

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

In the Matter of:)	
)	
MICHAEL McCARTHY, individually,)	AA-EC-2017-47
and as an institution-affiliated party of)	
)	
First National Bank)	
Edinburg, Texas)	

CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate prohibition and civil money penalty proceedings against Michael McCarthy (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (i) on the basis of Respondent’s activities while serving as Chief Lending Officer (“CLO”) and director of First National Bank, Edinburg, Texas (“Bank”);

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 consent to the issuance of this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(e) and (i);

NOW, THEREFORE, it is stipulated by and between the OCC, through the duly authorized representative of the Comptroller of the Currency (“Comptroller”), and Respondent that:

ARTICLE I

JURISDICTION

(1) The Bank was an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was a director and officer of the Bank and was 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 of this Order. *See* 12 U.S.C. § 1818(i)(3).

(3) The Bank was a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and was chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*

(4) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain this prohibition and civil money penalty action against Respondent pursuant to 12 U.S.C. § 1818(e) and (i).

ARTICLE II

COMPTROLLER’S FINDINGS

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

(1) Respondent was CLO and a director at the Bank from 2000 until September 2011, when Respondent resigned as CLO. Respondent remained as a director and became a loan officer until the Bank’s closure in September 2013. At all relevant times, Respondent was a voting member on the Bank’s Loan & Discount Committee.

(2) Beginning in 2009, Respondent originated and approved loans with concessionary and liberal terms to unqualified borrowers to finance the borrower’s purchase of stock in the bank’s holding company to raise capital for the Bank. Most of these loans were renewed indefinitely and outstanding at the time of the Bank’s closure in September 2013. Respondent caused the Bank to report the stock purchases financed with Bank loans as regulatory capital in the Bank’s Consolidated Reports of Condition and Income (“Call Reports”).

(3) From 2009 through at least 2011, Respondent originated and approved loans with concessionary and liberal terms to unqualified borrowers to sell the Bank's other real estate owned ("OREO") at above-market prices as part of a strategy to reduce the Bank's OREO and reduce the Bank's losses that it would have otherwise recorded on sales at fair market prices. On certain occasions, Respondent originated and approved loans to finance the sale of OREO without a credit analysis of the borrower, including \$56 million in loans to a borrower in June 2010.

(4) Respondent had responsibility for, and participated in, the Bank's accounting practices related to lending, including reporting stock purchases financed with Bank loans as capital, failing to record discounts on the sale of OREO financed with below-market loan terms, and accruing interest on nonaccrual loans without justification. These practices were inconsistent with generally accepted accounting principles, regulatory reporting requirements, and requirements contained within OCC consent orders. As a result, Respondent caused the Bank to report materially inflated earnings and capital in the Bank's Call Reports for every quarter beginning with the quarter ending June 30, 2009, through the quarter ending June 30, 2013.

(5) By reason of the foregoing conduct, Respondent engaged in reckless unsafe or unsound practices, breached his fiduciary duty, violated 12 U.S.C. § 161, and violated cease-and-desist orders. These practices, breaches, and violations were part of a pattern of misconduct, caused loss to the Bank, and caused prejudice to the interests of the Bank depositors. Further, Respondent's misconduct involved personal dishonesty and demonstrated willful and continuing disregard for the safety and soundness of the Bank.

ARTICLE III

ORDER OF PROHIBITION

Respondent consents to, and it is ORDERED that:

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, Respondent hereby agrees that he shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the “appropriate Federal banking agency,” as defined in 12 U.S.C. § 1813(q); or
- (d) vote for a director, or serve or act as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u).

(2) The prohibitions in paragraph (1) of this Article apply to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);
- (b) any institution treated as an insured bank under 12 U.S.C. § 1818(b)(3), (b)(4) or (b)(5);
- (c) any insured credit union under the Federal Credit Union Act;
- (d) any institution chartered under the Farm Credit Act of 1971;
- (e) any appropriate Federal depository institution regulatory agency; and
- (f) the Federal Housing Finance Agency and any Federal Home Loan Bank.

(3) The prohibitions of paragraphs (1) and (2) of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the

OCC and the institution's "appropriate Federal financial institutions regulatory agency," as defined in 12 U.S.C. § 1818(e)(7)(D).

