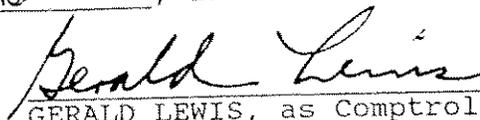


DONE AND ORDERED in Tallahassee, Leon County, Florida, this

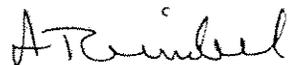
28th day of September, 1993.



GERALD LEWIS, as Comptroller of the
State of Florida and Head of the
Department of Banking and Finance

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order was served by U.S. Certified Mail, Return Receipt Requested, to Stuart Hoffman, 848 El Dorado Avenue, Clearwater, Florida 34630, to Allen R. Tomlinson, Esquire, Jones, Foster, Johnston & Stubbs, P.A., Attorneys for Hoffman, P.O. Box 3475, 505 South Flagler Drive, West Palm Beach, Florida 33402-3475 and Randall Benston, President, Gateway America Bank of Florida, 1451 N.W. 62nd Street, Suite 212, Ft. Lauderdale, Florida 33309-1953 this 28th day of September, 1993.



Albert T. Gimbel
Chief Banking Counsel
Office of Comptroller
The Capitol
Suite 1302
Tallahassee, Florida 32399
(904) 488-9896

CC: Susan E. Steinberg
Assistant General Counsel
Office of Comptroller
1313 Tampa Street, Suite 615
Tampa, Florida 33602-3394

Terence M. Straub, Director
Division of Banking
Department of Banking and Finance

ses/13/hoffman.stp

STATE OF FLORIDA
DEPARTMENT OF BANKING AND FINANCE
DIVISION OF BANKING

9/28/93
mb

IN RE:

STUART HOFFMAN,)
) Administrative Proceeding
) No. 3170-B-5/93
Respondent.)

STIPULATION AND CONSENT TO ISSUANCE OF
FINAL ORDER OF REMOVAL AND PROHIBITION

The Florida Department of Banking and Finance, Division of Banking (Department) and Stuart Hoffman (Hoffman), a former president and director of Gateway American Bank of Florida (Gateway), agree to the following on the date last executed below:

1. Consideration. The Department is of the opinion that grounds exist to continue administrative proceedings against Hoffman pursuant to Section 655.037, Florida Statutes. Hoffman denies the allegations made against him in the Administrative Complaint for Removal and Prohibition with Notice of Rights (the Administrative Complaint) filed in this Administrative proceeding and Hoffman has filed a Petition for Formal Hearing denying there is a basis for continuing administrative proceedings against him. However, Hoffman is no longer connected with Gateway American Bank and agrees not to seek employment in any capacity with a financial institution in Florida. It is the desire of Hoffman to cooperate with the Department and to also avoid the expense of administrative litigation provided in doing so it is clear he is not admitting the matters alleged in the Administrative Complaint. As such, Hoffman stipulates and agrees to the following terms in consideration of the Department's forbearance from continuing administrative action

against Hoffman.

2. Jurisdiction. Gateway is a state-chartered financial institution, operating under charter number 961, which is under the jurisdiction of the Florida Department of Banking and Finance. Hoffman, as a former president and director of a state-chartered financial institution, is subject to the Department's authority to initiate and maintain removal and prohibition proceedings against him pursuant to 655.037, Florida Statutes. Hoffman has been served with a copy of the Department's Administrative Complaint for Removal and Prohibition with Notice of Rights.

3. Consent. Hoffman consents to issuance, by the Department, of the accompanying Consent Final Order of Removal and Prohibition (Consent Order) deeming him ineligible for election to any official position in or employment by any financial institution in this State, except with the written consent of the Department, from the effective date of the Department's Consent Order. Hoffman further agrees that he will not request the Department's consent to become eligible for a position or employment in any financial institution in the future. He further agrees to comply with the terms and conditions of the Consent Order upon issuance and stipulates that the Consent Order complies with all applicable requirements of law.

