

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

In the Matter of:)	
)	
Lemar Whigham)	
Former Director)	AA-EC-2020-27
)	
City National Bank of New Jersey)	
Newark, New Jersey)	

CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate civil money penalty proceedings against Lemar Whigham (“Respondent”) pursuant to 12 U.S.C. § 1818(i) on the basis of Respondent’s activities while serving as a director of City National Bank of New Jersey, Newark, New Jersey (“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(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 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 civil money penalty action against Respondent pursuant to 12 U.S.C. § 1818(i).

ARTICLE II

COMPTROLLER’S FINDINGS

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

(1) During the period from at least 2014 to November 1, 2019, Respondent served as a director on the Bank’s Board of Directors (“Board”). Respondent did not receive Board fees during this period because the Bank was not in compliance with minimum capital ratios and did not otherwise seek and obtain the OCC’s authorization.

(2) Between 2014 and 2019, the Board allowed the Bank’s risk profile to significantly increase when Bank management recruited high-risk businesses as clients. The Board did not ensure the Bank had a commensurate Bank Secrecy Act/Anti-Money Laundering (“BSA”) program to manage such risk or that the Bank conducted adequate due diligence on the high-risk businesses. The Bank’s BSA program was critically deficient, failed to appropriately monitor for and report suspicious activity, and did not include a due diligence program reasonably designed to enable the Bank to detect suspected money laundering by foreign financial institutions. The OCC cited violations of 31 U.S.C. § 5318(h), 12 C.F.R. §§ 21.11 and

21.21(c), and 31 C.F.R. §§ 1010.306, 1010.520, and 1010.610(a)(3), but the Board did not ensure appropriate corrective actions were taken and allowed the transaction volume of the high-risk businesses to increase.

(3) The Board caused, brought about, or participated in violations of 12 U.S.C. § 1831o(e)(2) and 12 C.F.R. § 6.5 by failing to ensure the Bank timely submitted an acceptable Capital Restoration Plan from October 2018 through its failure on November 1, 2019.

(4) The Board failed to exercise appropriate oversight of the Bank. For example, the Board did not ensure the Bank controlled expenses or hold management accountable for correcting identified concerns. The Directors ceded much of the oversight of the Bank to Bank management. Despite repeat and direct criticisms from the OCC, the Directors did not take timely, effective, or necessary steps to correct deficiencies.

(5) During the relevant period, as a member of the Board, Respondent caused, brought about, or participated in violations of the consent order issued by the OCC on December 22, 2010, the consent order issued by the OCC on February 12, 2018, the Prompt Corrective Action Directive issued by the OCC on November 1, 2018, and the Prompt Corrective Action Directive issued by the OCC on June 26, 2019.

(6) By reason of the foregoing conduct, Respondent violated laws, regulations, or orders.

ARTICLE III

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 three thousand dollars (\$3,000), which shall be paid according to the following payment schedule:

Initials: LW
Date: 8-12-20

- (a) Seven hundred and fifty dollars (\$750) shall be paid upon Respondent's execution of this Order;
- (b) Seven hundred and fifty dollars (\$750) shall be paid no later than December 31, 2020;
- (c) Seven hundred and fifty dollars (\$750) shall be paid no later than March 31, 2021; and
- (d) The final installment of seven hundred and fifty dollars (\$750) and any outstanding balance shall be paid no later than June 30, 2021.

(2) Respondent shall make payment via pay.gov or wire transfer, in accordance with instructions provided by the OCC. The docket number of this case (AA-EC-2020-27) shall be referenced in connection with 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) 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.

(5) Within ten (10) days from the issuance of this Order, Respondent shall provide written notification to the OCC of the address of his current place of residence by completing the form attached hereto as Appendix A and sending the completed form by mail to Director of Enforcement, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219 or by email to the address provided by the OCC.

(6) Until the civil money penalty is paid in full, upon each and every subsequent change in place of residence, if any, Respondent shall provide written notification to the OCC of his new address within ten (10) days of such change in address by mail to Director of Enforcement, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219 or by email to the address provided by the OCC.

ARTICLE IV

BANKRUPTCY

(1) If Respondent files for bankruptcy protection, Respondent shall notify the Enforcement Director within ten (10) days of the filing and shall provide a copy of the filing to the OCC by mail to Director of Enforcement, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219 or by email to the address provided by the OCC.

(2) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay a civil money penalty pursuant to this Order is subject to discharge, Respondent will in no manner contest the assertion of the OCC or any officer, employee, or agent of the OCC 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 obligation in the Order arises out of acts which result in claims not dischargeable in bankruptcy.

ARTICLE V

CLOSING

- (1) By executing this Order, Respondent waives:
- (a) the right to a Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(i);

- (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(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/

8-12-2020

Lemar Whigham

Date

IT IS SO ORDERED.

//s// Digitally Signed, Dated: 2020.08.18

Thomas Herslebs
Acting Director for Special Supervision