

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

In the Matter of: James Alan Wells Former Regional President FSGBank, N.A., Chattanooga, Tennessee)))))))	AA-EC-12-113
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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 civil money penalty proceedings against James Alan Wells (“Respondent”), pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent’s activities while serving as Regional President of Dalton Whitfield Bank, a division of FSGBank, N.A., Chattanooga, Tennessee (“Bank”) during the period of 2007 through December 2009, for unsafe or unsound banking practices and breaches of his fiduciary duty;

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 (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. § *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 was employed at the Bank beginning in April 2001 until December 7, 2009, when he resigned from the Bank. At the time of his resignation, Respondent was the Regional President of Dalton Whitfield Bank, a division of FSGBank, and is deemed 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 these cease and desist and civil money penalty actions against him pursuant to 12 U.S.C. § 1818(b) and (i).

Article II

COMPTROLLER'S FINDINGS

The Comptroller finds the following:

- (1) Respondent, at all times pertinent to the events described herein, was the Regional President of Dalton Whitfield Bank, a division of the Bank.
- (2) Between April 2008 and December 2009, Respondent received several personal loans from Bank customers, none of which Respondent disclosed to the Bank.
- (3) Contrary to the Bank's policy, Respondent failed to disclose the existence of any of the personal loans described in paragraph (2) above to the Bank.
- (4) At the time that the personal loans were made to Respondent, four of the five customers described in paragraph (2) had active loans at the Bank. By borrowing from these customers, Respondent negatively affected their ability to repay their loans to the Bank. The Bank suffered a loss of at least \$65,000 on its loans to these customers.
- (5) By reason of the foregoing conduct, Respondent engaged in a pattern or practice of wrongdoing spanning a number of years, recklessly disregarded Bank policies, engaged in unsafe or unsound banking practices, and breached his fiduciary duty to the Bank.

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, effective immediately, whenever Respondent becomes employed by, or is offered employment at, an insured depository institution (as defined in 12 U.S.C. § 1813(c)(2)) or otherwise becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

- (a) Provide the Board of Directions or the Chief Executive Officer of any insured depository institution with a copy of this Order prior to accepting any position that would cause Respondent to become an institution-affiliated party, or if Respondent is currently employed by any such insured depository institution, provide a copy of this Order to the Board of Directors or the Chief Executive Officer within ten (10) days of the effective date of this Order;
- (b) Provide a written certification of his compliance with paragraph (a) to the Director of the Enforcement and Compliance Division (“Enforcement Director”) within ten (10) days of Respondent’s compliance; and
- (c) Provide written notice to the Enforcement Director with ten (10) days of Respondent’s acceptance of an offer of employment at any insured depository institution.

- (d) All such written certifications required by this Order shall be sent to:
Director, Enforcement and Compliance Division, 400 7th Street SW,
Washington, DC 20219.
- (e) Comply with all laws, rules, regulations, and policies applicable to
any insured depository institution which employs him;
- (f) Avoid engaging in any unsafe or unsound practices, as that term is
used in Title 12 of the United States Code;
- (g) Fully observe his fiduciary duties of loyalty and care owed to any
insured depository institution with which he is or may become
affiliated and shall, at all times, avoid placing his own interests
above those of the institution;
- (h) Familiarize himself with, and 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 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, Respondent shall adhere to the written
policies and procedures of such insured depository institution or
agency.
- (i) If Respondent, or a relative or other related interest of Respondent, is
the recipient of, or an applicant for, any extension of credit made by

any insured depository institution or agency to which he is or may become affiliated, make certain that the underwriting, approval and administration of any such extension of credit is handled by an officer of the depository institution other than Respondent, without the involvement of Respondent (other than as a borrower or applicant), regardless of whether this is a requirement of the depository institution's policies and procedures;

- (j) For each transaction, Respondent shall provide a written certification that any loan application on which Respondent acts as a loan officer or loan processor does not involve any self-dealing by Respondent; and
- (k) Respondent shall not engage in any personal financial transactions or other personal business with any customer, borrower, or applicant of the depository institution, except that Respondent may enter into credit arrangements with a depository institution's customer, borrower or applicant which are in the normal course of business of that bank customer, borrower or applicant, upon the same terms generally available to all other persons entering into credit arrangements with that customer, borrower or applicant. For the purposes of this paragraph, a personal loan from an individual

customer, borrower or applicant of the depository institution to Respondent is not considered the normal course of business.

(2) If, at any time, Respondent is uncertain whether a situation implicates paragraph (1) of this Article, or if Respondent is uncertain about his duties arising from such paragraphs, 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 banking agencies' websites.

(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

ORDER FOR CIVIL MONEY PENALTY

Respondent consents to, and it is ORDERED that:

(1) Respondent hereby consents to the payment of a civil money penalty in the amount of one thousand five hundred dollars (\$1,500.00), 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 (AC-EC-12-113) shall be entered on all checks. Respondent shall send a copy of the check to the Director, Enforcement and Compliance Division, 400 7th Street 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 V

CLOSING

- (1) By executing this Order, Respondent waives:
 - (a) the right to 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(b) and (i);
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b) and (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 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. In addition, 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) 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 any proceedings arising out of the facts, omissions, or violations described in the Comptroller's Findings (Article II of this Order). The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations referenced in the first whereas clause, hereof, unless such acts, omissions, or violations reoccur. 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) 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 him by the several laws of the United States of America.

(6) 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.

(7) 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.

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

(9) 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.

(10) The provisions of this Order are effective upon issuance by the Comptroller through his authorized representative whose hand appears below, and 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, through his authorized representative.

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

/s/Kristina B. Whittaker
Kristina B. Whittaker
Deputy Comptroller for Special Supervision
Office of the Comptroller of the Currency

10/24/13
Date

/s/James Alan Wells
James Alan Wells

10-23-13
Date