

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

_____)	
In the Matter of)	Order No.: WN-09-017
)	
AMERICAN EXPRESS BANK, FSB)	Effective Date: June 29, 2009
)	
Salt Lake City, Utah)	
OTS Docket No. 15648)	
_____)	

**STIPULATION AND CONSENT TO THE ISSUANCE OF
AN ORDER OF ASSESSMENT OF A CIVIL MONEY PENALTY**

WHEREAS, the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Western Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed American Express Bank, FSB, Salt Lake City, Utah, OTS Docket No. 15648 (Association), that grounds exist to initiate a civil money penalty assessment proceeding against the Association pursuant to 12 USC § 1818(i); and

WHEREAS, the Regional Director, pursuant to delegated authority, is authorized to issue Orders of Assessment of a Civil Money Penalty where a savings association has consented to issuance of an order; and

WHEREAS, the Association desires to cooperate with OTS to avoid the time and expense of an administrative civil money penalty proceeding by entering into this Stipulation and Consent to the Issuance of an Order of Assessment of a Civil Money Penalty (Stipulation) without admitting or denying that such grounds exist, but only admitting the statements and

conclusions in Paragraph 1 below concerning Jurisdiction, hereby stipulates and agrees as follows:

1. Jurisdiction.

- a. The Association is a “savings association” within the meaning of 12 USC § 1813(b) and 12 USC § 1462(4). Accordingly, the Association is an “insured depository institution” as that term is defined in 12 USC § 1813(c); and
- b. Pursuant to 12 USC § 1813(q), the Director of OTS is the “appropriate Federal banking agency” to initiate and maintain a civil money penalty proceeding against the Association pursuant to 12 USC § 1818(i)(2).

2. OTS Findings of Fact.

Based on OTS’s ongoing monitoring of the Association, OTS finds that the Association has violated Section 5 of the Federal Trade Commission Act (FTC Act), 15 USC § 45(a)(1), and OTS Regulation 12 CFR § 563.27 by engaging in unfair practices that caused harm to customers in that:

- a. The Association issued convenience checks to its customers for use on credit card accounts and declined to honor certain of those checks when presented due to an intervening reduction in the customer’s risk rating and/or credit limit;
- b. The Association’s practice resulted in dishonored check fees, charges for insufficient funds, and other costs incurred by the customers;
- c. The Association’s practice may have resulted in negative information being filed with consumer reporting agencies, bad check registries, or other databases against the customers; and

- d. The Association's practice caused damage that could not be reasonably avoided by the customer and the practice is not outweighed by countervailing benefits to the customers.

3. Consent.

The Association consents to the issuance by OTS of the accompanying Order of Assessment of a Civil Money Penalty (Order). The Association further agrees to comply with the terms of the Order upon the Effective Date of the Order and stipulates that the Order complies with all requirements of law.

4. Finality.

The Order is issued by OTS under the authority of 12 USC § 1818(i)(2) and upon the Effective Date it shall be a final order, effective and fully enforceable by OTS under the provisions of 12 USC § 1818(i)(1).

5. Waivers.

The Association waives the following:

- a. The right to be served with a written notice of OTS's assessment of a civil money penalty as provided by 12 USC § 1818(i) and 12 CFR Part 509;
- b. The right to an administrative hearing including, without limitation, any such right provided by 12 USC §§ 1818(h) or 1818(i);
- c. The right to seek judicial review of the Order, including, without limitation, any such right provided by 12 USC §§ 1818(h) or 1818(i), or otherwise to challenge the validity of the Order;
- d. Any and all claims against OTS, including its employees and agents, and any other governmental entity for the award of fees, costs, or expenses related to this

OTS enforcement matter and/or the Order, whether arising under common law, federal statutes, or otherwise; and

- e. The right to assert this proceeding, this consent to the issuance of the Order, and/or the issuance of the Order, the payment of any monies, or the provision of any other financial relief as contemplated by the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. OTS Authority Not Affected.

Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar, or otherwise prevent OTS from taking any other action affecting the Association if at any time OTS deems it appropriate to do so to fulfill the responsibilities placed upon OTS by law. OTS agrees not to institute further proceedings against the Association for the specific acts, omissions, or violations in the OTS Findings of Fact set forth in Paragraph 2 above to the extent known to OTS as of the Effective Date of the accompanying Order, unless such acts, omissions, or violations reoccur.

7. Other Governmental Actions Not Affected.

The Association acknowledges and agrees that this consent to the issuance of the Order is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 6 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Association that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than OTS.

8. Miscellaneous.

- a. The laws of the United States of America shall govern the construction and validity of this Stipulation and the Order;
- b. If any provision of this Stipulation and/or the Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise;
- c. All references to OTS in this Stipulation and the Order shall also mean any of OTS's predecessors, successors, and assigns;
- d. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the interpretation of this Stipulation or the Order; and
- e. The terms of this Stipulation and the Order represent the final agreement of the parties with respect to the subject matters hereof and constitute the sole agreement of the parties with respect to such subject matters.

9. Signature of Directors/Board Resolution.

Each Director signing this Stipulation attests that he or she voted in favor of a Board resolution authorizing the consent of the Association to the issuance of the Order and the execution of the Stipulation. This Stipulation may be executed in counterparts by the directors after approval of execution of the Stipulation at a duly called Board meeting.

WHEREFORE, the Association executes this Stipulation.

AMERICAN EXPRESS BANK, FSB
Salt Lake City, Utah

OFFICE OF THRIFT SUPERVISION

By: _____ /s/
Ronald C. Stovall, Chairman

By: _____ /s/
C.K. Lee
Regional Director, Western Region

Date: See Effective Date on page 1

_____/s/
Douglas H. Short, Director

_____/s/
Pam Codispoti, Director

_____/s/
Bob Phelan, Director

_____/s/
Peter Sisti, Director

_____/s/
Roger Goldman, Director

_____/s/
Peter A. Lefferts, Director

_____/s/
Jay Stevelman, Director

_____/s/
Roslyn Watson, Director

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AMERICAN EXPRESS BANK, FSB)	Effective Date: June 29, 2009
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Salt Lake City, Utah)	
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ORDER OF ASSESSMENT OF A CIVIL MONEY PENALTY

WHEREAS, American Express Bank, FSB, Salt Lake City, Utah, OTS Docket No. 15648 (Association), by and through its Board of Directors (Board), has executed a Stipulation and Consent to the Issuance of an Order of Assessment of a Civil Money Penalty (Stipulation); and

WHEREAS, the Association, by executing the Stipulation, has consented and agreed to the issuance of this Order of Assessment of Civil Money Penalty (Order) by the Office of Thrift Supervision (OTS), pursuant to 12 USC § 1818(i); and

WHEREAS, pursuant to delegated authority, the OTS Regional Director for the Western Region (Regional Director), is authorized to issue Orders of Assessment of a Civil Money Penalty where a savings association has consented to the issuance of an order.

NOW, THEREFORE, IT IS ORDERED that:

Payment of Civil Money Penalty.

1. Effective immediately, the Association is ordered to pay a civil money penalty of Two Hundred and Fifty Thousand Dollars (\$250,000.00) by tendering a certified check or bank draft made payable to the order of the Treasury of the United States. The Association shall pay such civil money penalty itself and is prohibited from seeking or accepting indemnification for such payment from any third party.

Effective Date, Incorporation of Stipulation.

2. This Order is effective on the Effective Date as shown on the first page. The Stipulation is made a part hereof and is incorporated herein by this reference.

IT IS SO ORDERED.

OFFICE OF THRIFT SUPERVISION

By: _____ /s/
C.K. Lee
Regional Director, Western Region

Date: See Effective Date on page 1