

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

IN THE MATTER OF:)	
Tracy Kidd)	
Former Head of Community Bank Human Resources)	AA-EC-2020-52
)	
)	
Wells Fargo Bank, N.A.)	
Sioux Falls, South Dakota)	

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate cease and desist and civil money penalty proceedings against Tracy Kidd (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent’s activities while employed by Wells Fargo Bank, N.A., Sioux Falls, South Dakota (“Bank”), including serving as Head of Community Bank Human Resources;

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

(2) Respondent was an employee 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 of this Order. *See* 12 U.S.C. § 1818(i)(3).

(3) The Bank is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and is 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 these cease and desist and civil money penalty actions against Respondent 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) From approximately 2009 through 2012, Respondent was the Human Resources Manager for the Eastern Region within the Community Bank. From 2012 through 2014, Respondent was the Community Bank Human Resources Leader responsible for Community Bank Compensation, Insights, and Analytics. Respondent served as the Community Bank’s Head of Human Resources from 2014 until 2017, reporting to the Head of the Community Bank until mid-2016 and then the Head of HR Consulting.

(2) From at least 2002, the Community Bank had a systemic sales practices misconduct problem.¹

(3) By 2012 at the latest, Respondent knew or should have known about the systemic sales practices misconduct problem in the Community Bank and its root cause.

¹ The term “sales practices misconduct” as used herein refers to the practice of Bank employees issuing products and services to customers without the customers’ consent, or transferring customers’ funds from one account to another without consent, or obtaining the customers’ consent by making a false or deceptive statement.

(4) As Head of the Community Bank Human Resources, Respondent was responsible for Human Resources risk management and approving performance management metrics and incentive compensation plans. From at least 2012 through 2016, Respondent approved incentive compensation plans that failed to appropriately balance risk and reward and instead overly incentivized sales.

(5) Respondent was responsible for ensuring that human resource risks were identified, understood, and managed. Between 2009 and 2016, Respondent received information from various sources that sales goals were unreasonable, that employees feared losing their jobs for not meeting those goals, and that employees faced disciplinary action, including termination, for not meeting those goals. Respondent did not sufficiently respond to or escalate this information.

(6) From 2014 through 2017, Respondent failed to fulfill her responsibilities as a voting member of the Community Banking Risk Management Committee. This committee was responsible for understanding the Community Bank's operational risk profile, working with management to ensure risks were managed effectively, and escalating to the Enterprise Risk Management Committee any current or emerging risk, trend, or business practice.

(7) Respondent failed to effectively escalate sales practices misconduct issues to senior management and did not credibly challenge Community Bank senior leadership regarding its culture and sales goals.

(8) Respondent failed to ensure that materially relevant information was provided to a consultant hired by the Bank to review sales practices.

(9) By reason of the foregoing conduct, grounds exist for the OCC to initiate these cease and desist and civil money penalty actions against Respondent pursuant to 12 U.S.C. § 1818(b) and (i)(2)(B).

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 Hundred and Fifty Thousand Dollars (\$350,000) which shall be paid as follows:

- (a) One Hundred Thousand Dollars (\$100,000) shall be paid upon Respondent's execution of this Order;
- (b) Twenty-Five Thousand Dollars (\$25,000.00) shall be paid on or before December 31, 2020;
- (c) Twenty-Five Thousand Dollars (\$25,000.00) shall be paid on or before March 31, 2021;
- (d) Twenty-Five Thousand Dollars (\$25,000.00) shall be paid on or before June 30, 2021;
- (e) Twenty-Five Thousand Dollars (\$25,000.00) shall be paid on or before September 30, 2021; and
- (f) Twenty-Five Thousand Dollars (\$25,000.00) shall be paid on or before December 31, 2021; and
- (g) Twenty-Five Thousand Dollars (\$25,000.00) shall be paid on or before March 31, 2022; and
- (h) Twenty-Five Thousand Dollars (\$25,000.00) shall be paid on or before June 30, 2022; and
- (i) Twenty-Five Thousand Dollars (\$25,000.00) shall be paid on or before September 30, 2022; and

(j) Twenty-Five Thousand Dollars (\$25,000.00) shall be paid on or before December 31, 2022; and

(k) Twenty-Five Thousand Dollars (\$25,000.00) shall be paid on or before March 31, 2023.

(2) Respondent shall make payment in full according to the above schedule via pay.gov or wire transfer, in accordance with instructions provided by the OCC. The docket number of this case (AA-EC-2020-52) shall be referenced in connection with the submitted payment.

(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.

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, 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 IV

ORDER TO CEASE AND DESIST

Respondent consents to, and it is ORDERED that:

- (1) Whenever Respondent is employed by or is otherwise affiliated with any depository institution as defined in 12 U.S.C. § 1813(c)(1) or otherwise becomes an institution-affiliated party as defined in 12 U.S.C. § 1813(u), Respondent shall:
 - (a) Notify the OCC within 20 days of accepting any role with an insured depository institution having Human Resources management authority. The notification shall be made by mail to Director, 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;
 - (b) Comply fully with all laws and regulations applicable to the institution;
 - (c) Not engage or participate in any unsafe or unsound practice, as that term is used in Title 12 of the United States Code;
 - (d) Fulfill her fiduciary duties of loyalty and care and, at all times, avoid placing her own interests above those of the institution;
 - (e) Adhere to the institution's written policies and procedures, or receive written permission from appropriate authorized individuals to do otherwise; and
 - (f) With respect to reporting to any banking regulator, board, or management committee, act diligently, prudently, honestly, and carefully in carrying out her responsibilities.
- (2) Respondent shall cooperate fully and promptly with the OCC in any investigation, litigation, or administrative proceeding related to the subject matter of this order, including sales practices misconduct at the Bank.

(3) If Respondent is currently an institution-affiliated party, she shall provide the President or Chief Executive Officer of the institution with a copy of this Order within ten (10) days of execution of this Order.

(4) Prior to accepting any offer of a position that causes Respondent to become an institution-affiliated party, she shall provide the President or Chief Executive Officer of the institution with a copy of this Order.

(5) Within ten (10) days of satisfying the requirements of paragraphs (3) and/or (4) of this Article, Respondent shall provide written certification of her compliance to the OCC by mail to Director, Enforcement Division, 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) If, at any time, Respondent is uncertain whether a situation implicates paragraph (1) of this Article, or if Respondent is uncertain about her duties arising from such paragraph, she shall obtain, at her own expense, and abide by the written advice of counsel regarding her 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 banking agencies' websites.

(7) 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

CLOSING

(1) By executing this Order, Respondent waives:

Initials: TK
Date: 9/11/20

- (a) the right to a Notice of Charges for Issuance of an Order to Cease and Desist and a Notice of Civil Money Penalty Assessment 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 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 she 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 her hand.

/s/

Tracy Kidd

9/11/20

Date

IT IS SO ORDERED.

//s//

Gregory J. Coleman

9/21/20