

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

IN THE MATTER OF)
MARK D. DUNLAP, CHAIRMAN OF THE BOARD, PRESIDENT,)
AND CHIEF EXECUTIVE OFFICER)
NEW RICHMOND NATIONAL BANK)
NEW RICHMOND, OHIO)

AA-EC-91-175

DECISION ON REQUEST FOR PRIVATE HEARING

Respondent Mark D. Dunlap, Chairman of the Board, President and Chief Executive Officer of the New Richmond National Bank, New Richmond, Ohio ("Bank"), has requested a private hearing in the above administrative proceeding scheduled to begin on December 2, 1991. On October 28, 1991, the Enforcement and Compliance Division ("E&C") of the Office of the Comptroller of the Currency ("OCC") filed a Response opposing the request.

After fully considering the applicable law and the arguments of the parties, the Comptroller has determined that a private hearing is not necessary in this matter to protect the public interest. Therefore, the Respondent's request must be denied.

I. APPLICABLE LAW

Until recently, OCC administrative hearings were statutorily required to be private, unless the Comptroller determined that a public hearing was in the public interest. See 12 U.S.C. § 1818(h)(1) (1989). However, section 2547 of the Crime Control

Act of 1990 ("Act"), Public Law No. 101-647, enacted November 29, 1990, repealed the private hearing presumption in 12 U.S.C.

§ 1818(h)(1) and amended section 8(u)(2) of the Federal Deposit Insurance Act to read:

All hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

12 U.S.C. § 1818(u)(2).

On August 9, 1991, the OCC promulgated new Uniform Rules of Practice and Procedure ("Uniform Rules") applicable to all actions commenced on or after that date. See Uniform Rules, 56 Fed. Reg. 38,024 (1991) (to be codified at 12 C.F.R. Part 19). Section 19.33 of the Uniform Rules reiterates the public hearing presumption set forth in 12 U.S.C. § 1818(u)(2). See 12 C.F.R. § 19.33 (1991).

II. PROCEDURAL BACKGROUND

On October 1, 1991, the OCC served a Notice of Intention to Prohibit Further Participation ("Prohibition Notice") pursuant to 12 U.S.C. § 1818(e)(1) on Respondent. Simultaneously, the OCC served Respondent and the Bank with a Suspension Order, immediately suspending Respondent from further participation in the affairs of the Bank and any other financial institution

pursuant to 12 U.S.C. § 1818(e)(7). A hearing has been scheduled for December 2, 1991.

On October 17, 1991, Respondent submitted an answer to the charges set forth in the Prohibition Notice and a request for a private hearing.¹ Respondent's request for a private hearing does not state a reason why the request should be granted.

E&C has filed a response to the Respondent's request, arguing that an open hearing would serve the public interest by showing that the OCC is willing to take strong action to prevent the kinds of activities allegedly engaged in by Respondent, namely violations of law, unsafe and unsound practices, and breaches of fiduciary duty arising from improper use of bank funds for personal benefit. Response at 7-8. In addition, E&C asserted that, in the event it becomes necessary to introduce the financial records of third party customers and borrowers into evidence, E&C will take measures to protect the confidentiality of that information by filing any document under seal if disclosure of the document would be contrary to the public interest. Id. at 8.

¹ Respondent erroneously filed the request with the administrative law judge. In most situations the Uniform Rules require that motions be filed with the administrative law judge. 12 C.F.R. § 19.23(c) (1991). However, requests for private hearings are to be filed with the Comptroller. 12 C.F.R. § 19.33(a) (1991).

III. DISCUSSION

Section 1818(u)(2) contains a presumption favoring a public hearing, unless the Comptroller determines that holding a public hearing would be contrary to the public interest. Respondent has not presented any reason, nor does the Comptroller find any reason, why the hearing should not be public.

The public interest requires an open hearing. The Prohibition Notice alleges that the Respondent engaged in serious violations of law. An open hearing serves the public interest by apprising the public of actions that adversely affected the safety and soundness of the Bank. A public hearing will demonstrate that the OCC will take strong enforcement action against directors and officers alleged to have engaged in such practices.

Even when a hearing is public, safeguards are available to protect the confidentiality of persons who are not parties to the proceeding. Section 1818(u) authorizes the OCC to file any document or part of a document under seal. See 12 U.S.C. § 1818(u)(6). E&C has stated that it is prepared to take measures pursuant to section 1818(u)(6) to preserve confidentiality if it becomes necessary to introduce a borrower's financial records into evidence. In addition, the administrative law judge has broad authority to address any remaining concerns regarding confidential information by ordering that documents be

produced, and portions of the hearing be held, in private. 12
C.F.R. § 19.33(b) (1991).

IV. CONCLUSION

For the reasons described above, the Respondent's request for a private hearing should be denied.

ORDER

IT IS HEREBY ORDERED THAT:

The request for a private hearing by Respondent Mark D. Dunlap is DENIED.

So ordered this 13th day of November, 1991.

Robert L. Clarke
Comptroller of the Currency