

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

In the Matter of:)	
Pamela K. Wagenknecht)	
Former Executive Assistant)	AA-EC-11-72
Bank of America, N.A.)	
Charlotte, North Carolina (El Paso branch location))	

CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate prohibition proceedings against Pamela K. Wagenknecht (“Respondent”), pursuant to 12 U.S.C. § 1818(e), on the basis of Respondent’s activities while serving as Executive Assistant at Bank of America, N.A. (“Bank”), in one of the Bank’s El Paso, Texas branches, during the period from March 1993 through July 2007;

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(e);

NOW, THEREFORE, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

Initials: PKW
Date: 11/19/11

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 Executive Assistant 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 prohibition action against her pursuant to 12 U.S.C. § 1818(e).

Article II

COMPTROLLER’S FINDINGS

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

(1) During the period from January 23, 2002 through June 28, 2007, Respondent embezzled \$142,292.21 from six customer accounts, transferring funds into both her own account and an account belonging to one of her relatives (“Associate”).

- (a) Between May 13, 2007 and June 28, 2007, Respondent made five withdrawals, totaling \$7,500, from Customer A's account. Respondent credited the funds to Associate's account. Respondent then made five transfers, totaling \$5,890, from Associate's account into Respondent's own account. On May 9, 2007, Respondent processed another, \$2,607.21 debit transfer from Customer A's into Associate's account. In total, the transfers Respondent made from Customer A's account totaled \$10,107.21. Customer A did not authorize these transactions, and the transactions caused the Bank to suffer a \$10,107.21 loss.
- (b) Between November 10, 2005 and December 12, 2006, Respondent processed five transactions from Customer B's account. Three of the transactions were credited to Associate, and two of the transactions were credited to Respondent. Customer B did not authorize these transactions, and the transactions caused the Bank to suffer a \$6,000 loss.
- (c) From January 23, 2002 through April 4, 2007, Respondent processed a total of 132 transactions on joint accounts under the names of Customer C, Customer D, and Customer E. Customers C, D, and E

did not authorize these transactions, and the transactions caused the Bank to suffer a \$126,465 loss.

(2) The total amount that Respondent embezzled from all customer accounts was \$142,492.21.

(3) By reason of the foregoing conduct, Respondent engaged in violations of law, including 18 U.S.C. §§ 656 and 1005. Respondent also committed reckless unsafe or unsound practices; engaged in a pattern or practice of misconduct; and exhibited personal dishonesty and a willful and continuing disregard for the law that resulted in personal gain and unjust enrichment to herself 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 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).

Article IV

WAIVERS

- (1) By executing this Order, Respondent waives:
 - (a) Any and all rights to the issuance of a Notice of Intention to Prohibit Further Participation under 12 U.S.C. § 1818(e);
 - (b) Any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(e) and 12 C.F.R. Part 19;
 - (c) Any and all rights to seek judicial review of this Order;
 - (d) Any and all rights in any way to contest the validity of this Order in any way;
 - (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; and
 - (f) Any and all rights to assert a "double jeopardy" claim in the event of a criminal prosecution brought by the Department of Justice, and any

and all rights to assert a “res judicata” claim in the event of a civil action brought by another agency within the United States government, for the acts which form the basis for the issuance of this Order.

(2) This Order constitutes a settlement of the enforcement proceeding against Respondent contemplated by the Comptroller, based on the conduct described in the Comptroller’s findings set forth in Article II of this Order. The Comptroller agrees not to institute further proceedings based on Respondent’s conduct with respect to the Bank, unless such conduct reoccurs. However, the conduct described in Article II may be used by the Comptroller in future enforcement proceedings to establish a pattern or practice of misconduct, or the continuation of a pattern or practice of misconduct. This release shall not preclude or affect the Comptroller’s right to determine and ensure compliance with the terms and provisions of this Order.

(3) This Order is not an adjudication on the merits. If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to take any action affecting Respondent, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing, except as specified in paragraph (2) of this Article. This Order does not limit any right, power, or authority of any other federal agency, or the United States, including, but

not limited to, the Department of Justice, to bring actions as these entities deem appropriate.

Article V

CLOSING

(1) This Order is and shall be effective upon its execution by the Comptroller, through his authorized representative whose hand appears below. The Order shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(2) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818, and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States. Respondent expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of those entities, to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(3) This Order is "issued with the consent of . . . the institution-affiliated party concerned," pursuant to 12 U.S.C. § 1818(h)(2).

(4) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

(5) No separate promise or inducement of any kind has been made by the Comptroller, or his officers or employees, to cause or induce Respondent to consent to the issuance of this Order and/or to execute it.

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

/s/Pamela K. Wagenknecht

9/27/2011

Pamela K. Wagenknecht

Date

IT IS SO ORDERED.

/s/Kristina B. Whittaker

12/21/11

Kristina B. Whittaker
Deputy Comptroller for Special Supervision

Date