

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

In the Matter of: Frank D. Ortwine Former President, Chief Executive Officer, and Chairman of the Board Valley Capital Bank, N.A. Mesa, Arizona)))))	AA-EC-11-40
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CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate cease and desist and prohibition proceedings against Frank D. Ortwine (“Respondent”), pursuant to 12 U.S.C. §§ 1818(b) and (e), on the basis of Respondent’s activities while serving as president, chief executive officer, and chairman of the board of Valley Capital Bank, N.A., Mesa, AZ (“Bank”) during the period from September 2007 through February 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”) issued pursuant to 12 U.S.C. §§ 1818(b) and (e);

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 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 former president, chief executive officer, and chairman of the board 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 prohibition actions against him pursuant to 12 U.S.C. §§ 1818(b) and (e).

Article II

COMPTROLLER’S FINDINGS

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

(1) During the period from September 2007 through February 2009, Respondent failed to properly supervise chief credit officer Steven J. Ellsworth

(“Ellsworth”) and chief operations officer Kevin W. Stevenson (“Stevenson”).

Respondent’s failure allowed Ellsworth and Stevenson to engage in a scheme to use Bank funds to repay personal debts and obligations that the two had jointly acquired.

(2) In December 2007, Respondent voted to approve loans to two Bank employees that violated 12 C.F.R. § 215.5, which prohibits bank executive officers from receiving general purpose extensions of credit in excess of \$100,000. Respondent also violated 12 U.S.C. § 83, which prohibits banks from making loans secured by their own stock.

(3) In January 2009, Respondent obtained a \$500,000 loan from the Bank in violation of 12 C.F.R. § 215.5, which prohibits bank executive officers from receiving general purpose extensions of credit in excess of \$100,000. Respondent was forced out of the Bank in February 2009, and subsequently defaulted on the \$500,000 loan.

(4) After Respondent’s departure from the Bank, Respondent received \$20,000 in impermissible golden parachute payments pursuant to 12 U.S.C. § 1828(k) and 12 C.F.R. Part 359.

(5) Respondent’s conduct caused a loss to the Bank of at least \$520,000.

(6) By reason of the foregoing conduct, Respondent engaged in violations of law, reckless unsafe or unsound practices, a pattern or practice of misconduct; breached his fiduciary duty to the Bank; and showed personal

dishonesty and a willful and continuing disregard for the law that resulted in personal gain and unjust enrichment to himself and substantial losses to the Bank.

Article III

ORDER OF PROHIBITION

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 hereby agrees that he 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, bank holding companies and 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;
- (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 PAYMENT OF RESTITUTION

Respondent consents to, and it is ORDERED that:

(1) Respondent shall reimburse the Deposit Insurance Fund in the amount, if any, determined through resolution of the following Federal Deposit Insurance Corporation lawsuit involving Respondent: Federal Deposit Insurance Corporation, as Receiver for Valley Capital Bank, N.A. v. Frank D. Ortwine, et al., Case no. 2:10-cv-01178 – GMS, in the United States District Court for the District of Arizona.

(a) Respondent shall deliver a copy of any payments made by him pursuant to the above referenced lawsuit to the Director, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 250 E St., S.W., Washington, D.C. 20219.

(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 become final pursuant to 12 U.S.C. § 1818(b)(6).

Article V

OTHER PROVISIONS

- (1) By consenting to the issuance of this Order, Respondent waives:
- (a) the right to the issuance of a Notice of Charges for Issuance of an Order to Cease and Desist and a Notice of Intention to Prohibit Further Participation under 12 U.S.C. §§ 1818(b) and (e);

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

(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) This Order constitutes a settlement of prohibition, 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 of practice of misconduct or the continuation of a pattern or practice of misconduct.

(5) This Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph (4), 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.

(6) 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.

(7) 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/

Frank D. Ortwine

Nov 11, 2011

Date

IT IS SO ORDERED.

/s/

Kristina B. Whittaker
Deputy Comptroller for Special Supervision

Dec. 14, 2011

Date