

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

_____)	
In the Matter of:)	
)	AA-EC-10-18
Robert E. Lee,)	
Former President)	
)	
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 Robert E. Lee (“Respondent”) pursuant to 12 U.S.C. §§ 1818(b) and (i), on the basis of Respondent’s activities during the period of September 2004 through October 2005, while serving as president of 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, without admitting or denying any wrongdoing, consents to the issuance of this Consent Order (“Order”);

NOW, THEREFORE, it is stipulated by and between the Comptroller, through his

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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 the president 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).

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Article II

COMPTROLLER'S FINDINGS

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

(1) During the period of approximately September 2004 through October 2005, Respondent had fully drawn \$100,000 on a general line of credit from the Bank, the maximum amount of general purpose credit allowed to Bank executive officers.

(2) On September 27, 2004, Respondent obtained an \$815,000 credit line from the Bank for the stated purpose of constructing a residence (“Construction Loan”). From September 2004 through October 2005, Respondent made numerous draws on the Construction Loan for general purposes other than the construction of his residence and set up a “sweep” between his checking account and the Construction Loan, whereby any check written would be drawn from the Construction Loan. Draws on the Construction Loan for general purposes other than residential construction totaled over \$400,000, causing violations of 12 C.F.R. §§ 215.4(a); 215.5(a); 215.5(c)(4); and 215.6.

(3) On eight other occasions in 2005, Respondent received further extensions of general purpose credit from the Bank in excess of the \$100,000 limit. First, Respondent caused the Bank to make five loans totaling \$382,000 to his immediate family members, which should have been attributed to him pursuant to 12 C.F.R. §

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215.3(f). Second, Respondent received undocumented and interest-free loans totaling \$20,000 by causing transfers to his personal account from inter-bank “due from” accounts, which are Bank ledger accounts used to account for funds owed from other banks. All of these transactions were made on preferential terms in violation of 12 C.F.R. § 215.4(a) and resulted in Respondent further exceeding the \$100,000 limit on general credit allowable to Bank executives in violation of 12 C.F.R §§ 215.5(a); 215.5(c)(4) and 215.6.

(4) Between March 29 and October 25, 2005, Respondent accrued eight overdrafts in his checking accounts, totaling at least \$18,000, causing him to exceed his preauthorized overdraft protection plan in violation of 12 C.F.R. § 215.4(e).

(5) Respondent repaid the full amount of principal owing on the loans described in this Article II, and also repaid the full amount of interest owing, where interest was charged, on the loans. The Bank did not suffer loss.

(6) By reason of the foregoing conduct, Respondent violated banking regulations, engaged in reckless unsafe or unsound practices, breached his fiduciary duty to the Bank, and engaged in a pattern of misconduct resulting in pecuniary gain to himself.

Article III

PERSONAL CEASE AND DESIST ORDER

Respondent consents to, and it is ORDERED that:

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(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 he is 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) 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 IAP to, or for the benefit of: (1) himself, (2) any family member of Respondent (defined as any spouse, parent, sibling, child, stepchild, grandparent, grandchild, or any parent, sibling, or grandparent of his spouse, or

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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).

- (d) Comply fully with all laws, rules, and regulations, including 12 C.F.R. § 215 (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks – Regulation O), 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 or 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.

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- (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 fifteen thousand dollars (\$15,000), to be paid according to the following payment schedule:

- (a) payment of six hundred dollars (\$600.00) upon execution of this Order;
- (b) payments of one thousand two hundred dollars (\$1,200.00) each calendar quarter thereafter for twelve (12) consecutive quarters, with the first quarterly payment due on or before July 1, 2010, and final payment due on or before April 1, 2013.

(2) Respondent shall make payment by check made payable to the Treasurer of the United States and shall deliver the payment to: Comptroller of the Currency, P.O.

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Box 979012, St. Louis, MO 63197-9000. The docket number of this case, (AA-EC-10-18), shall be entered on all checks.

(3) If Respondent fails to comply with any provision of the payment plan provided in this Article, 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) 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

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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 bankruptcy 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(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;

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- (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

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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 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.

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(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.

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IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand.

/S/ REL
Robert E. Lee

2/25/2010
Date

IT IS SO ORDERED.

/S/ JQ
John Quill
Deputy Comptroller for Special Supervision

2/26/2010
Date

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