

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

| | | |
|---|---|-----------------|
| _____ |) | |
| Marvin Sutterfield |) | |
| Former President and Current Business Development |) | |
| Officer |) | OCC-AA-EC-12-50 |
| |) | |
| Ozark Heritage Bank, N.A. |) | |
| Mountain View, AR |) | |
| _____ |) | |

CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate these cease and desist and civil money penalty proceedings against Marvin Sutterfield (“Respondent”), pursuant to 12 U.S.C. § 1818(b) and (i), on the basis of Respondent’s activities while President at Ozark National Bank, N.A., Mountain View, AR (“Bank”); and

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, Respondent, without admitting or denying any wrongdoing, desires to enter into this Stipulation and Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(b) and (i);

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

Article I

JURISDICTION

(1) Ozark National Bank, N.A., Mountain View, Arkansas (“Bank”) is 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.* Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent, at all relevant times, was 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)).

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain these cease and desist and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(b) and (i).

Article II

COMPTROLLER’S FINDINGS

The Comptroller finds, and Respondent neither admits nor denies, the following:

- (1) Respondent caused the Bank to make extensions of credit to himself, members of his family, and entities owned by members of his family, through which he received a tangible economic benefit in excess of the

\$100,000 lending threshold for executive officers set forth in 12 C.F.R. Part 215.5(c)(4).

- (2) Respondent failed to adequately supervise the affairs of the Bank so as to prevent the bank from engaging in unsafe or unsound lending practices. Specifically, Respondent failed to ensure that the Bank acquired the necessary documentation from borrowers and conducted appropriate underwriting prior to disbursing loan proceeds to customers. Additionally, Respondent failed to ensure that the Bank established and maintained accurate loan files.
- (3) Respondent caused the Bank to make two impermissible golden parachute payments to former Bank employees in violation of 12 U.S.C. § 1828(k) and 12 C.F.R. Part 359.
- (4) Respondent's actions and/or inactions while serving as President and Chief Lending Officer of the Bank caused, brought about, or aided violations of law and regulations, including, but not limited to, 12 U.S.C §§ 375a and 1828(k), and 12 C.F.R. Parts 215 ("Regulation O") and 359. Respondent's actions and/or inactions while serving as President and Chief Lending Officer of the Bank also constituted unsafe or unsound banking practices.

Article III

PERSONAL CEASE AND DESIST ORDER

- (1) Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that, whenever Respondent is employed by an insured depository institution or otherwise is an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:
- (a) Comply fully with all laws, regulations, and policies applicable to any insured depository institution of which he is an institution-affiliated party.
 - (b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code.
 - (c) Not breach the fiduciary duties of loyalty or care owed to any insured depository institution of which he is an institution-affiliated party.
 - (d) Not be involved in any manner (including, but not limited to, participating in loan application approval, loan disbursement, loan collection and loan servicing) in the lending or loan underwriting process at the insured depository institution of which he is an institution-affiliated party.
 - (e) Adhere to the written policies and procedures of any insured depository institution or agency with which he is or may become

affiliated. In the event that the Respondent is affiliated with an insured depository institution or agency with written policies and procedures that are more stringent than the provisions of this Order, the Respondent shall adhere to the written policies and procedures of such insured depository institution or agency.

- (f) Provide the board of directors of any insured depository institution of which he is currently an institution-affiliated party with a copy of this Order. Respondent shall provide written certification of compliance with this paragraph to the Director of the Enforcement and Compliance Division, within ten (10) days of execution of this Order, at the following address: Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219.
- (g) Prior to accepting any position that causes Respondent to become an institution-affiliated party of an insured depository institution, provide the board of directors of that insured depository institution with a copy of this Order. Respondent shall provide written notice of such acceptance to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219, along with written certification of his compliance with this paragraph within ten (10) days after acceptance of such position.

(2) If, at any time, Respondent is uncertain whether a situation implicates Article three (3) of this Order or if Respondent is uncertain about his duties arising from these or any other requirements of this Order, he shall obtain at his own expense, and abide by, the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel who is in no way affiliated with the institution, and who has never been subject to any formal sanctions by any Federal banking agency, either by agency order or consent, as disclosed on the Federal banking agencies' websites.

(3) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818(b).

Article IV

ORDER FOR CIVIL MONEY PENALTY

(1) Respondent hereby consents to the assessment of a civil money penalty in the amount of twenty thousand dollars (\$20,000), of which ten thousand (\$10,000) shall be paid upon execution of this Order, and the remaining ten thousand (\$10,000) shall be paid by October 1, 2012.

(2) Respondent shall make payment in full by cashier's or certified check made payable to the Treasurer of the United States and shall deliver the payment to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case shall be entered on the check.

Respondent shall send a copy of the check to the Director, Enforcement and Compliance Division, 250 E St., SW, Washington, DC 20219.

(3) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. §§ 1818(h) and (i) (as amended).

Article V

WAIVERS

- (1) By executing this Order, Respondent waives:
 - (a) the right to the issuance of a Notice of Charges for Issuance of an Order to Cease and Desist and a Notice of Assessment of a Civil Money Penalty under 12 U.S.C. § 1818(b) and (i);
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (i) and 12 C.F.R. Part 19;
 - (c) all rights to seek judicial review of this Order;
 - (d) all rights in any way to contest the validity of this Order; and
 - (e) any and all claims for fees, costs, or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

(2) Respondent shall not cause, participate in, or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of the civil money penalty under this Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part 359. In addition, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller, or his agents or employees, to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) It is hereby agreed that the provisions of this Order constitute a settlement of these cease and desist and civil money penalty proceedings contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations referenced in the first whereas clause, hereof, unless such acts, omissions, or violations reoccur.

(5) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph (4) above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting Respondent if, at any time, he deems

it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(6) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand.

/s/ Marvin Sutterfield
Marvin Sutterfield

7-30-2012
Date

IT IS SO ORDERED.

/s/ Kristina B. Whittaker
Kristina B. Whittaker
Deputy Comptroller
Special Supervision Division

8/10/12
Date