3.1 Upon full execution of this Stipulation and Consent Agreement, the Department agrees to enter a Consent Order in this matter without making any findings that Hoffman committed any of

the wrongful acts alleged in the Administrative Complaint. Such final order shall incorporate the terms of this Stipulation and Consent Agreement.

3.2 Upon full execution of this Stipulation and Consent Agreement, Hoffman withdraws his petition for hearing in the above-styled action.

4. Finality. The Consent Order is issued pursuant to Section 655.037, Florida Statutes, and upon its issuance shall be a final administrative order.

5. Effectiveness. The Consent Order is effective upon its issuance by the Department. It is fully enforceable by the Department under the provisions of Section 655.031 and 655.037, Florida Statutes, as well as Chapter 120, Florida Statutes.

6. Waivers. Hoffman, knowingly and voluntarily waives:

1) Any right to an administrative hearing provided by Section 655.037 or Chapter 120, Florida Statutes;

2) Any requirement that the Department's Final Order contain stated Findings of Fact and Conclusions of Law or a Notice of Rights;

3) Any right to issuance of a recommended order by a Hearing Officer from the Division of Administrative Hearings or from the Department; and

4) Any and all rights to object to or challenge in any judicial proceeding or forum, including but not limited to, an appeal pursuant to Section 120.68, Florida Statutes, any aspect, provision or requirement concerning content, issuance, procedure,

or timeliness of the Department's Consent Order.

6.1. Hoffman hereby waives and releases the Department and its agents, representative and employees from any cause of action he may now have, or may have in the future, including but not limited to, any action for libel, slander, violation of a constitutionally protected right, tortious interference with advantageous contractual relationships and the like, arising out of the Department's administrative action in this matter. The Department agrees to accept this release without acknowledging, and expressly denies, that any such cause of action may exist.

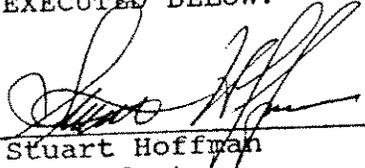
7. Other matters. The Department and Hoffman agree that each shall be solely responsible for their own separate costs and expenses, including legal fees, incurred as a result of or relating to this matter up to and including the entry of the Consent Order incorporating the terms and conditions of this Stipulation and Consent Agreement.

7.1. This Stipulation and Consent Agreement shall resolve only the matter stated herein as between the parties hereto and shall not be construed to resolve any matters other than those contained in the Complaint in the above-styled proceeding. Nothing herein shall be construed to waive or restrict the Department's right to undertake any action under any provision of the Florida Statutes, arising out of any facts or circumstances not expressly set forth in the Complaint.

7.2. The parties herein acknowledge that they have read this Stipulation and Consent to Issuance of Final Order of Removal and

Prohibition and fully understand the rights, obligations, terms, conditions, duties and responsibilities with respect to its contents and are acting upon the advice of good and competent counsel.

IN CONSIDERATION OF THE FOREGOING, THE DEPARTMENT AND HOFFMAN EXECUTED THIS STIPULATION AND CONSENT TO ISSUANCE OF A FINAL ORDER OF REMOVAL AND PROHIBITION, AS ATTACHED HERETO, ON THE DATE LAST EXECUTED BELOW.



Stuart Hoffman
Respondent

9/14/93

Date



Terence M. Straub, Director
Division of Banking
DEPARTMENT OF BANKING AND FINANCE

9/27/93

Date

STATE OF FLORIDA
DEPARTMENT OF BANKING AND FINANCE
DIVISION OF BANKING

IN RE:

STUART HOFFMAN,)
)
Respondent.)
)
)
)

