

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

In the Matter of: Martin W. Trofimuk Former Treasurer North Shore Trust and Savings Waukegan, Illinois)))))))	AA-EC-2013-20
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CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate these cease and desist and civil money penalty proceedings against Martin W. Trofimuk (“Respondent”), pursuant to 12 U.S.C. § 1818(b) and (i), on the basis of Respondent’s activities while Treasurer at North Shore Trust and Savings, Waukegan, Illinois (“Association”); 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 Stipulation and Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(b) and (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 Association is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, the Association is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent, at all relevant times, was Treasurer at the Association and is an “institution-affiliated party” of the Association 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.¹ Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain these cease and desist and civil money penalty proceedings against Respondent pursuant to 12 U.S.C. § 1818(b) and (i).

Article II

COMPTROLLER’S FINDINGS

The Comptroller finds the following:

(1) Between 2005 and 2010, Respondent served as Treasurer of the Association and was responsible for, among other things, the management and reconciliation of the Association’s Federal Reserve Bank of Chicago clearing account (“FRCA”).

¹ Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010), all functions of the Office of Thrift Supervision (“OTS”) related to Federal savings associations were transferred to the Office of the Comptroller of the Currency (“OCC”) on July 21, 2011. *See* Dodd-Frank Act, § 312(b), 12 U.S.C. § 5412.

(1) Beginning in 2007 and continuing through March 2010, Respondent prepared and submitted quarterly reports to the Association's Board of Director's Audit Committee ("Audit Committee") detailing the reconciling status of the Association's various accounts, including the FRCA.

(2) During this time, Respondent repeatedly certified through his quarterly reports to the Audit Committee that the FRCA was fully reconciled.

(3) In 2010, Respondent informed the Audit Committee that there was a relatively small outstanding reconciling item from 2006 in the FRCA. The Association investigated this matter and determined that the potential loss to the Association was significantly larger than Respondent identified in his March 2010 quarterly report to the Audit Committee. The Association ultimately determined that the FRCA had not been fully reconciled since 2007.

(4) Respondent's actions regarding the FRCA account resulted in a substantial loss to the Association in the amount of \$342,000.

(5) Respondent lacked the proper technical knowledge, training, and documentation necessary to accurately perform the FRCA reconciliations. Furthermore, Respondent was aware of deficiencies in the Association's accounting procedures that directly impacted his ability to accurately perform the FRCA reconciliations.

(6) Accordingly, Respondent engaged in an unsafe or unsound practice and breached his fiduciary duty to the Association by mismanaging the FRCA and repeatedly representing to the Board of Directors that the FRCA was fully reconciled.

Article III

PERSONAL CEASE AND DESIST ORDER

(1) Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that, whenever Respondent is employed by an insured depository institution, as defined in 12 U.S.C. § 1813(c)(2), or otherwise is an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

- (a) Comply fully with all laws, regulations, and policies applicable to any insured depository institution of which he is an institution-affiliated party.
- (b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code.
- (c) Not breach the fiduciary duties of loyalty or care owed to any insured depository institution of which he is an institution-affiliated party.
- (d) Not serve in any capacity where he is responsible for the performance, preparation, management, supervision, or oversight of any aspect of an insured depository institution's financial reporting, financial management, accounting, account reconciliation, or audit functions.
- (e) Not provide any substantive reports to any insured depository institution's board of directors or any committee comprised of members of an insured depository institution's board of directors.
- (f) Adhere to the written policies and procedures of any insured depository institution or agency with which he is or may become affiliated. In the event that the Respondent is affiliated with an insured depository

institution or agency with written policies and procedures that are more stringent than the provisions of this Order, the Respondent shall adhere to the written policies and procedures of such insured depository institution or agency.

- (g) Provide the board of directors of any insured depository institution of which he is currently an institution-affiliated party with a copy of this Order. Respondent shall provide written certification of compliance with this paragraph to the Director of the Enforcement and Compliance Division, within ten (10) days of execution of this Order, at the following address: Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 400 7th St. SW, Mail Stop 9E-11, Washington, DC 20219.

(2) If, at any time, Respondent is uncertain whether a situation implicates Article III of this Order or if Respondent is uncertain about his duties arising from these or any other requirements of this Order, he shall obtain at his own expense, and abide by, the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel who is in no way affiliated with the institution, and who has never been subject to any formal sanctions by any Federal banking agency, either by agency order or consent, as disclosed on the Federal banking agencies' websites.

(3) Prior to accepting any new position that causes Respondent to become an institution-affiliated party of any other insured depository institution, Respondent shall provide the chief executive officer or president and board of directors of the insured

depository institution with a copy of this Order.

(4) Within ten (10) days of the acceptance of any position described in paragraph (3) of this Article, Respondent shall provide written notice of such acceptance to the Director of the Enforcement and Compliance Division, Office of the Comptroller of the Currency, at the address above, together with a written certification of compliance with paragraph (3) of this Article.

(5) 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(b).

Article IV

ORDER FOR CIVIL MONEY PENALTY

(1) Respondent hereby consents to the assessment of a civil money penalty in the amount of five thousand dollars (\$5,000), which shall be paid upon execution of this Order.

(2) Respondent shall make payment in full by cashier's or certified check 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 the check. Respondent shall send a copy of the check to the Director, Enforcement and Compliance Division, 400 7th St. SW, Mail Stop 9E-11, 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(i) (as amended).

Article V

CLOSING

- (1) By executing 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 Assessment of a Civil Money Penalty under 12 U.S.C. § 1818 and 12 C.F.R. Part 109²;
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818 and 12 C.F.R. Part 109;
 - (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 Association (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

² In order to facilitate the OCC's enforcement and administration of former OTS rules and to make appropriate changes to these rules to reflect OCC supervision of federal savings associations as of the transfer date, the OCC republished, with nomenclature and other technical changes, the OTS regulations formerly found in Chapter V of Title 12 of the Code of Federal Regulations. The republished regulations are codified with the OCC's regulations in Chapter I at parts 100 through 197 ("Republished Regulations"), effective on July 21, 2011. The Republished Regulations supersede the OTS regulations in Chapter V for purposes of OCC supervision and regulation of federal savings associations. OTS Integration Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act; Interim Final Rule, 76 Fed. Reg. 48,950 (Aug. 9, 2011). References in this document are to the Republished Regulations at 12 C.F.R. Chapter I.

12 C.F.R. § 145.121 and Part 359. In addition, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Association (or any subsidiary or affiliate thereof) with respect to such amounts except as permitted by 12 C.F.R. § 145.121 and Part 359.

(3) Respondent acknowledges that 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, or 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.

(4) This Order constitutes a settlement of cease and desist and civil money penalty proceedings contemplated by the Comptroller and 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 Comptroller in future enforcement actions to establish a pattern of misconduct or the continuation of a pattern of misconduct.

(5) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph (4) above, 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 Respondent by the several laws of the United States of America.

(6) 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, including the Department of Justice, to bring other actions deemed appropriate.

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

S/ Martin w. Trofimuk

6/14/13

Martin W. Trofimuk

Date

IT IS SO ORDERED.

S/ Kristina B. Whittaker

August 6, 2013

Kristina B. Whittaker
Deputy Comptroller
Special Supervision

Date