(4) 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.

ARTICLE IV

ORDER FOR CIVIL MONEY PENALTY

Respondent consents to, and it is ORDERED that:

(1) Respondent shall pay a civil money penalty in the amount of one hundred twenty-five thousand dollars (\$125,000), which shall be paid in full through three payments according to the following payment schedule:

- (a) Payment of \$41,667 upon Respondent's execution of this Order;
- (b) Payment of \$41,667 on or before December 31, 2018; and
- (c) Payment of \$41,666 on or before December 31, 2019.

(2) Respondent shall make payment by cashier's or certified check made payable to the Treasurer of the United States, and shall deliver the payment to: Office of the Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-2017-47) shall be entered on the submitted payment.

(3) If Respondent fails to comply with any provision of this Order, then the entire balance of the civil money penalty amount described in this Article shall become immediately due and payable.

(4) Until the civil money penalty is paid in full, upon each and every subsequent change in place of residence, if any, Respondent shall notify the Director, Enforcement and

Compliance Division (“Enforcement Director”), 400 Seventh St., SW, Mail Stop 9E-11, Washington, DC 20219 of his new address within seven (7) days of such change of address.

(5) 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.

ARTICLE V

BANKRUPTCY

(1) If Respondent files for bankruptcy protection prior to making the payments in full as required by this Order, Respondent shall notify the Enforcement Director within ten (10) days of the filing and shall provide a copy of the filing to the Enforcement Director.

(2) In any bankruptcy proceeding in which it is or may be contended that Respondent’s obligation to pay a civil money penalty or restitution pursuant to this Order is subject to discharge, Respondent will in no manner contest the assertion of the Comptroller or any agent, officer, or representative of the United States, pursuant to 11 U.S.C. § 523(a) or otherwise, that the civil money penalty or restitution obligation in this Order arises out of acts which result in claims not dischargeable in bankruptcy.

ARTICLE VI

CLOSING

- (1) By executing this Order, Respondent waives:
- (a) the right to a Notice of Intention to Remove from Office and Prohibit Further Participation and Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(e), and (i);

- (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(e) 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 United States, the OCC, or any officer, employee, or agent of the OCC, 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 of the Bank) to incur, directly or indirectly, any 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 of the Bank) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359; provided, however, Respondent may not obtain or accept such indemnification with respect to payment of the civil money penalty.

(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 OCC or any officer, employee, or agent of the OCC to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) This Order constitutes a settlement of any proceedings arising out of the facts, omissions, or violations described in the Comptroller's Findings (Article II of this Order). The

OCC agrees not to institute the proceedings referenced in the first whereas clause of this Order for the specific acts, omissions, or violations described in Article II of this Order unless such acts, omissions, or violations reoccur. However, the specific acts, omissions, or violations described in Article II may be used by the OCC in future enforcement actions to establish a pattern of misconduct or the continuation of a pattern of misconduct.

(5) This Order shall not be construed as an adjudication on the merits and, except as set forth in paragraph (4) above, shall not inhibit, estop, bar, or otherwise prevent the OCC from taking any action affecting Respondent if, at any time, the OCC deems it appropriate to do so to fulfill the responsibilities placed upon the OCC by the several laws of the United States.

(6) Nothing in this Order shall preclude any proceedings brought by the OCC to enforce the terms of this Order, and nothing in this Order 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.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818, and expressly does not form, and may not be construed to form, a contract binding on the United States, the OCC, or any officer, employee, or agent of the OCC. Respondent expressly acknowledges that no officer, employee, or agent of the OCC has statutory or other authority to bind the United States, the United States Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer, employee, or agent of those entities, to a contract affecting the OCC's exercise of its supervisory responsibilities.

(8) This Order is “issued with the consent of . . . the institution-affiliated party concerned,” pursuant to 12 U.S.C. § 1818(h)(2).

(9) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

(10) The provisions of this Order are effective upon issuance by the OCC, through the Comptroller’s duly authorized representative, whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the OCC, through the Comptroller’s duly authorized representative.

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

//s//Michael McCarthy

10/10/2017

Michael McCarthy

Date

IT IS SO ORDERED.

//s//Michael R. Brickman

10/25/2017

Michael R. Brickman
Deputy Comptroller for Special Supervision

Date