Administrative Proceeding
No. 3170-B-5/93

ADMINISTRATIVE COMPLAINT FOR REMOVAL AND PROHIBITION
WITH NOTICE OF RIGHTS

The State of Florida Department of Banking and Finance, (hereinafter the Department), is authorized and directed to administer Florida Statutes Title XXXVIII, Banks and Banking. Stuart Hoffman (hereinafter Hoffman) has engaged or participated in a violation of laws relating to financial institutions and violations of other laws involving fraud or moral turpitude which constitute a felony, demonstrating a willful or continuing disregard for the safety and soundness of a financial institution and is unfit to hold any office or participate in any manner in the conduct of affairs of a financial institution. Upon due consideration of the facts set forth below, the Department files this Administrative Complaint for Removal and Prohibition with Notice of Rights barring Hoffman from future service as an officer, director, committee member, employee, or other person participating in the conduct of the affairs of a financial institution and/or a financial institution-affiliated party in this state from the date a final order is entered in this action, and in support thereof states:

FINDINGS OF FACTS

1. The Department has jurisdiction over financial

institutions and officers, directors, committee members, employees, or other persons participating in the conduct of the affairs of a financial institution and financial institution-affiliated parties.

2. At all times material hereto Hoffman was president and director of Gateway American Bank of Florida (hereinafter Gateway) and otherwise participated in the conduct of the affairs of the Gateway.

3. Gateway is a state-chartered financial institution, operating under charter number 961 and located at 1451 N.W. 62nd Street, Suite 212, Ft. Lauderdale, Florida 33309-1953.

4. Officers and directors of financial institutions share an obligation to the institution, its members, depositors and shareholders greater than that of an ordinary prudent person. The standards of care and fidelity are more lofty than those of the market place. Officers and directors of financial institutions owe a fiduciary duty to that institution and to its shareholders greater than that owed all other corporations. First Nat'l. Bank of LaMarque v. Smith, 436 F. Supp. 824 (S.D. Texas 1977); Gadd v. Pearson, 351 F. Supp. 895 (M.D. Fla. 1972); Fleishbacker v. Blum, 109 F.2d 543 (9th Cir. 1940). At all times material hereto, Hoffman, as president and director, owed a fiduciary duty to the institution, its shareholders and depositors.

5. Between October 1990 and October 1992, Hoffman used his authority at Gateway to conduct activity in violation of Chapter 655, Florida Statutes. His actions are described below:

a. Hoffman engaged or participated, directly or

indirectly, in business or transactions conducted on behalf of or involving Gateway which resulted in a conflict between his personal interests and those of Gateway.

b. Hoffman allowed Gateway to lend bank funds to individuals with whom he had a financial interest or association (hereinafter the Hoffman Customers), without disclosing that association or interest to the Board of Directors of Gateway (hereinafter the Board).

c. Hoffman recommended to the Board that it approve loans to Hoffman Customers. The information provided by Hoffman to the Board regarding those loans falsely stated the purpose or true recipient of the funds. In at least one instance, Hoffman approved a loan to a Hoffman Customer after the loan was denied by the Board.

d. Using his authority, Hoffman knowingly and intentionally concealed overdrafts from Gateway in Hoffman Customer accounts.

e. Hoffman knowingly lent funds to straw men and personally applied the proceeds to delinquent Hoffman Customer accounts in an effort to conceal the delinquent nature of those accounts.

f. Hoffman renewed certain Hoffman Customer loans even though the loan accounts were seriously delinquent at the time of renewal.

g. Hoffman accepted services from Hoffman Customers free of charge without advising the Board of this fact.

h. Hoffman knowingly and intentionally converted bank funds for his own personal use by depositing checks made payable to Gateway into his personal account.

i. Hoffman knowingly and intentionally violated state and federal law by failing to file a cash transaction report (hereinafter CTR) for cash transactions in excess of Ten Thousand Dollars (\$10,000.00) as required by Section 655.50, Florida Statutes. In several instances, Hoffman manipulated the amount of the cash transaction to avoid CTR requirements.

6. As a result of the above described activity, Hoffman caused Gateway to suffer losses in excess of \$742,448.65.

7. As an experienced officer and participant in the affairs of a financial institution, Hoffman knew or should have known that engaging in the acts described in this Complaint was both illegal and a breach of his fiduciary duty.

