

#2003-20

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

In the Matter of:)	
James Earl Smith)	
Former Vice President and Loan Officer)	AA-EC-2003-08
Grand Valley National Bank)	
Grand Junction, Colorado)	

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate prohibition, cease and desist, and civil money penalty proceedings against James Earl Smith (“Respondent”) pursuant to 12 U.S.C. § 1818(b), (e) and (i); 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, the Comptroller and Respondent desire to enter into this Stipulation and Consent Order (“Order”);

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) Grand Valley National Bank, Grand Junction, Colorado (“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 was a Vice President and Loan Officer 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 enforcement proceedings against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain prohibition, cease and desist and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(b), (e) and (i).

ARTICLE II

FINDINGS OF FACT

(1) Pursuant to the authority invested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby finds, and Respondent neither admits nor denies, that:

(2) On or about March 20, 2002, Respondent pleaded “no contest” to two counts of the criminal offense of Theft of Trade Secrets, in violation of Section 18-4-408 of the Colorado Revised Statutes.

(3) Respondent’s plea of no contest arose as a result of Respondent’s misappropriation of in excess of 2200 electronic mortgage loan files from the Bank, by an electronic transfer of these files to a third party.

(4) Respondent’s conduct caused, brought about, participated in, counseled, or aided or abetted violations of 12 C.F.R. Part 40, titled “Privacy of Consumer Financial Information,” constituted unsafe or unsound banking practices, and further constituted breaches of his fiduciary duty of loyalty to the Bank.

ARTICLE III

PROHIBITION ORDER

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, and without admitting or denying any wrongdoing, 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) (as amended).

(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 as a savings association under 12 U.S.C. § 1818(b)(9);
- (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 Board 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 Comptroller 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(e) and (h).

ARTICLE IV

OTHER AFFIRMATIVE ACTION

- (1) Without admitting or denying any wrongdoing, Respondent hereby consents, pursuant to the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), that:
- (a) Respondent shall, within ten (10) days of the execution of this Order, provide the chief executive officer of Fairway Mortgage Inc. with a copy of this Order.
 - (b) Within ten (10) days from the date of the execution of this Order, Respondent shall provide written certification of his compliance with paragraph (1)(a) of this Article to the Director of the Enforcement and Compliance Division.
 - (c) Prior to accepting any new position with any employer that will cause him to come in contact with “nonpublic personal information,” as defined in 12 C.F.R. § 40.3(n) (2002), that is transferred as part of the employer’s business to any institutions or agencies listed in Article III, paragraph (2), Respondent shall provide the chief executive officer of the entity offering Respondent the position with a copy of this Order.
 - (d) Within ten (10) days from and after his acceptance of any position described in paragraph (1)(c) of this Article, Respondent shall provide written notice of such acceptance to the Director of the Enforcement and Compliance Division along with a written certification of his compliance with paragraph (1)(c). All such written notices and certifications required

by this Order shall be sent to: Director, Enforcement and Compliance
Division, 250 E Street, SW, Washington, DC 20219.

(2) It is further ordered that, in connection with any employment subject to Article IV, paragraph (1) above, whenever Respondent comes into contact with “nonpublic personal information,” as defined in 12 C.F.R. § 40.3(n) (2002), he shall comply with the following provisions:

- (a) Respondent shall at all times comply with all applicable laws and regulations relating to such “nonpublic personal information.”
- (b) Respondent shall adhere to all written policies and procedures of his employer relating to “nonpublic personal information.”
- (c) Respondent shall not breach his duties of loyalty or care owed to any employer with which he may become affiliated and shall, at all times, avoid placing his own interests above those of the employer.

(3) It is further ordered that Respondent shall:

- (a) Never use, or otherwise handle, “nonpublic personal information,” as defined in 12 C.F.R. § 40.3(n) (2002), in any manner not explicitly or implicitly permitted by the provider of such information.
- (b) Be diligent to ensure that – within the scope of Respondent’s duties and influence – adequate and appropriate controls are in place to ensure that “nonpublic personal information,” as defined in 12 C.F.R. § 40.3(n) (2002),

is not used, or otherwise handled, in any manner not explicitly or implicitly permitted by the provider of such information.

(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(b) and (h).

ARTICLE V

CIVIL MONEY PENALTY ORDER

(1) Without admitting or denying any wrongdoing, Respondent hereby consents to the payment of a civil money penalty in the amount of twenty thousand dollars (\$20,000). Such penalty shall be paid as follows: within ten (10) days of the execution of this Order, Respondent shall pay four thousand dollars (\$4,000), followed by annual payments of four thousand dollars (\$4,000), commencing on April 15, 2004, and ending on or before April 15, 2007. Respondent shall make all such payments referenced in this Article by check made payable to the Treasurer of the United States and shall deliver the payments to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. A copy of each check shall be sent to the Director of the Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(2) If Respondent fails to make any payment as required by Paragraph (1) of this Article V, the entire remaining balance of the civil money penalty amount ordered to be paid in this Article shall become immediately due and payable.

(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).

(4) Within seven (7) days from the issuance of this Order, Respondent shall notify the Director of the Enforcement and Compliance Division of his current address, by completing the form attached hereto as Appendix A.

ARTICLE VI

WAIVERS

- (1) By executing this Order, Respondent waives:
- (a) the right to the issuance of Notices under 12 U.S.C. § 1818(b), (e) and (i);
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b), (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;
 - (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; and

- (f) all rights to assert a “double jeopardy” claim in the event of a criminal prosecution brought by the Department of Justice for the acts which form the basis for issuance of this Order.

ARTICLE VII

CLOSING

(1) 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 in accordance with 12 C.F.R. § 7.2014 and Part 359; and 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 in accordance with 12 C.F.R. § 7.2014 and Part 359.

(2) It is hereby agreed that the provisions of this Order constitute a settlement of these cease and desist, prohibition and civil money penalty proceedings contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, violations or breaches set forth in Article II above, unless such acts, omissions, violations or breaches reoccur.

(3) Except as set forth in paragraph (2) above, it is further agreed that the provisions of this Order shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the 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.

(4) 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.

(5) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay the agreed upon civil money penalty pursuant to this Order is subject to discharge, Respondent will in no manner contest the Comptroller's assertion, pursuant to 11 U.S.C. § 523(a)(7) or otherwise, that the foregoing obligations arise out of acts which result in claims not dischargeable in bankruptcy.

(6) Respondent expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency ("OCC") has statutory or other authority to bind the United States, the United States Department of the Treasury, the OCC, any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities.

(7) If, at any time, Respondent is uncertain whether a situation implicates any of the obligations or requirements of this Order, or if Respondent is uncertain about the obligations or requirements imposed by 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 has not been subject to any order or agreement imposing sanctions on such counsel by any Federal banking agency, as that term is used in 12 U.S.C. § 1813(q).

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

/s/ Ronald G. Schneck

4/4/03

Ronald G. Schneck
Director
Special Supervision Division

Date

/s/ James Earl Smith

3/24/03

James Earl Smith

Date