# UNITED STATES OF AMERICA
## Before The
## OFFICE OF THRIFT SUPERVISION

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|---|---|---|
| **In the Matter of:** | ) | |
| | ) | |
| **Waymona Lisa Bess,** | ) | **OTS Order No.:** MWR-00-12 |
| | ) | |
| **Former Employee and Institution-Affiliated Party of:** | ) | **Dated:** September 11, 2000 |
| | ) | |
| **Commercial Federal Bank, A FSB Omaha, Nebraska** | ) | |

**STIPULATION AND CONSENT TO ENTRY OF AN ORDER OF PROHIBITION AND AN ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

**WHEREAS,** the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed **Waymona Lisa Bess ("BESS")**, former employee and institution-affiliated party of **Commercial Federal Bank, A FSB, Omaha, Nebraska**, OTS No. 5198 (**"Commercial Federal Bank"** or the **"Institution"**), that the OTS is of the opinion that grounds exist to initiate administrative prohibition and cease and desist and proceedings against **BESS** pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b) and 12 U.S.C. § 1818(e).[1]

**WHEREAS, BESS** desires to cooperate with the OTS to avoid the time and expense of

[1] All references in this Stipulation and Consent and in the Order of Prohibition and an Order to Cease and Desist for Affirmative Relief are to the U.S.C. as amended.

such administrative litigation and, without admitting or denying that such grounds exist, but admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and agrees to the following terms:

**1. Jurisdiction.**

**(a) Commercial Federal Bank**, at all times relevant hereto, was a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. § 1462(4). Accordingly, **Commercial Federal Bank** was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

**(b) BESS**, as a former employee of **Commercial Federal Bank**, is deemed to be an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), having served in such capacity within six (6) years of the date hereof (see 12 U.S.C. § 1818(i)(3)).

**(c)** Pursuant to Section 3(q) of the FDIA, 12 U.S.C. §1813(q), the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an enforcement proceeding against institution-affiliated parties. Therefore, **BESS** is subject to the authority of the OTS to initiate and maintain cease and desist and prohibition proceedings against ~her pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b) and Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

**2. OTS Findings of Fact.**

The OTS finds that on two separate occasions on or about September 18, 1999, and February 12, 2000, **BESS**, without authorization, misapplied a total of $6,250.00 of the funds of **Commercial Federal Bank** to her own use. As a result of her actions, **BESS** (1) engaged in a

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violation of the law or breached ~her fiduciary duty of honesty to **Commercial Federal Bank;** and (2) **Commercial Federal Bank** suffered a financial loss or she received a financial benefit or other gain; and (3) the violation of law or breach of fiduciary duty demonstrates willful and/or continuing disregard by **BESS** for the safety and soundness of **Commercial Federal Bank.**

**3. Consent.**

**BESS** consents to the issuance by the OTS of the accompanying Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders"). She further agrees to comply with their terms upon issuance and stipulates that the Orders comply with all requirements of law.

**4. Finality.**

The Orders are issued by the OTS under the authority of Section 8(b) of the FDIA, 12 U.S.C. §1818(b) and Section 8(e) of the FDIA, 12 U.S.C. §1818(e). Upon their issuance by the Regional Director or designee for the Midwest Region, OTS, they shall be final orders, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

**5. Waivers.**

**BESS** waives the following:

**(a)** the right to be served with a written notice of the OTS's charges against her (see Sections 8(b) and 8(e) of the FDIA);

**(b)** the right to an administrative hearing of the OTS's charges against her (see Sections 8(b) and 8(e) of the FDIA); and

**(c)** the right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. §1818(h), or otherwise to challenge the validity of the Order.

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**6. Indemnification.**

**BESS** shall neither cause nor permit **Commercial Federal Bank** (or any successor institution, holding company, subsidiary, or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional expenses incurred relative to the negotiation and issuance of the Order of Prohibition and Order to Cease and Desist for Affirmative Relief. Nor shall **BESS** obtain any indemnification (or other reimbursement) from the **Institution** (or any successor institution, holding company, subsidiary, or service corporation thereof) with respect to such amounts. Any such payments received by or on behalf of **BESS** in connection with this action shall be returned to **Commercial Federal Bank** (or the successor institution, holding company, subsidiary, or service corporation thereof).

**7. Other Government Actions Not Affected.**

(a) **BESS** acknowledges and agrees that the consent to the entry of the Orders is for the purpose of resolving these cease and desist and prohibition actions only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of **BESS** that arise pursuant to these actions or otherwise, and that may be or have been brought by any other government entity other than the OTS.

(b) By signing this Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief, **BESS** agrees that she will not assert this proceeding, her consent to the entry of the Orders, and/or the entry of the Orders, 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 Federal or state governmental entity.

