

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

IN THE MATTER OF:)
GERALD CLEVINGER)
FORMER EXECUTIVE VICE PRESIDENT)
HEARTLAND BANK, N.A.)
JEWELL, KANSAS)

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (Comptroller) intends to initiate cease and desist, prohibition, and civil money proceedings against Gerald Clevenger (Respondent) pursuant to 12 U.S.C. §§ 1818(b), (e), and (i) through the issuance of a Notice of Charges, Notice of Intent to Prohibit Further Participation, and Notice of Assessment of a Civil Money Penalty (Notices) for activities detailed in the Comptroller s letter to Respondent of on or about October 1, 1998; and

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 desires to enter into this Stipulation and Consent Order (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) Heartland Bank, N.A., Jewell, Kansas (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 defined in 12 U.S.C. § 1813(c)(2), and within the meaning of 12 U.S.C. §§ 1818(b), 1818(e), and 1818(i).

(2) Respondent was an Executive President of the Bank and is an institution-affiliated party of the Bank as defined in 12 U.S.C. § 1813(u) and within the meaning of 12 U.S.C. §§ 1818(b), 1818(e), and 1818(i).

(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, prohibition, and civil money penalty proceedings against him pursuant to 12 U.S.C. §§ 1818(b), 1818(e), and 1818(i).

ARTICLE II

(1) Without admitting or denying any wrongdoing, Respondent hereby consents to the issuance of this Order by the Comptroller.

(2) Respondent agrees that this Order shall be deemed "an order issued with the consent of the . . . institution-affiliated party concerned," within the meaning of 12 U.S.C. § 1818(h)(2), and further agrees that this Order shall become effective upon its issuance and shall be fully enforceable to the same extent and in the same manner as an effective and outstanding Order that has been issued pursuant to 12 U.S.C. §§ 1818(b), 1818(e), and 1818(i). Accordingly,

IT IS HEREBY ORDERED, pursuant to 12 U.S.C. §§ 1818(b), 1818(e), and 1818(i) that:

ARTICLE III

(1) Respondent shall pay restitution to the Bank in the amount of three thousand, four hundred, eighty nine dollars (\$3,489.00), which payment shall be made upon execution of this Order by Respondent.

(2) Restitution shall be made in certified funds made payable to Heartland Bank, N.A. and shall be delivered to Damon J. Savoy, Senior Attorney, Comptroller of the Currency, 245 Peachtree Center Ave., N.E., Suite 600, Atlanta, GA 30303.

ARTICLE IV

(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 bank under 12 U.S.C. §§ 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9) (as amended);
- (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 Board 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) (as amended).

ARTICLE V

(1) Respondent hereby also consents to the payment of a civil money penalty in the amount of twenty-five thousand dollars (\$25,000), which shall be paid in five installments of five thousand dollars (\$5,000). Such payments shall be made on or before each of the following dates: May 1, 2000; May 1, 2001; May 1, 2002; May 1, 2003; and May 1, 2004. Respondent shall make all payments in certified funds made payable to the Treasurer of the United States and shall deliver the payments to: Comptroller of the Currency, P.O. Box

73150, Chicago, Illinois 60673-7150. The charter number of the Bank, #22956, should be entered on the checks.

ARTICLE VI

- (1) By executing this Stipulation and Consent Order, Respondent hereby waives:
 - (a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b), 1818(e), and 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;
and
 - (d) any and all claims for fees, costs or expenses against the Comptroller, or any of their 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.

- (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 monies 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.

(3) 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(b), (e), (i), (j), and (h).

ARTICLE VII

(1) It is hereby agreed that the provisions of this Stipulation and Consent Order constitute a settlement of only the cease and desist, prohibition, and civil money penalty actions contemplated by the Comptroller.

(2) It is further agreed that the provisions of this Stipulation and Consent Order 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.

