

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

In the Matter of: James Barnes Former Director and Chairman of the Board Ozark Heritage Bank, N.A. Mountain View, Arkansas)))))	OCC-AA-EC-14-97
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CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate prohibition and civil money penalty proceedings against James Barnes (“Respondent”), pursuant to 12 U.S.C. § 1818(e) and (i), respectively, on the basis of Respondent’s activities while serving as a Director and Chairman of the Board of Ozark Heritage Bank, N.A. (“Bank”) in Mountain View, Arkansas; and

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above-captioned 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) 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:

Initials: JB
Date: 3/18/2015

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, 12 U.S.C. § 1 *et seq.* (as amended). Accordingly, the Bank 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 a Director or 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 these prohibition and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(e) and (i), respectively.

Article II

COMPTROLLER’S FINDINGS

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

(1) In or around April 2009, Respondent joined the Bank’s board of directors (“Board”), of which he served as Chairman from, on or about April 2009, through, on or

about May 7, 2013. Respondent continued to serve on the Board until he resigned on or about October 18, 2013. All of the findings discussed within this Order, with the exception of those discussed in paragraphs (3) and (7) below, occurred when Respondent served as Chairman of the Board and acted as an executive officer of the Bank. The findings discussed in paragraphs (3) and (7) occurred when Respondent served as a Director of the Bank.

(2) In or around November 2011, Respondent received a Bank loan (“Loan #1”) to purchase cattle. The cattle that Respondent purchased served as collateral for Loan #1. Before Respondent repaid Loan #1, however, Respondent sold the cattle without either informing the Bank or obtaining permission from the Bank.

(3) In or around August 2013, Respondent’s business received a Bank loan (“Loan #2”). Before receiving this loan, Respondent was required to complete a personal financial statement (“PFS”), detailing his assets and liabilities, and to submit the PFS to the Bank. On the PFS, Respondent misrepresented his assets and liabilities by omitting debt from another financial institution and by including assets that he no longer owned.

(4) Between April 2011 and April 2013, Respondent and/or Respondent’s business received three Bank loans (“Loans #3-5”), and numerous extensions of those loans, from the Bank. Before receiving these loans and each subsequent extension, Respondent was required to submit a PFS to the Bank. On each PFS associated with Loans #3-5 that Respondent submitted, Respondent misrepresented his assets and liabilities by omitting debt from another financial institution.

(5) When Loans #3 and #4 were extended, Respondent received a reduced interest rate, notwithstanding the deterioration of his financial condition. When Loan #5 was funded, Respondent received more favorable terms than the Board had approved.

(6) Between November 2013 and May 2014, the Bank charged off a loss related to Loans #2-5.

(7) In or around November 2012, the Board discussed the Bank's purchase of two lots that Respondent owned. In or around January 2013, the Board voted to purchase the lots, and Respondent participated in the vote. Shortly after the Board voted to purchase the lots, Respondent executed a warranty deed and conveyed his interest in the lots to his business associate ("Associate"). In or around June 2013, Associate sold the lots to the Bank. A portion of the sale proceeds were used to make payments on a loan that Respondent's business and Associate's business jointly owed to another institution. Shortly thereafter, Respondent's business was removed as an obligor for that loan. In addition, Associate wrote Respondent's business a check for \$16,599.83, which Respondent used to repay loans that he owed to the Bank.

(8) By engaging in the foregoing conduct, Respondent violated 12 U.S.C. §§ 375a and 375b, 12 C.F.R. Part 15, and 18 U.S.C. §§ 1014 and 1344; committed reckless unsafe or unsound practices; and breached his fiduciary duties to the Bank. Respondent's actions caused loss to the Bank, and he demonstrated personal dishonesty and a willful and continuing disregard for the Bank's safety and soundness.

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);
- (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 Agency 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).

(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.

Article IV

ORDER FOR CIVIL MONEY PENALTY

Respondent consents to, and it is ORDERED that:

(1) Respondent shall pay a civil money penalty in the amount of twenty-thousand dollars (\$20,000), which shall be paid in full according to the following payment schedule:

- (a) Three-thousand three-hundred and thirty-three dollars (\$3,333) shall be paid no later than June 1, 2015;
- (b) Three-thousand three-hundred and thirty-three dollars (\$3,333) shall be paid no later than December 1, 2015;
- (c) Three-thousand three-hundred and thirty-three dollars (\$3,333) shall be paid no later than June 1, 2016;

- (d) Three-thousand three-hundred and thirty-three dollars (\$3,333) shall be paid no later than December 1, 2016;
- (e) Three-thousand three-hundred and thirty-three dollars (\$3,333) shall be paid no later than June 1, 2017; and
- (f) A final payment of three-thousand three-hundred and thirty-five dollars (\$3,335) shall be paid no later than December 1, 2017.

(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 (AA-EC-14-97) shall be entered on the submitted payment. Respondent shall also send a copy of the submitted payment to the Director, Enforcement and Compliance Division, 400 Seventh St. SW, Mail Stop 9E-11, Washington, DC 20219.

(3) If Respondent fails to comply with any provision of this Order, then the entire balance of the civil money penalty amount described in this Article shall become immediately due and payable.

(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.

(5) Within seven (7) days from the issuance of this Order, Respondent shall notify the Director of the Enforcement & Compliance Division ("Enforcement Director")

of the address of his current place of residence, by completing the form attached hereto as Appendix A .

(6) Until the civil money penalty is paid in full, upon each and every subsequent change in place of residence, if any, Respondent shall notify the Enforcement Director of his new address within seven (7) days of such change in address, by sending written notice to Enforcement Director, 400 7th Street S.W., Washington, DC 20219.

Article V

CLOSING

- (1) By executing this Order, Respondent waives:
- (a) the right to a Notice of Intention to Prohibit Further Participation and Notice of Civil Money Penalty Assessment under 12 U.S.C. §§ 1818(e) and (i);
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(e) 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 has hereunto set his hand.

/s/James Barnes

James Barnes

3/18/2015

Date

IT IS SO ORDERED.

/s/Michael Brickman

Michael Brickman

Deputy Comptroller

Special Supervision Division

3/23/15

Date