

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

**EA#96-74**

|                                     |   |             |
|-------------------------------------|---|-------------|
| IN THE MATTER OF                    | ) |             |
| Gary Schutz,                        | ) | AA-EC-96-15 |
| Former President and Director,      | ) |             |
| First National Bank at Saint James, | ) |             |
| St. James, Minnesota                | ) |             |

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (AComptroller@) has initiated a CMP proceeding against Gary Schutz (ARespondent@) pursuant to 12 U.S.C. ' 1818(i)(2) (as amended) through the issuance of a Notice of Assessment of a Civil Money Penalty (ANotice@), dated May 23, 1996; and

WHEREAS, in the interest of cooperation and the avoidance of further costs associated with the above matter, the Comptroller and Respondent desire to enter into this Stipulation and Consent Order;

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

(1) First National Bank at Saint James (ABank@) 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 Ainsured depository institution@ as that term is defined in 12 U.S.C. ' 1813(c)(2).

(2) Respondent was the President and the Director 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 a CMP proceeding against him pursuant to 12 U.S.C. ' 1818(i)(2).

## ARTICLE II

(1) Without admitting or denying any wrongdoing, Respondent hereby consents to the payment of a civil money penalty in the amount of twenty-five thousand dollars (\$25,000) payable according to the following schedule:

- (a) Three thousand dollars (\$3,000) upon execution of this document; and
- (b) Twenty-two thousand dollars (\$22,000) upon execution of the Respondent's sale of the Bank's holding company stock or on May 1, 1997, whichever occurs first.

Respondent shall make these payments by checks made payable to the Treasurer of the United States. All checks shall be delivered to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. The docket number of this case should be entered on all checks.

(2) This Stipulation and Consent 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(h) and (i) (as amended).

### ARTICLE III

(1) Within seven (7) days from the issuance of this Order, Respondent shall notify the Director of the Enforcement & Compliance Division (Director) of his current address on the form attached hereto as Appendix A. Until the CMP is paid in full, upon each and every subsequent change in address, if any, Respondent shall notify the Director of his new address within seven (7) days of such change in address.

### ARTICLE IV

- (1) By executing this Stipulation and Consent Order, Respondent waives:
- (a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. ' 1818(i) and 12 C.F.R. Part 19;
  - (b) all rights to seek judicial review of this Order;
  - (c) all rights in any way to contest the validity of this Order;
  - (d) 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 and/or the 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; and
  - (e) all rights to assert a "double jeopardy" claim in the event of a criminal prosecution brought by the Department of Justice for the acts which form the basis for issuance of this Order.

(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 CMP under this Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order; and, in accordance with 12 C.F.R. ' 7.2014, 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.

## ARTICLE VI

(1) It is hereby agreed that the provisions of this Stipulation and Consent constitute a settlement of this CMP action. The Comptroller agrees not to institute further proceedings for the specific acts alleged in this CMP action, unless such acts reoccur.

(2) It is further agreed that the provisions of this Stipulation and Consent shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the 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.

(3) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Stipulation and Consent, 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 have hereunto set their hands.

\_\_\_\_\_  
Leann Britton  
Senior Deputy Comptroller for  
Bank Supervision (Operations)

\_\_\_\_\_  
December 9, 1996

Date

\_\_\_\_\_  
Gary Schutz

\_\_\_\_\_  
November 21, 1996

Date