. Hallock, MN

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)
) AA-EC-08-75
)
)

CONSENT ORDER

WHEREAS, on November 7, 2008, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) initiated this proceeding pursuant to 12 U.S.C. § 1818(i) against James F. Clifford, (“Respondent”), former director at Marshall Bank N.A., Hallock, MN (“Bank”), by issuance of a Notice of Assessment of Civil Money penalty for alleged violations of a condition imposed in writing by the OCC in connection with the grant of an application;

WHEREAS, solely 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, enters into this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(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: _____
Date: _____

Article I

JURISDICTION

(1) Marshall Bank N.A., Hallock, MN (“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 former director 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 civil money penalty against him pursuant to 12 U.S.C. § 1818(i).

Article II

COMPTROLLER’S FINDINGS

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

(1) Respondent was a director of the Bank from approximately May 27, 2005 to approximately June 29, 2007.

(2) On October 11, 2002, the Bank applied to the OCC for approval to convert from a state chartered to a nationally chartered bank, which the OCC granted by Conditional Approval on December 7, 2002.

Civil Money Penalty Order

Initials: _____

Date: _____

(3) One of the terms and requirements of the Conditional Approval required the Bank to provide written notice to the OCC and to obtain the OCC's written non-objection, prior to undertaking a significant deviation or change from its business plan or operations.

(4) On or about September 23, 2005, the Bank's board of directors approved an agreement with its affiliate, BankFirst, through which the Bank would undertake a program to issue stored value cards. The Bank did not provide written notice to the OCC nor receive a written non-objection from the OCC before undertaking the commencement of the stored value card program.

(5) During May 2006, the Bank commenced the stored value card business without obtaining the OCC's written determination of no objection to the program. The stored value card business represented a significant deviation or change from the Bank's 2002 business plan or operations.

(6) On February 12, 2007, the Bank requested OCC approval to launch and operate a stored value card program. On June 4, 2007, the OCC responded to the Bank's request stating that the OCC would not provide a no objection to the proposed stored value card program.

(7) On February 8, 2007 and May 3, 2007, the Bank signed contracts with vendors for issuance of stored value cards at a time when the Bank had not received OCC non-objection to the stored value card program.

(8) Respondent, as a director throughout the period of the Bank's commencement and continuation of the stored value card business, caused, brought about, participated in, counseled or aided or abetted the Bank's violations of conditions imposed in writing by failing to cause written notice to be provided to the OCC and by failing to obtain the OCC's written determination of no objection before the Bank commenced to engage in the stored value card business, and by failing to cause the Bank to terminate the program upon receipt of the OCC's written determination not to provide a no objection to the program.

(9) By reason of the foregoing conduct, Respondent violated and or caused the Bank to violate conditions imposed in writing by the OCC in connection with the grant of an application, in violation of 12 U.S.C. § 1818(i)(2)(A)(iii).

Article III

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 thirteen thousand five hundred dollars (\$ 13,500.00), which shall be paid 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.

Civil Money Penalty Order

Initials: _____

Date: _____

(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 IV

WAIVERS

(1) By executing this Order, Respondent waives:

- (a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i) and 12 C.F.R. Part 19;
- (b) all rights to seek judicial review of this Order;
- (c) all rights in any way to contest the validity of this Order; and
- (d) 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

Civil Money Penalty Order

Initials: _____

Date: _____

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 the 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, Civil Money Penalty Order

Initials: _____
Date: _____

or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

(7) Respondent further agrees not to take any action nor to make or permit to be made on his behalf any public statement denying, directly or indirectly, any allegation in the Notice, filed on November 7, 2008, or creating the impression that the Notice or this Order is without factual basis. If Respondent violates this provision, the OCC may set aside this settlement and restore this action to its active docket. Nothing in this paragraph shall affect Respondent's testimonial obligations.

(8) Respondent undertakes to cooperate fully with the OCC in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Notice of Assessment of Civil Money Penalties initiating this administrative proceeding. In connection with such cooperation, Respondent agrees to be interviewed by the OCC at such times as the OCC reasonably may request and to appear and testify truthfully and completely without service of a notice or subpoena in this matter, including for deposition, hearing or trial as may be requested by the OCC.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

/s/ Henry Fleming
Henry Fleming
Director for Special Supervision

11-9-09
Date

/s/ James F. Clifford
James F. Clifford

10-16-09
Date

Civil Money Penalty Order

Initials: _____

Date: _____