

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

_____)	
In the Matter of)	Order No.: DC-10-008
)	
)	
BARRY DROGY)	Effective Date: July 2, 2010
)	
Former President and)	
Institution-Affiliated Party of)	
)	
Guardian Trust Company, FSB)	
New York, New York)	
OTS Docket No. 15358)	
_____)	

ORDER TO CEASE AND DESIST

WHEREAS, the Office of Thrift Supervision (OTS) is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against **Barry Drogy (Drogy)**, the former President and an institution-affiliated party of Guardian Trust Company, FSB, New York, New York, OTS Docket No. 15358; and

WHEREAS, Drogy has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist (Stipulation); and

WHEREAS, Drogy, by execution of the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist (Order) by the OTS pursuant to 12 U.S.C. § 1818(b); and

WHEREAS, pursuant to delegated authority, the OTS Deputy Director for Examinations, Supervision and Consumer Protection (Deputy Director) is authorized to issue Orders to Cease and Desist where an institution-affiliated party (IAP)¹ has consented to the issuance of an order.

NOW THEREFORE, IT IS ORDERED that:

Cease and Desist.

1. **Drogy**, while at any time an IAP of an insured depository institution,² shall not engage in, participate in, counsel, or aid or abet in any violations of law and/or regulation, unsafe or unsound practice, and/or breach any fiduciary duty.

Corrective Actions.

2. Within one hundred eighty days (180) days, or prior to accepting any position as an IAP of any institution specified in 12 U.S.C. § 1818 (e)(7)(A), whichever occurs first, **Drogy** shall successfully complete at least one hundred twenty (120) hours of training that focuses on best industry practices concerning: (a) general business ethics training (minimum forty (40) hours); (b) ethics training that specifically focuses on the fiduciary duties and obligations of financial institution employees, officers and directors (minimum forty (40) hours); (c) trust and asset management service activities, including trust and estate administration, and agency services; (d) the oversight of subordinate personnel; (e) accurate financial institution recordkeeping, including requirements associated with the Bank Secrecy Act and corresponding regulations, as well as the Office of Foreign Asset Control regulations; and (f) accurate reporting to a board of directors and

¹ The term “institution-affiliated party” is defined at within the meaning of 12 U.S.C. § 1813(u).

² The term “insured depository institution” is defined at 12 U.S.C. § 1813(c)(2).

to regulatory agencies, in order to effectively understand and thereafter apply such best industry practices. Such training shall be conducted by third-party vendors acceptable to the Deputy Director.

3. Within ten (10) days of completion of the training required in Paragraph 2, **Drogy** shall provide the Deputy Director with a copy(ies) of a certificate(s) of completion issued by the third-party vendor(s) of the training required in Paragraph 2.

Notifications.

4. Within ten (10) days of receipt of this Order, **Drogy** shall provide a copy of this Order and a copy of the Stipulation to his current employer.

5. While this Order is in effect, **Drogy** shall, prior to accepting any position as an IAP of any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), provide the chief executive officer and the board of directors of such institution or agency with a copy of this Order and a copy of the Stipulation.

6. Within thirty (30) days of receipt of this Order, **Drogy** shall provide written certification of his compliance with the requirements of paragraph 4 of this Order.

7. Within ten (10) days after his acceptance of any position from an institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), **Drogy** shall provide written notice of such acceptance to the Deputy Director, together with a written certification of his compliance with paragraph 5 of this Order.

Compliance.

8. **Drogy** shall promptly respond to any request from the OTS for documents to demonstrate compliance with this Order.

Effective Date, Incorporation of Stipulation.

9. This Order is effective as of the Effective Date as shown on the first page. The Stipulation is made a part hereof and is incorporated herein by this reference.

Duration.

10. This Order shall remain in effect until terminated, modified, or suspended by written notice of such action by the OTS, acting by and through its authorized representatives.

Time Calculations.

11. Calculation of time limitations for compliance with the terms of this Order run from the Effective Date and shall be based on calendar days, unless otherwise noted.

12. The Deputy Director, or an OTS authorized representative, may extend any of the deadlines set forth in the provisions of this Order upon written request by **Drogy** that includes reasons in support for any such extension. Any OTS extension shall be made in writing.

Submissions and Notices.

13. All submissions, including any certifications and notices, to the OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes.

14. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing and sent by first class U.S. mail (or by reputable overnight carrier, electronic facsimile transmission or hand delivery by messenger) addressed as follows:

(a) To OTS:

Thomas S. Angstadt, Assistant Director
Office of Thrift Supervision
Harborside Financial Center Plaza Five
Suite 1600

Hudson and Pearl Streets
Jersey City, New Jersey 07311
Fax: (201) 413-7543

(b) **To Drogy:**

c/o Rosenfeld & Kaplan, L.L.P.
535 Fifth Avenue
10th Floor
New York, New York 10017
Fax: (212) 682-1100

No Violations Authorized.