CONCLUSIONS OF LAW

8. Section 655.037(1), Florida Statutes (1989), states in pertinent part:

(1) The department may issue and serve upon any officer, director, committee member, employee, or other person participating in the conduct of the affairs of a financial institution, and upon the financial institution involved, a complaint stating charges whenever the department has reason to believe that the officer, director, committee member, employee, or other person participating in the conduct of the affairs of the financial institution is engaging or has engaged in conduct that is:

(a) An unsafe or unsound practice;

* * *

(c) A violation of any other law involving fraud or moral turpitude which constitutes a felony;

* * *

(g) An act of commission or omission of a practice which is a breach of trust or a breach of fiduciary duty.

9. Section 655.037, Florida Statutes (1992 Supp.), states in pertinent part:

(1) The department may issue and serve upon any financial institution-affiliated party and upon the state financial institution . . . a complaint stating charges whenever the department has reason to believe that the financial institution-affiliated party is engaging or has engaged in conduct that is:

- (a) An unsafe or unsound practice;
- (b) A prohibited act or practice;
- (c) A willful violation of any law relating to financial institutions;
- (d) A violation of any other law involving fraud or moral turpitude which constitutes a felony;
- (e) A violation of Section 655.50, relating to the Florida Control of Money Laundering In Financial Institutions Act; Chapter 896, relating to offenses related to financial transactions; or any similar state or federal law;

* * *

(i) An act of commission or omission of a practice which is a breach of trust or a breach of fiduciary duty.

10. Based upon the foregoing Findings of Fact, the Department concludes as a matter of law that pursuant to Sections 655.001 and 655.012, Florida Statutes (1989) and Sections 655.001 and 655.012, Florida Statutes (1992 Supp.), that it has jurisdiction over Hoffman and is authorized to take this action.

11. Based upon the foregoing Findings of Fact, the Department concludes as a matter of law that Hoffman engaged in conduct that is a willful violation of law relating to financial institutions.

12. Based upon the foregoing Findings of Fact, the Department concludes as a matter of law that Hoffman engaged in conduct that is a violation of law involving fraud or moral turpitude which constitutes a felony.

13. Based upon the foregoing Findings of Fact, the Department concludes as a matter of law that Hoffman committed acts or engaged in practices prohibited by the Department.

14. Based upon the foregoing Findings of Fact, the Department concludes as a matter of law that Hoffman's willful violation of laws relating to financial institutions is evidence of a willful and continuing disregard for the safety and soundness of the financial institution.

15. Based upon the foregoing Findings of Fact, the Department concludes as a matter of law that Hoffman's willful participation in a violation of law involving fraud or moral turpitude which constitutes a felony is evidence of a willful and continuing disregard for the safety and soundness of the financial institution.

16. Based upon the foregoing Findings of Fact, the Department concludes as a matter of law that Hoffman's willful participation in acts or practices prohibited by the Department is evidence of a continuing disregard for the safety and soundness of the financial institution.

17. Based upon the foregoing Findings of Fact, the Department concludes as a matter of law that Hoffman engaged in conduct which constitutes an unsafe or unsound practice.

18. Based upon the foregoing Findings of Fact, the Department concludes as a matter of law that Hoffman has engaged in an act or practice which constitutes a breach of his fiduciary duty to the institution.

19. Section 655.0321, Florida Statutes (1992 Supp.), states in pertinent part:

The Department shall consider the public purpose specified in Section 119.14(1)(b) in determining whether the hearings and proceedings conducted pursuant to Section 655.033 for the issuance of cease and desist orders and Section 655.037 for the issuance of suspension or removal orders shall be closed and exempt from the provisions of Section 286.011, and whether related documents shall be confidential and exempt from the provisions of Section 119.07(1).

20. Based upon the foregoing Findings of Fact, the Department concludes as a matter of law that this Administrative Complaint For Removal and Prohibition With Notice of Rights is a public document.

