

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

In the Matter of:)	
)	
Richard E. Magnuson)	AA-EC-10-13
Former President)	
)	
American Bank, N.A.)	
Le Mars, Iowa)	
)	

NOTICE OF CHARGES FOR AN ORDER OF PROHIBITION,
OR ORDER TO CEASE AND DESIST,
AND NOTICE OF ASSESSMENT OF A CIVIL MONEY PENALTY

On a date as determined by the Administrative Law Judge, a hearing will commence in Le Mars, Iowa, pursuant to 12 U.S.C. § 1818(b), (e), and (i), concerning the charges set forth herein to determine whether an Order should be issued against Richard E. Magnuson (“Respondent”), former President of American Bank, N.A., Le Mars, Iowa (“Bank”), prohibiting Respondent from participating in any manner in the conduct of the affairs of any federally insured depository institution or any other institution, credit union, agency or entity referred to in 12 U.S.C. § 1818(e); or, in the alternative, requiring Respondent to take certain affirmative actions pursuant to 12 U.S.C. § 1818(b); and requiring Respondent to pay a civil money penalty pursuant to 12 U.S.C. § 1818(i) on the basis of his misconduct during 2008.

After taking into account the size of the financial resources and good faith of the Respondent, the gravity of the violations, the history of previous violations, and such other matters as justice may require pursuant to 12 U.S.C. § 1818(i)(2)(G), and after soliciting and

giving full consideration to Respondent's view with respect to these considerations, the Comptroller hereby assesses a civil money penalty in the amount of twenty five thousand dollars and zero cents (\$25,000.00) against Respondent, pursuant to the provisions of 12 U.S.C.

§ 1818(i). These penalties are payable to the Treasurer of the United States.

The hearing afforded Respondent shall be open to the public unless the Comptroller, in his discretion, determines that holding an open hearing would be contrary to the public interest.

In support of this Notice of Charges for an Order of Prohibition, or Cease and Desist Order, and Notice of Assessment of a Civil Money Penalty ("Notice"), the Comptroller charges the following:

Article I

Jurisdiction

At all times relevant to the charges set forth below:

(1) The Bank was 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.

(2) The Bank was an "insured depository institution" as defined in 12 U.S.C. § 1813(c)(2) and within the meaning of 12 U.S.C. § 1818(i)(2).

(3) The Comptroller is the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q)(1) and for purposes of 12 U.S.C. § 1818(b), (e), and (i) to initiate and maintain an enforcement proceeding against an institution-affiliated party.

(4) Respondent was the President 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)). Therefore, Respondent is subject

to the authority of the Comptroller to initiate and maintain an enforcement proceeding against Respondent pursuant to 12 U.S.C. § 1818.

Article II

Background

(5) At all relevant times, until he resigned from the Bank on or about February 20, 2009, Respondent was employed by the Bank as its president.

(6) As president of the Bank, Respondent had an obligation to comply with all applicable laws and regulations and to carry out his duties and responsibilities in a safe and sound manner. In addition, Respondent owed a fiduciary duty of care and loyalty to the Bank, which included an obligation to avoid conflicts of interest and to place the interests of the Bank ahead of his own personal interests at all times.

Article III

Respondent's Unauthorized Purchase of 2002 PT Cruiser And False Representation to the Bank

(7) The OCC reasserts and realleges the allegations in paragraphs (5) through (6).

(8) Immediately prior to September 2008, the Bank authorized Respondent to use a Bank owned 2008 Chevrolet Truck ("Chevy Truck") as his primary vehicle.

(9) In September 2008, Respondent contacted the owner of Big Deal Auto, a used car dealer, to arrange the purchase of a new 2009 Pontiac GT G8, for his use as Bank president. The owner of Big Deal Auto arranged to purchase the Pontiac GT G8 from another dealer to facilitate the sale to Respondent.

(10) In September 2008, Respondent, on behalf of the Bank, traded in the Bank owned Chevy Truck to Big Deal Auto and purchased a new 2009 Pontiac GT G8. The Pontiac GT G8 was titled in the Bank's name.

(11) Big Deal charged \$30,549.00 for the purchase of the 2009 Pontiac GT G8, less \$26,000.00 credited for the trade-in of the Chevy Truck, leaving \$4,549.00 due from the Bank.

(12) Respondent caused the Bank to pay Big Deal Auto \$9,549.00 for the transaction and an additional \$477.45 in taxes. The Bank's payment was \$5,000.00 more than was required to purchase the Pontiac GT G8.

