

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of

**KENNETH KEITH FOX, individually,
and as an institution affiliated
party of**

**HEARTLAND COMMUNITY BANK
FRANKLIN, INDIANA**

(Insured State Nonmember Bank)

**STIPULATION AND
CONSENT
TO THE ISSUANCE OF AN
ORDER TO PAY**

FDIC-02-147k

Subject to the acceptance of the STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO PAY ("CONSENT AGREEMENT") by the Federal Deposit Insurance Corporation ("FDIC"), it is hereby stipulated and agreed by and between a representative of the Legal Division of the FDIC and Kenneth Keith Fox ("Respondent"), as follows:

1. Respondent has been advised of the right to receive a NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT, AND CONCLUSIONS OF LAW ("NOTICE OF ASSESSMENT") detailing the alleged unsafe and unsound practices or breaches of fiduciary duty for which an ORDER TO PAY a civil money penalty may issue. Respondent has been further advised of the right to a hearing on the charges under section 8(i) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(i), and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308. Respondent is represented by counsel.
2. Respondent admits that, at all time relevant to this proceeding, he was an "institution-affiliated party" with respect to Heartland Community Bank, Franklin, Indiana ("Bank"), as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u); that the FDIC is the "appropriate Federal banking agency" to maintain this enforcement action pursuant to section 3(q)(3) of the Act, 12 U.S.C. § 1813(q)(3); and that the FDIC has jurisdiction over him and the subject matter of this proceeding.
3. The FDIC has reason to believe that the Respondent engaged in unsafe and unsound practices or breaches of his fiduciary duty to the Bank in connection with his underwriting and loan administration responsibilities as a loan officer of the Bank.
4. Respondent, solely for the purpose of this proceeding and without admitting or denying the practices and breaches of fiduciary duty set forth in paragraph 3 of this CONSENT AGREEMENT, hereby consents and agrees to the issuance of an ORDER TO PAY by the FDIC, and further consents and agrees to pay a civil money penalty of \$5,000. The penalty shall be paid to the Treasury of the United States pursuant to the provisions of section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2). Respondent further stipulates and agrees that such ORDER TO PAY shall be final and fully enforceable by

the FDIC pursuant to the provisions of section 8(i)(2)(I) of the Act, 12 U.S.C. § 1818(i)(2)(I).

5. Respondent further agrees to pay the civil money penalty assessed by delivering to the FDIC a certified or cashier's check in the amount of \$5,000, made payable to the Treasury of the United States.

6. In the event the FDIC accepts this CONSENT AGREEMENT and issues the ORDER TO PAY, it is agreed that no action will be taken by the FDIC to initiate any additional enforcement actions under section 8(i) of the Act, 12 U.S.C. § 1818(i), for the practices and breaches set forth in paragraph 3 of this CONSENT AGREEMENT.

7. In the event the FDIC accepts this CONSENT AGREEMENT and issues the ORDER TO PAY, Respondent agrees not to seek or accept indemnification from any insured depository institution for the civil money penalty assessed and paid in this matter.

8. Respondent hereby waives for purposes of this proceeding:

- a) the receipt of a NOTICE OF ASSESSMENT;
- b) the right to present defenses to the allegations to be set forth in the NOTICE OF ASSESSMENT;
- c) a hearing for the purpose of taking evidence on the allegations to be set forth in the NOTICE OF ASSESSMENT;
- d) the filing of proposed findings of fact and conclusions of law;
- e) a recommended decision of an administrative law judge;
- f) exceptions and briefs with respect to such recommended decision; and
- g) judicial review of the ORDER TO PAY as provided by 12 U.S.C. § 1818(h), or any other challenge to the validity of the ORDER TO PAY.

Dated this _____ day of _____, 2003.

FEDERAL DEPOSIT INSURANCE
CORPORATION

John S. Stevens
Senior Regional Attorney

RESPONDENT LEGAL
DIVISION

Kenneth Keith Fox
Respondent

Last Updated 12/30/2003