

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
)

HEATHER DAVEY)
)

A Former Employee of)
FIRST NIAGARA BANK)
LOCKPORT, NEW YORK)
OTS NO. 17945)
)

Re: Order No. NE-07-05

Date: May 17, 2007

STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER OF PROHIBITION

WHEREAS, the Office of Thrift Supervision (“OTS”), based upon information derived from the exercise of its regulatory responsibilities, has informed **HEATHER DAVEY, a former employee of FIRST NIAGARA BANK, Lockport, New York, OTS No. 17945 (“FIRST NIAGARA” or the “Bank”)** that grounds exist to initiate an administrative prohibition proceeding against her pursuant to 12 U.S.C. § 1818(e), and

WHEREAS, HEATHER DAVEY desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, or the Findings of Fact or opinions and conclusions of the OTS, except as to Jurisdiction, paragraph 1, below, which is admitted, hereby stipulates and agrees to the following:

1. Jurisdiction.

- (a) FIRST NIAGARA is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c);
- (b) **HEATHER DAVEY** is a former employee of FIRST NIAGARA and is an “institution-affiliated party” as that term is defined in 12 U.S.C. § 1813(u) and served in such capacity within 6 years of the date hereof (see 12 U.S.C. § 1818(i)(3)); and
- (c) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate Federal banking agency” to maintain an administrative prohibition proceeding against such a savings association or its institution-affiliated parties.

Therefore, **HEATHER DAVEY** is subject to the jurisdiction of the OTS to initiate and maintain an administrative proceeding against her pursuant to 12 U.S.C. § 1818(e). The Director of the OTS has delegated to the Regional Director of the Northeast Region of the OTS or his designee (“Regional Director”) the authority to issue prohibition orders where the individual has consented to the issuance of the order.

2. OTS Findings of Fact. **HEATHER DAVEY** had been employed as a head teller at the North Tonawanda branch of FIRST NIAGARA (the “Branch”) from April 2000 through December 2006. The OTS finds that **HEATHER DAVEY** engaged in violations of law and unsafe or unsound practices by embezzling funds from the Branch’s ATM cash vault for over a period of approximately one year. **HEATHER DAVEY** then participated in a bank robbery of the bank’s ATM cash vault on December 9, 2006. Between the embezzlement and the bank robbery, approximately \$140,000 was taken from the Bank. By reason of the violations and

unsafe practices, **HEATHER DAVEY** caused a financial loss or other damage to FIRST NIAGARA, prejudiced the interests of the Bank's depositors, and received financial gain or other benefit. Such violations and practices also involved personal dishonesty on the part of **HEATHER DAVEY** and demonstrate willful or continuing disregard for the safety or soundness of the Bank.

3. Consent. **HEATHER DAVEY** consents to the issuance by the OTS of the accompanying Consent Order of Prohibition ("Order"). **HEATHER DAVEY** further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under 12 U.S.C. § 1818(e). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. Waivers. **HEATHER DAVEY** waives the following:

- (a) the right to be served with a written notice of the OTS's charges against her as provided by 12 U.S.C. § 1818(e);
- (b) the right to an administrative hearing of the OTS's charges against her as provided by 12 U.S.C. § 1818(e);
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;

- (d) any and all claims against the 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, the Equal Access to Justice Act, 5 U.S.C. § 504 or 28 U.S.C. § 2412; and
- (e) the right to assert this proceeding, her consent to issuance of the Order, 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. Other Governmental Actions Not Affected. **HEATHER DAVEY** acknowledges and agrees that the consent to the issuance of the Order is for the purpose of resolving this OTS enforcement matter only, involving the facts described in paragraph 1, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of **HEATHER DAVEY** that arise pursuant to this action or otherwise and that may be or have been brought by the OTS or another governmental entity.

7. Acknowledgment of Criminal Sanctions. **HEATHER DAVEY** acknowledges that the Stipulation and Order are subject to the provisions of 12 U.S.C. § 1818(j).

8. Miscellaneous.

- (a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America;

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HEATHER DAVEY)	Order No. NE-07-05
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LOCKPORT, NEW YORK)	
OTS NO. 17945)	
_____)	

CONSENT ORDER OF PROHIBITION

WHEREAS, HEATHER DAVEY has executed a Stipulation and Consent to the Issuance of an Order of Prohibition (“Stipulation”); and

WHEREAS, HEATHER DAVEY, by her execution of the Stipulation, has consented and agreed to the issuance of this Order of Prohibition (“Order”) by the Office of Thrift Supervision (“OTS”), pursuant to 12 U.S.C. § 1818(e).

NOW THEREFORE, IT IS ORDERED that:

1. **HEATHER DAVEY** is prohibited from further participation, in any manner, in the conduct of the affairs of **FIRST NIAGARA BANK, Lockport, New York, OTS No. 17945** and any holding company, subsidiary, and/or service corporation thereof.

2. **HEATHER DAVEY**, except upon the prior written consent of the OTS (acting through its Director or an authorized representative thereof) and any other “appropriate Federal financial institutions regulatory agency,” for purposes of 12 U.S.C.

§ 1818(e)(7)(B)(ii), also shall not:

(a) hold any office in, or participate in any manner in the conduct of the affairs of, any institution or agency specified in 12 U.S.C.

§ 1818(e)(7)(A), including, but not limited to:

(i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, trust companies, and other banking institutions;

(ii) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3) and 1818(b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings associations;

(iii) any insured credit union under the Federal Credit Union Act [12 U.S.C. § 1781 et seq.];

(iv) any institution chartered under the Farm Credit Act of 1971 [12 U.S.C. § 2001 et seq.];

(v) any appropriate Federal depository institution regulatory agency, within the meaning of 12 U.S.C. § 1818(e)(7)(A)(v); and

(vi) the Federal Housing Finance Board and any Federal Home Loan Bank.

(b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in 12 U.S.C. § 1818(e)(7)(A);

(c) violate any voting agreement previously approved by the “appropriate Federal banking agency” within the meaning of 12 U.S.C. § 1813(q); or

(d) vote for a director, or serve or act as an "institution-affiliated party," as that term is defined at 12 U.S.C. § 1813(u), e.g., a director, officer, employee, controlling stockholder of, or agent for, an insured depository institution.

3. The Stipulation is made a part hereof and is incorporated herein by this reference.

4. This Order is subject to the provisions of 12 U.S.C. § 1818(j).

5. **HEATHER DAVEY** shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

6. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the Order shall remain in effect until terminated, modified or suspended, in writing by the OTS, acting through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

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By:

ROBERT C. ALBANESE
Regional Director
Northeast Region