

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

In the Matter of:)	
)	
Michael M. Storey)	AA-EC-2014-83
Former President, CEO, and Chairman)	
)	
Fidelity Bank of Florida, N.A.)	
Merritt Island, Florida)	

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 Michael M. Storey (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent’s actions while employed as the President, Chief Executive Officer (“CEO”), and Chairman of Fidelity Bank of Florida, N.A., Merritt Island, Florida (“Bank”), during the period of at least 2007 through January 2011;

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to this 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. § 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 the former President, CEO, and Chairman 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 civil money penalty proceedings against him pursuant to 12 U.S.C. §§ 1818(b) and (i).

Article II

COMPTROLLER’S FINDINGS

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

(1) In October 2009, Company Z had a \$2.35 million loan outstanding with the Bank. Collateral for the loan consisted of a hotel property. On October 18, 2009, Respondent signed on behalf of the Bank a purchase agreement allowing the sale of Company Z to a third party. Respondent released the personal guarantee of the original owner of Company Z and did not require any personal guarantees from the new owners. At or around the same time, Company Z’s new owners informed Respondent that they needed \$150,000 to pay miscellaneous expenses

related to the hotel property securing the Bank's \$2.35 million loan. On October 20, 2009, Respondent directed a Bank employee to write a \$150,000 check to the new owners, but did not obtain any documentation for the purported expenses or establish that the \$150,000 represented an additional loan to Company Z. The Bank expensed the \$150,000, and subsequently charged off approximately \$2.3 million on the Company Z loan.

(2) During at least 2007 to 2010, Respondent made personal loans to seven individuals and entities that were also Bank customers. All but one of the customers had loans from the Bank prior to receiving personal loans from Respondent. Of those seven loans, one was secured with a second mortgage that was subordinate to the Bank's position, two paid off existing Bank loans, and the remaining four were secured with liens on real estate that was not also collateral for any Bank loans. Respondent did not fully inform the Bank of these loans or the details of his lending relationships with these Bank borrowers, nor did Respondent in each instance inform the Bank of relevant information concerning Bank borrowers, namely that they had taken on additional debt.

(3) By reason of the foregoing conduct, Respondent recklessly engaged in unsafe or unsound practices and breached his fiduciary duty to the Bank. Respondent's actions caused more than a minimal loss to the Bank and were part of a pattern of misconduct.

Article III

PERSONAL CEASE AND DESIST ORDER

Respondent consents to, and it is ORDERED that:

(1) Whenever Respondent is employed by, or is offered employment at, a depository institution (as defined in 12 U.S.C. § 1813(c)(1)) or otherwise becomes 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 depository institution with which he is or may become affiliated;
- (b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code;
- (c) Fulfill the fiduciary duties of loyalty and care owed to any depository institution with which he is or may become affiliated;
- (d) Not engage in or participate in any type of non-bank personal lending to customers of such institution;
- (e) Not cause the funds of such institution to be disbursed unless such disbursement complies with the institution's policies and procedures and safe and sound banking practices;
- (f) Provide the Board of Directors of the depository institution of which Respondent 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, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219, within ten (10) days of execution of this Order; and
- (g) With respect to any future employment, prior to accepting employment at a depository institution or becoming an institution-affiliated party, provide the President or Chief Executive Officer of the depository institution with a copy of this Order. Respondent shall provide written notice of such acceptance to the Director, Enforcement and Compliance Division, Office

of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219, along with a written certification of his compliance with this paragraph within ten (10) days after acceptance of such position.

(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 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 banking agencies' web sites.

(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(b) and (h).

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 five thousand dollars (\$5,000.00), which shall be paid in full upon execution of this Order.

(2) Respondent shall make payment by cashier's 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 (AA-EC-2014-83) shall be entered on the submitted payment.

(3) A copy of the check or money order shall be returned along with this original signed Order to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219.

(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(i) and (h).

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 has hereunto set his hand.

s/Michael M. Storey

Michael M. Storey

3-26-2015

Date

IT IS SO ORDERED.

s/Michael R. Brickman

Michael R. Brickman
Deputy Comptroller for Special Supervision

4/1/2015

Date