(13) Respondent, without Bank authorization or knowledge, used the "extra" \$5,000.00 in Bank funds to purchase a 2002 PT Cruiser from Big Deal Auto, which he titled in his own name.

(14) Respondent did not receive approval from the Bank to purchase the PT Cruiser and was not authorized to purchase more than one vehicle for his use as president of the Bank.

(15) The Bank suffered financial loss and Respondent received financial gain or other benefit by his unauthorized purchase with Bank funds and use of the 2002 PT Cruiser.

(16) Respondent submitted a Bill of Sale for his purchase of the new 2009 Pontiac GT G8 to the Bank listing the purchase price as \$35,594.00.

(17) The Bill of Sale was fraudulent because it overstated the purchase price of the 2009 Pontiac GT G8 by \$5,000.00. Respondent knew that the Bill of Sale he submitted to the Bank was fraudulent.

(18) Respondent did not disclose the purchase of the PT Cruiser to the Bank.

Article IV

Legal Bases for Requested Relief

(19) The OCC reasserts and realleges the allegations in paragraphs (5) through (20).

(20) By reason of Respondent's misconduct described in Articles II and III, the Comptroller seeks an Order of Prohibition against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

- (a) Respondent engaged in unsafe or unsound practices in conducting the affairs of the Bank and breached his fiduciary duty as an officer and director of the Bank.
- (b) Respondent caused the Bank to suffer financial loss and received personal financial gain or other benefit.
- (c) Respondent's practices and/or breaches involved personal dishonesty or demonstrated a willful and/or continuing disregard for the Bank's safety and soundness.

(21) By reason of Respondent's misconduct as described in Articles II and III, the Comptroller seeks, in the alternative to an Order of Prohibition, an Order to Cease and Desist against Respondent pursuant to 12 U.S.C. § 1818(b) on the grounds that Respondent has engaged in unsafe or unsound practices in conducting the business of the Bank.

(22) By reason of Respondent's misconduct described in Articles II and III, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i) on the following grounds:

- (a) Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank and breached his fiduciary duty as an officer and director of the Bank.
- (b) Respondent's practices caused and were likely to cause more than a minimal loss to the Bank, and resulted in pecuniary gain or other benefit to Respondent.

Opportunity for Hearing

Respondent is directed to file a written answer to this Notice within twenty (20) days from the date of service of this Notice in accordance with 12 C.F.R. § 19.19(a) and (b). The original and one copy of any answer shall be filed with the Office of Financial Institution Adjudication, Federal Deposit Insurance Corporation, 3501 N. Fairfax Drive, Suite VS-D8113, Arlington, Virginia 22226-3500. Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any answer shall also be filed with the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, Washington, D.C. 20219, Paul.Chism@occ.treas.gov and with the attorney whose name appears on the accompanying certificate of service. **Failure to answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice, and shall, upon the Comptroller's motion, cause the administrative law judge or the Comptroller to find the facts in this Notice to be as alleged, upon which an appropriate order may be issued.**

In addition, Respondent is directed to file a written request for a hearing before the Comptroller, along with the written answer, concerning the Civil Money Penalty assessment

contained in this Notice within twenty (20) days after date of service of this Notice, in accordance with 12 U.S.C. § 1818(i) and 12 C.F.R. §§ 19.19(a) and (b). The original and one copy of any request shall be filed, along with the written answer, with the Office of Financial Institution Adjudication, Federal Deposit Insurance Corporation, 3501 N. Fairfax Drive, Suite VS-D8113, Arlington, Virginia 22226-3500. Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any request, along with the written answer, shall also be served on the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, Washington, D.C. 20219, Paul.Chism@occ.treas.gov and with the attorney whose name appears on the accompanying certificate of service. **Failure to request a hearing within this time period shall cause this assessment to constitute a final and unappealable order for a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i).**

Prayer for Relief

The Comptroller prays for relief in the form of the issuance of a final Order of Prohibition against Respondent pursuant to 12 U.S.C. § 1818(e) or, in the alternative, a final Order to Cease and Desist pursuant to 12 U.S.C. § 1818(b), and an Order of Civil Money Penalty Assessment in the amount of twenty five thousand dollars and zero cents (\$25,000.00) against Respondent pursuant to 12 U.S.C. § 1818(i).

Witness, my hand on behalf of the Office of the Comptroller of the Currency, given at Washington, D.C. this 18th day of February, 2010.

/s/John W. Quill

John W. Quill
Deputy Comptroller for Special Supervision