

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

In the Matter of: Dennis O'Malley Vice Chairman Beverly Bank & Trust Company, N.A., Chicago, Illinois)))))))	AA-EC-11-49
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CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate a civil money penalty proceeding against Dennis O’Malley (“Respondent”), Vice Chairman of the Board of Directors of Beverly Bank & Trust Company, Chicago, Illinois (“Bank”), pursuant to 12 U.S.C. § 1818(i) on the basis of Respondent’s activities in 2006 and 2007; 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, desires to enter 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:

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 Vice Chairman of the Board of Directors 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 a civil money penalty proceeding against him pursuant to 12 U.S.C. § 1818.

Article II

COMPTROLLER’S FINDINGS

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

(1) During at least the period from October 2006 through March 2007, Respondent approved overdrafts to Customer A, a construction company that develops residential real estate in the Chicago area, in excess of his lending authority. Respondent’s brother, then the Bank’s CEO and Chairman, was the Bank’s officer for the Customer A.

(2) For at least 6 months, Respondent failed to disclose to the Bank that he approved overdrafts to Customer A in excess of his lending authority in violation of the Bank’s policy. These overdrafts to Customer A increased the Bank’s exposure to Customer A loans and resulted in a loss to the Bank.

(3) Respondent had knowledge that his brother had engaged in unsafe or unsound banking practices in approving loans and overdrafts to Customer A.

(4) By failing to disclose his approvals of the overdrafts to Customer A and report his brother's misconduct to the Bank's Board of Directors, Respondent deprived the Bank of material information that resulted in the Bank's filing inaccurate Call Reports.

(5) By reason of the foregoing, Respondent engaged in recklessly unsafe or unsound banking practices and/or a breach of fiduciary duty.

Article III

ORDER FOR CIVIL MONEY PENALTY

(1) Respondent hereby consents to the payment of a civil money penalty in the amount of ten thousand dollars (\$10,000), which shall be paid upon execution of this Order.

(2) Respondent shall make payment in full by certified 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 shall be entered on all checks. Respondent shall send a copy of the check to the Director, Enforcement and Compliance Division, 250 E St., SW, Washington, DC 20219.

(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.

Article IV

BANKRUPTCY

(1) If Respondent files for bankruptcy protection prior to making payment in full of the civil money penalty required by this Order, Respondent shall notify the Director, Enforcement and Compliance Division, 250 E St., SW, Washington, DC 20219, within ten (10) days of the filing and shall provide a copy of the filing to the 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 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

WAIVERS

- (1) By executing this Order, Respondent waives:
- (a) the right to the issuance of a Notice of Charges under 12 U.S.C. § 1818;
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818 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 shall not cause, participate in or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for 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.

(3) Any failure by Respondent to comply with this Order shall be subject to enforcement for the longer of (a) the period allowed by the applicable statute of limitations, or (b) five (5) years following the failure to comply.

(4) Respondent 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.

(5) This Order constitutes a settlement of the civil money penalty proceeding contemplated by the Comptroller and arising out of the specific acts, omissions, or violations described in Article II of this Order. However, the specific acts, omissions or violations described in Article II of this Order may be used by the Comptroller in future enforcement actions to establish a pattern or practice of misconduct or the continuation of a pattern or practice of misconduct.

(6) The provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph (5), 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.

(7) 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, or authority of any other representatives of the United States or agencies thereof to bring other actions deemed appropriate.

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

/s/Henry Fleming
Henry Fleming
Director for Special Supervision
Office of the Comptroller of the Currency

8/15/11
Date

/s/D. O'Malley
Dennis O'Malley

06/27/11
Date