

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

In the Matter of:)	
Kenley Just)	
Director and former President)	AA-EC-10-99
The Farmers and Merchants National Bank of Hatton)	
Hatton, North Dakota)	

CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) intends to initiate proceedings to assess a civil money penalty against Kenley Just (“Respondent”), pursuant to 12 U.S.C. § 1818(i), in his capacity as a director and former president of The Farmers and Merchants National Bank of Hatton, Hatton, North Dakota (“Bank”), for failing to take the necessary actions to cause the Bank to comply with the Formal Agreement entered into on May 11, 2009.

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:

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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 director and former 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 civil money penalty actions 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) On May 11, 2009, Respondent executed a Formal Agreement (“FA”) with the OCC in his capacity as a director of the Bank. As a director and president of the

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Bank, Respondent was responsible for ensuring the Bank's compliance with the FA, which required the Board to, among other things, revise the Bank's Lending Policy; obtain necessary financial and collateral documentation for all loans identified by the OCC as missing the necessary information; obtain appraisals and evaluations consistent with regulatory guidance for loans identified by the OCC as missing the required appraisal or evaluation; adopt a real estate appraisal and evaluation review process; and adopt loan workout plans that identify sources of repayment, primary and secondary actions to eliminate the basis of criticism, and timeframes for accomplishing the identified actions.

(2) Respondent has maintained his position as a Bank director since execution of the FA. Respondent also held the position of president from the time of execution until March, 2010, during which time he was primarily responsible for coordinating actions to comply with the FA.

(3) The OCC tested the Bank's compliance with the FA twice since its execution – in September 2009 and January 2010 – finding noncompliance with several of the requirements of the FA at each examination. The OCC identified deficiencies causing the noncompliance, and provided guidance for correcting the deficiencies to the Bank's Board and management, including Respondent, following each examination.

(4) Respondent, in his capacity as a director and former president, failed to ensure that the Bank took the necessary actions to achieve compliance with several provisions of the FA. For example, Respondent failed to ensure that the Board approved

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a revised Lending Policy incorporating specific items such as collection procedures and use of brokered deposits to fund loan growth; obtain current financial and collateral information on eighteen loans criticized by the OCC in the September 2009 Examination; obtain real estate evaluations consistent with regulatory standards; implement an appraisal and evaluation review process; and develop workout plans that identify the expected source of repayment and include primary and secondary actions to eliminate the basis of criticism, with timeframes for such actions.

(5) By reason of the foregoing conduct, Respondent violated and caused the Bank to violate a written agreement between the Bank and the OCC.

Article III

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 five thousand dollars (\$5,000.00), which shall be paid in full upon execution of this Order.

(2) Respondent shall make payment by cashier's check or money order, 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-10-99) shall be entered on the submitted payment.

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(3) Respondent shall notify the OCC of the address of his current place of residence by completing the form attached hereto as Appendix A and returning it together with this signed Order.

(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 (i) (as amended).

Article IV

OTHER PROVISIONS

- (1) By consenting to the issuance of this Order, Respondent waives:
- (a) the right to the issuance of a Notice under 12 U.S.C. § 1818(i);
 - (b) 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;
 - (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:

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- (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 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.
- (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 civil money penalty proceeding 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.

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(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 have hereunto set their hands.

/s/ Bert A. Otto

Bert A. Otto
Deputy Comptroller
Central District

10/27/10

Date

/s/ Kenley Just

Kenley Just

10/22/2010

Date