**8. Acknowledgment of Criminal Sanctions.**

**BESS** acknowledges that Section 8(j) of the FDIA, 12 U.S.C. §1818(j), sets forth criminal penalties for knowing violations of the Order.

**9. Agreement for Continuing Cooperation.**

**BESS** agrees that, at the OTS's request, on reasonable notice and without service of a subpoena, she will provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to any investigation, litigation, or other proceeding maintained by the OTS relating to **Commercial Federal Bank**, its holding companies, its subsidiaries, and its institution-affiliated parties, except that **BESS** does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If **BESS** invokes a privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the OTS inquires or the production of any document requested by the OTS and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., **BESS** agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial, administrative, or investigative proceeding on the matter for which immunity is given.

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**WHEREFORE, BESS** executes this Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

By:

/S/

Waynmona Lisa K. Bess

Dated: 9-01-00

Accepted By:
Office of Thrift Supervision

/S/

Frederick R. Casteel
Midwest Regional Director

Dated: 9-11-00

* * * * *

**ACKNOWLEDGMENT**

State of Missouri

County of Jackson

On this 1st day of September, 2000, before me, the undersigned notary public, personally appeared Waymona Lisa K. Bess and acknowledged her execution of the foregoing Stipulation and Consent to Entry of an Order of Prohibition and an Order to Cease and Desist for Affirmative Relief.

Ramona Lord

Notary Public

My Commission expires:

RAMONA LORD
Notary Public – State of Missouri
County of Jackson
My Commission Expires Jun 18, 2001

**UNITED STATES OF AMERICA**
**Before The**
**OFFICE OF THRIFT SUPERVISION**

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| **In the Matter of:** | ) | |
| | ) | |
| **Waymona Lisa Bess,** | ) | **OTS Order No.:** MWR-00-12 |
| | ) | |
| **Former Employee and Institution-Affiliated Party of:** | ) | **Dated:** September 11, 2000 |
| | ) | |
| **Commercial Federal Bank, A FSB Omaha, Nebraska** | ) | |

**ORDER OF PROHIBITION**
**AND**
**ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

**WHEREAS, Waymona Lisa Bess ("BESS")** has executed a Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Stipulation"); and

**WHEREAS, BESS**, by her execution of the Stipulation, has consented and agreed to the issuance of this Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders") by the Office of Thrift Supervision ("OTS"), pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §1818(e) and Section 8(b) of the FDIA, 12 U.S.C. §1818(b).

**NOW THEREFORE, IT IS ORDERED** that:

## ORDER OF PROHIBITION

1. **BESS** is prohibited from further participation, in any manner, in the conduct of the affairs of **Commercial Federal Bank, A FSB, Omaha, Nebraska,** and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. **BESS** is and shall be subject to the statutory prohibitions provided by Section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Due to and without limitation on the operation of Sections 8(e)(6) and 8(e)(7) of the FDIA, 12 U.S.C. §§ 1818(e)(6) and 1818(e)(7), **BESS,** 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 Section 8(e)(7)(B)(ii) of the FDIA, 12 U.S.C. § 1818(e)(7)(B)(ii), shall not:

**(A)** hold any office in, or participate in any manner in the conduct of the affairs of any institution or any agency specified in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A) ("Covered Institution"), including:

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

**(ii)** any institution treated as an insured bank under Sections 8(b)(3) and 8(b)(4) of the FDIA, 12 U.S.C. §§ 1818(b)(3) and 1818(b)(4), or as a savings association under Section 8(b)(9) of the FDIA, 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;

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**(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 Covered Institution;

**(C)** violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of Section 3(q) of the FDIA, 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 Section 3(u) of the FDIA, 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 Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), and shall become effective on the date it is issued.

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

**6.** The terms and provisions of this Order shall be binding upon, and inure to the benefit of the parties hereto and their successors in interest.

**IT IS FURTHER ORDERED** that:

**ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

**7.** **BESS** is and shall be subject to the statutory requirements provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

**8.** **BESS,** within fifteen (15) days of the date of this Order, or within the terms of any payment plan mutually agreeable to **Commercial Federal Bank, A FSB,** shall pay restitution to **Commercial Federal Bank, A FSB,** in the amount of $$6,250.00.

**9.** All payments should be made by certified check or money order made payable to the Institution and forwarded directly to the Institution.

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

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11. This Order is subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. §1818(j), and shall become effective on the date it is issued.

12. BESS shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

13. The terms and provisions of this Order shall be binding upon, and inure to the benefit of the parties hereto and their successors in interest.

**THE OFFICE OF THRIFT SUPERVISION**

**By:**

/S/

**Frederick R. Casteel**
**Midwest Regional Director**

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