15. Nothing in this Order or the Stipulation shall be construed as allowing **Drogy** to violate any law, rule, or regulation.

IT IS SO ORDERED.

OFFICE OF THRIFT SUPERVISION

By: _____
Thomas A. Barnes
Deputy Director, Examinations,
Supervision and Consumer Protection

Date: See Effective Date on page 1

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BARRY DROGY)	Effective Date: July 2, 2010
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Former President and)	
Institution-Affiliated Party of)	
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Guardian Trust Company, FSB)	
New York, New York)	
OTS Docket No. 15358)	
_____)	

STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST

WHEREAS, the Office of Thrift Supervision (OTS), acting by and through its Deputy Director for Examinations, Supervision and Consumer Protection (Deputy Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed **Barry Drogy (Drogy)**, a former President and an institution-affiliated party of Guardian Trust Company, FSB, New York, New York, OTS Docket No. 15358 (Association), that grounds exist to initiate an administrative cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b); and

WHEREAS, the Deputy Director, pursuant to delegated authority, is authorized to issue Orders to Cease and Desist where the individual has consented to the issuance of an order; and

WHEREAS, Drogy desires to cooperate with the OTS and to avoid the time and expense of such administrative cease and desist proceeding by entering into this Stipulation and Consent to the Issuance of an Order to Cease and Desist (Stipulation) and, without admitting or denying that such grounds exist, or the Findings of Fact or opinions and conclusions of the OTS, but only admitting the statements and conclusions in Paragraphs 1, 2, and 3 below concerning Jurisdiction, hereby stipulates and agrees to the following:

Jurisdiction.

1. The Association is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, the Association is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c).
2. **Drogy** is a former President of the Association and is an “institution-affiliated party” as defined in 12 U.S.C. § 1813(u) and served in such capacity within six (6) years of the Effective Date as shown on the first page (see 12 U.S.C. § 1818(i)(3)).
3. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an administrative cease and desist proceeding against savings associations and institution-affiliated parties. Therefore, **Drogy** is subject to the jurisdiction of the OTS to initiate and maintain an administrative cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b).

OTS Findings of Fact.

4. **Drogy** had been employed as President of the Association at all times pertinent to the events described herein. The OTS finds that **Drogy**, from 2006 through 2007, failed to ensure that each of the trust accounts at the Association were properly: presented to, reviewed by and authorized by the Guardian Trust Committee; reviewed for compliance with requirements under the Bank Secrecy Act and corresponding regulations and the Office of Foreign Asset Control regulations; entered into and maintained within the Association's system of books and records; and, were properly monitored and administered by the Association once opened as required by Association policy and in compliance with OTS regulations.

5. Accordingly, pursuant to 12 U.S.C. § 1818(b), **Drogy** has engaged in unsafe or unsound practices in conducting the affairs of an insured depository institution; and/or has violated a law, rule, or regulation.

Consent.

6. **Drogy** consents to the issuance by the OTS of the accompanying Order to Cease and Desist (Order). **Drogy** further agrees to comply with the terms of the Order upon the Effective Date of the Order and stipulates that the Order complies with all requirements of law.

Finality.

7. The Order is issued by the OTS under 12 U.S.C. § 1818(b). Upon the Effective Date it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

Waivers.

8. **Drogy** waives the following:

- (a) the right to be served with a written notice of the OTS's charges against him as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (b) the right to an administrative hearing of the OTS's charges against him as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and
- (d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this the OTS enforcement matter and/or the Order, whether arising under common law, federal statutes or otherwise.

OTS Authority Not Affected.

9. Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar, or otherwise prevent the OTS from taking any other action affecting **Drogy** if, at any time, the OTS deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law.

Other Governmental Actions Not Affected.

10. **Drogy** acknowledges and agrees that his consent to the issuance of the Order is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 9 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect

any actions, charges against, or liability of **Drogy** that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than the OTS.

Miscellaneous.

11. The laws of the United States of America shall govern the construction and validity of this Stipulation and the Order.
12. If any provision of this Stipulation and/or the Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Deputy Director in his or her sole discretion determines otherwise.
13. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns.
14. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the interpretation of this Stipulation or the Order.
15. The terms of this Stipulation and the Order represent the final agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.
16. This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Deputy Director, or other authorized representative.

WHEREFORE, Drogy executes this Stipulation.

Accepted by:

Accepted by:

BARRY DROGY

OFFICE OF THRIFT SUPERVISION

By: _____
Barry Drogy

By: _____
Thomas A. Barnes
Deputy Director, Examinations,
Supervision and Consumer Protection

Date: See Effective Date on page 1