21. Section 655.037(7), Florida Statutes (1989), states in pertinent part:

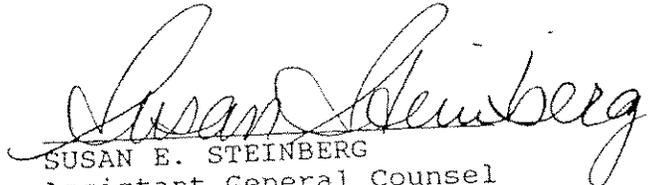
Any officer, director, committee member, employee, or other person participating in the conduct of the affairs of a financial institution removed from office pursuant to this section is not eligible for re-election to such position or to any official position in any financial institution in this state except with the written consent of the department.

22. Section 655.037(7), Florida Statutes (1992 Supp.), states in pertinent part:

Any financial institution-affiliated party removed from office pursuant to this section is not eligible for re-election to such position or to any official position in any financial institution in this state except with the written consent of the department.

23. Based upon the foregoing, the Department concludes as a matter of law that upon entry of a Final Order Hoffman is removed from the Bank and prohibited from participation in the affairs of any state-chartered financial institution without the express written consent of the Department.

WHEREFORE, unless a hearing is requested within twenty-one (21) days from the date of service of this Administrative Complaint for Removal and Prohibition in accordance with the attached Notice of Rights, the Department will enter an Order removing Hoffman from Gateway American Bank of Florida and prohibiting Hoffman from future participation in the affairs of any state-chartered financial institution from the date a Final Order of Removal and Prohibition is entered.


SUSAN E. STEINBERG
Assistant General Counsel
Office of the Comptroller
1313 Tampa Street, Suite 615
Tampa, FL 33602-3394
(813) 272-2565
Fla. Bar No. 0701114

NOTICE OF RIGHTS

The Respondent is advised that within twenty-one (21) days after receipt of the foregoing Administrative Complaint for Removal and Prohibition, the Respondent may request a hearing on this matter under the provisions of Section 120.57, Florida Statutes, by filing a petition for hearing in accordance with Rule 3-7.002, Florida Administrative Code, within twenty-one (21) days. The original and two copies of the petition for hearing must be filed with:

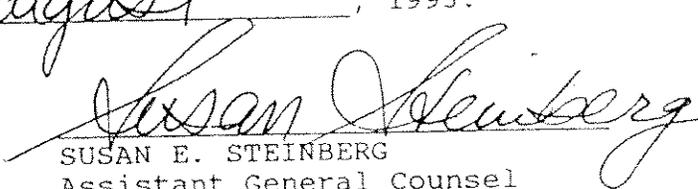
Agency Clerk
Department of Banking and Finance
The Capitol, Suite 1302
Tallahassee, Florida 32399-0350

Should the Respondent request a hearing, he is referred to

Chapters 3-7, 28-5, 28-6, and 60Q-2, Florida Administrative Code, which operates as the Department's Rules of Procedure in this matter and he is further advised that at such hearing he shall have the right to be represented by counsel or other qualified representative; to offer testimony, either written or oral; to call and cross-examine witnesses; and to have subpoena and subpoena duces tecum issued on his behalf. FAILURE TO REQUEST A HEARING WITHIN TWENTY-ONE (21) DAYS AFTER RECEIPT OF THIS NOTICE SHALL CONSTITUTE A WAIVER OF THE RESPONDENT'S RIGHT TO REQUEST A HEARING ON ANY MATTER SET FORTH IN THE FOREGOING AND A FINAL ORDER WILL BE ENTERED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Administrative Complaint for Removal and Prohibition with Notice of Rights was delivered by Certified U.S. Mail, Return Receipt Requested to Stuart Hoffman, 848 El Dorado Avenue, Clearwater, Florida 34630 and by U.S. Certified Mail, Return Receipt Requested to Randall Benston, President, Gateway American Bank of Florida, 1451 N.W. 62nd Street, Suite 212, Ft. Lauderdale, Florida 33309-1953 this 14th day of August, 1993.


SUSAN E. STEINBERG
Assistant General Counsel

ses/13/hoffman.cpl