

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

In the Matter of:	)	
Robert Diez	)	
Director	)	AA-EC-10-88
Security Bank, N.A.	)	
North Lauderdale, FL	)	

**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 Robert Diez (“Respondent”) pursuant to 12 U.S.C. § 1818(i) on the basis of Respondent’s activities while serving as a director of Security Bank, N.A., North Lauderdale, FL (“Bank”), during the period of April 2008 through May 19, 2010;

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:

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*

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*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 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 nether admits nor denies, the following:

(1) Respondent has been a director of the Bank during the period of 2006 through the present.

(2) On April 3, 2008, Respondent executed a Formal Agreement (“FA”) with the OCC in his capacity as a director of the Bank. As a director, Respondent was responsible for ensuring the Bank’s compliance with the FA, which required the Bank to, among other things, maintain minimum capital levels and submit an acceptable Capital Plan to the OCC; develop and implement a written loan portfolio management program; develop and implement a written asset diversification program that included analysis of credit concentrations sufficient to assess relevant risks; develop and implement a written

program to reduce the high level of credit risk in the Bank; and develop and implement a written program designed to eliminate the basis of criticism for criticized assets.

(3) The FA was in effect during April 3, 2008 to May 19, 2010 (“Relevant Timeframe”), when it was replaced by a Consent Order issued against the Bank.

(4) The OCC tested the Bank’s compliance with the FA three times during the Relevant Timeframe – December 1, 2008, September 3, 2009, and October 20, 2009 – finding non-compliance with several of the requirements of the FA at each of the examinations. The OCC identified deficiencies causing the non-compliance, and provided guidance for correcting the deficiencies to the Bank’s Board, including Respondent, following each examination.

(5) Respondent, in his capacity as a director, failed to ensure that the Bank took the necessary actions to achieve compliance with the provisions of the FA during the Relevant Timeframe. For example, Respondent failed to ensure that the Bank developed and adhered to written programs to identify and manage concentrations of credit and reduce levels of criticized assets and credit risk; failed to ensure that the Bank developed and adhered to an acceptable Capital Plan; and failed to ensure that the Bank adopted and followed a written plan to improve loan portfolio management.

(6) 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 six thousand five hundred dollars (\$6,500.00), to be paid according to the following payment schedule:

- (a) Three thousand dollars (\$3,000) of the penalty shall be paid upon execution of this Order;
- (b) The remaining three thousand five hundred dollars (\$3,500) of the penalty shall be paid no later than October 31, 2011.

(2) Respondent shall make payment in full according to the schedule set forth above by cashier's check or money order, made payable to the Treasurer of the United States, and shall deliver the payments to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-10-88) shall be entered on each payment, a copy of which shall be submitted to the OCC, Director of Enforcement at 250 E Street, SW, Washington, DC 20219.

(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 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 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 IV

#### BANKRUPTCY

(1) If Respondent files for bankruptcy protection prior to payment in full of the civil money penalty ordered in Article III, 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 a 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 V

#### 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:

- (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.

(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/R.D.

10/27/10

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Robert Diez

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Date

**IT IS SO ORDERED.**

/s/Henry Fleming

11/23/10

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Henry Fleming  
Director  
Special Supervision Division

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Date

Initials: R.D.  
Date: 10/27/10