

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

<u>In the Matter of:</u>	)	
Gaines W. Hammond, Jr.	)	
Former Chairman of the Board	)	AA-EC-09-74
	)	
First National Bank of the South	)	
Spartanburg, South Carolina	)	

**CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate proceedings for a prohibition order and assessment of a civil money penalty against Gaines W. Hammond, Jr. (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (i), on the basis of Respondent’s activities while serving as Chairman of the Board at First National Bank of the South, Spartanburg, South Carolina (“Bank”) during the period of January through April 2008.

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”);

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

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

Article I

JURISDICTION

(1) First National Bank of the South, Spartanburg, South Carolina (“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 the Chairman of the Bank’s Board 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 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) During the period of January through April 2008, while serving as chairman of the Bank’s board of directors, Respondent orchestrated a check kiting scheme through three accounts he controlled at the Bank and one account at a state bank. Respondent

Prohibition/Removal and Civil Money Penalty Order

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

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

passed approximately \$5.6 million among the four accounts during this timeframe until the scheme collapsed, leaving a deficit in his accounts with the Bank of over \$190,000. Respondent reimbursed the Bank for all shortages in his accounts caused by his actions.

(2) As part of the foregoing scheme, Respondent caused the Bank to pay numerous checks drawn on his accounts at a time when there were insufficient funds in his accounts to pay such checks. Respondent subsequently made “covering” deposits to repay the Bank funds it disbursed to pay his bad checks. Respondent’s activities caused the Bank to make numerous unauthorized extensions of credit to him in violation of 12 C.F.R. §§ 215.4(e) and 215.6, and caused the Bank to sustain more than \$5,000 in lost NSF fees.

(3) As part of the foregoing scheme, Respondent deposited into his accounts at the Bank, nine checks drawn on his account at the state bank, creating provisional credits that Respondent relied on to cover checks drawn on his Bank accounts. However, the provisional credits were reversed when the state bank returned the nine checks for insufficient funds, resulting in nine unauthorized overdrafts and extensions of credit in further violation of 12 C.F.R. §§ 215.4(e) and 215.6.

(4) By reason of the foregoing conduct, Respondent violated the law, engaged in reckless unsafe or unsound practices, breached his fiduciary duty to the Bank, and engaged in a pattern or practice of misconduct that resulted in pecuniary gain to himself and loss to the Bank.

### Article III

#### ORDER OF PROHIBITION

Prohibition/Removal and Civil Money Penalty Order

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

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

Respondent consents to, and it is ORDERED that:

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, Respondent 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;

Prohibition/Removal and Civil Money Penalty Order

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

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

- (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).

#### 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 fifty thousand dollars (\$50,000), to be paid according to the following payment schedule:

- (a) payment of \$10,000 upon execution of this Order;
- (b) payment of \$15,000 on or before July 1, 2010;
- (c) payment of \$6,250 on or before October 1, 2010;
- (d) payment of \$6,250 on or before January 1, 2011;

Prohibition/Removal and Civil Money Penalty Order

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

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

- (e) payment of \$6250 on or before April 1, 2011; and
- (f) payment of \$6250 on or before July 1, 2011.

(2) Respondent shall make payment by certified check or money order, according to the payment schedule outlined 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, Missouri 63197-9000. The docket number of this case (AA-EC-09-74) 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) Upon execution of this Order, Respondent shall notify the Director of the Enforcement & Compliance Division (“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(i) (as amended).

Article V

BANKRUPTCY

(1) If Respondent files for bankruptcy protection prior to payment in full of the civil money penalty ordered in Article IV, Respondent shall notify the Enforcement Director within ten (10) days of the filing and shall provide a copy of the filing to the Enforcement Director.

(2) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay the civil money penalty pursuant to this Order is subject to discharge, Respondent shall make a motion to the court for an order of non-dischargeability of the civil money penalty and provide the Enforcement Director with a copy of the motion, concurrent with filing, and a copy of any subsequently issued order within ten (10) days of issuance. If Respondent fails to make such motion, 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(e) and

(i);

Prohibition/Removal and Civil Money Penalty Order

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

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

- (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(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 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 him to agree to consent to the issuance of this Order or to execute this Order.

(3) This Order constitutes a settlement of the prohibition 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) Respondent understands that 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/Gaines W. Hammond, Jr.  
Gaines W. Hammond, Jr.

11/27/09  
Date

**IT IS SO ORDERED.**

/s/Henry Fleming  
Henry Fleming  
Director for Special Supervision

12/22/09  
Date