

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

In the Matter of:

David Johnson
Former Director
Landmark Community Bank, N.A.
Isanti, Minnesota

AA-EC-2016-54

CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate prohibition, civil money penalty, and cease and desist proceedings against David Johnson (“Respondent”) pursuant to 12 U.S.C. § 1818(b), (e), and (i) on the basis of Respondent’s activities while serving as a Director of Landmark Community Bank, National Association, Isanti, Minnesota (“Bank”);

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 consent to the issuance of this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(b), (e), and (i);

NOW, THEREFORE, it is stipulated by and between the OCC, through the duly authorized representative of the Comptroller of the Currency (“Comptroller”), and Respondent that:

ARTICLE I

JURISDICTION

(1) The Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

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(2) Respondent was a director of the Bank and was 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 of this Order. *See* 12 U.S.C. § 1818(i)(3).

(3) The Bank is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and is chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*

(4) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain these prohibition, civil money penalty, and cease and desist actions against Respondent pursuant to 12 U.S.C. § 1818(b), (e), and (i).

ARTICLE II

COMPTROLLER’S FINDINGS

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

(1) The Bank was subject to a formal agreement (“Formal Agreement”) from June 26, 2008 through November 21, 2013, at which time it was replaced with a consent order (“Consent Order”) that is still in effect. Both the Formal Agreement and the Consent Order required that the Bank maintain capital minimums and prohibited the Bank from declaring a dividend if it failed to do so.

(2) During the period from January 2012 to December 2014, in violation of the Formal Agreement and the Consent Order, Respondent and the other Bank directors diminished the Bank’s capital in order to pay loans held by the directors and the Bank’s holding company.

(3) Respondent, together with the other directors, attempted to conceal from the OCC the fact that Bank capital was being used to pay the directors’ and holding company’s debts.

(4) Respondent and the other directors disguised the diminutions of Bank capital as board fees, increases to the Bank president's compensation, and a bonus paid to the Bank president's wife, who was also a Bank officer and employee. In this manner, the Respondent and the other directors diverted approximately \$269,600 in Bank capital.

(5) In March 2013, Respondent and the other directors made two submissions to the OCC that contained materially false statements about a quarterly bonus payment to the Bank president's wife and the increases in board fees and the Bank president's compensation.

(6) On November 19, 2014, Respondent made materially false statements to the OCC regarding the diminutions of Bank capital during a sworn statement.

(7) Another Bank director ("Director A") had Bank loans for several of his businesses. After Director A filed for bankruptcy and his loans went into default, Respondent and the other directors caused the Bank to establish a company ("Company A") on July 25, 2012 to improve repossessed collateral to increase its resale value. In violation of 12 C.F.R. § 5.36(f), the Bank did not first apply to the OCC to make such investment. On July 10, 2013, the OCC directed the Bank to dissolve Company A or relinquish any membership shares in the entity. Respondent and the other directors caused the Bank to fail to comply with this direction until July 2014. In failing to timely comply with the OCC's direction, Respondent and the other directors caused a second violation of 12 C.F.R. § 5.36(f).

(8) By reason of the foregoing conduct, Respondent engaged in violations of law and regulation, including 18 U.S.C. §§ 1001 & 1517 and 12 C.F.R. § 5.36(f), violations of written agreement, reckless unsafe or unsound practices, and breaches of his fiduciary duty to the Bank; which violations, practices, and breaches were part of a pattern of misconduct, caused or were likely to cause more than a minimal loss to the Bank, and/or resulted in pecuniary gain

to Respondent. Respondent's misconduct resulted in financial gain to Respondent and loss or risk of loss to the Bank, demonstrated personal dishonesty and willful or continuing disregard for the safety and soundness of the Bank, and involved a reckless disregard for the law, applicable regulations, and prior order. Additionally, Respondent was unjustly enriched in connection with the violations and practices.

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); or
- (d) vote for a director, or serve or act as an "institution-affiliated party," as defined in 12 U.S.C. § 1813(u).

(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 bank 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 OCC 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) Payment of five thousand dollars (\$5,000) upon execution of this order;
- (b) Payment of the remaining fifteen thousand dollars (\$15,000) by no later than sixty (60) days of the effective date of this Order.

(2) Respondent shall make payment by cashier's or certified check made payable to the Treasurer of the United States, and shall deliver the payment to: Office of the Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-2016-54) shall be entered on the submitted payment.

(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) 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 Director, Enforcement and Compliance Division, 400 Seventh St. SW, Mail Stop 9E-11, Washington, DC 20219, of his new address within seven (7) days of such change in address.

(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.

ARTICLE V

ORDER TO CEASE AND DESIST REQUIRING PAYMENT OF RESTITUTION

Respondent consents to, and it is ORDERED that:

(1) Respondent shall pay restitution in the amount of nine thousand, three hundred and ninety dollars (\$9,390), which shall be paid in full according to the following payment schedule:

- (a) Payment of one thousand dollars (\$1,000) upon execution of this order;
- (b) Payment of the remaining eight thousand, three hundred and ninety dollars (\$8,390) by no later than sixty (60) days of the effective date of this Order.

(2) The restitution required in paragraph (1) shall be paid to the Bank.

- (a) Within seven (7) days of payment, Respondent shall deliver a copy of the submitted payment to the Director, Enforcement and Compliance Division, 400 Seventh St. SW, Mail Stop 9E-11, Washington, DC 20219.

The docket number of this case (AA-EC-2016-54) shall be entered on the submitted payment.

(3) If Respondent fails to comply with any provision of this Order, then the entire balance of the restitution 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 become final pursuant to 12 U.S.C. § 1818.

ARTICLE VI

BANKRUPTCY

(1) If Respondent files for bankruptcy protection prior to making the payments in full as required by this Order, Respondent shall notify the Enforcement Director within ten (10) days of the filing and shall provide a copy of the filing to the Enforcement Director.

(2) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay a civil money penalty or restitution pursuant to this Order is subject to discharge, Respondent will in no manner contest the assertion of the Comptroller or any agent, officer, or representative of the United States, pursuant to 11 U.S.C. § 523(a) or otherwise, that the civil money penalty or restitution obligation in this Order arises out of acts which result in claims not dischargeable in bankruptcy.

Article VII

CLOSING

(1) By executing this Order, Respondent waives:

- (a) the right to a Notice of Charges to Prohibit Further Participation, Notice of Civil Money Penalty Assessment, and Notice of Charges for Issuance of an Order to Cease and Desist under 12 U.S.C. § 1818(b), (e), and (i);
- (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b), (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 United States, the OCC, or any officer, employee, or agent of the OCC, 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 of the Bank) to incur, directly or indirectly, any 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 of the Bank) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359; provided, however, Respondent may not obtain or accept such indemnification with respect to payment of the civil money penalty.

(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 OCC or any officer, employee, or agent of the OCC 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 OCC agrees not to institute the proceedings referenced in the first whereas clause of this Order for the specific acts, omissions, or violations described in Article II of this Order unless such acts, omissions, or violations reoccur. However, the specific acts, omissions, or violations described in Article II may be used by the OCC 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 in paragraph (4) above, shall not inhibit, estop, bar, or otherwise prevent the OCC from taking any action affecting Respondent if, at any time, the OCC deems it appropriate to do so to fulfill the responsibilities placed upon the OCC by the several laws of the United States.

(6) Nothing in this Order shall preclude any proceedings brought by the OCC to enforce the terms of this Order, and nothing in this Order 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 on the United States, the OCC, or any officer, employee, or agent of the OCC. Respondent expressly acknowledges that no officer, employee, or agent of the OCC has statutory or other authority to bind the United States, the United States Treasury Department,

the OCC, or any other federal bank regulatory agency or entity, or any officer, employee, or agent of those entities, to a contract affecting the OCC's exercise of its 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 OCC, through the Comptroller's duly 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 OCC, through the Comptroller's duly authorized representative.

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

//S//David Johnson

8-29-16

David Johnson

Date

IT IS SO ORDERED.

//S//Michael R. Brickman

9/6/16

Michael R. Brickman
Deputy Comptroller for Special Supervision

Date