

Order No. 2018-019x

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
DIANE R. PARKER,	§	
FORMER DIRECTOR AND	§	
VICE-PRESIDENT,	§	
THE ELKHART STATE BANK,	§	
And	§	COMMISSIONER OF TEXAS
	§	
FORMER DIRECTOR AND	§	
VICE-PRESIDENT,	§	
ELKHART BANCORPORATION, INC.	§	
	§	
ELKHART, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

AMENDED CONSENT ORDER NUNC PRO TUNC

On this day, the matter of DIANE R. PARKER, Elkhart, Texas (“Respondent”) was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (“Commissioner”), for consideration and action. Staff of the Texas Department of Banking (Staff) states that a clerical error was made in Consent Order No. 2018-019, In the Matter of Diane R. Parker, (Parker Consent Order) which was signed on August 9, 2018. The error was that the Parker Consent Order was given the number 2018-019, and that same number had already been assigned to another order signed by me on August 1, 2018. Staff brought this error to the attention of Respondent and Respondent has agreed that, in order to avoid confusion, this Amended Consent Order Nunc Pro Tunc (Amended Order) may be entered to correct that clerical error by changing the number of the Parker Consent Order to 2018-019x. The Amended Order shall be effective August 9, 2018. Therefore, the Amended Order will be the same in all respects as the Parker Consent Order with the exception of the changed order number.

The Amended Order shall state as follows:

1. Respondent was a director and vice-president of The Elkhart State Bank, Elkhart, Texas (the “Bank”). The Bank was owned 100% by Elkhart Bancorporation, Inc. (the “Holding Company”). The Bank voluntarily dissolved pursuant to *Texas Finance Code* Chapter 36, Subchapter B, and on August 14, 2015, its charter was cancelled.

2. Respondent was also a director and the vice-president of the Holding Company.
3. On August 28, 2014, Respondent consented to be removed from her position at the Bank and the Holding Company pursuant to Commissioner's Order No. 2014-014.
4. The Texas Department of Banking ("Department") is the appropriate state banking agency to bring this enforcement action pursuant to *Texas Finance Code* §§35.009 and 35.010, and the Commissioner has jurisdiction over Respondent and the subject matter of this proceeding.
5. Respondent has been informed that she has the right to receive a notice of a hearing setting the time and place of a hearing on the penalty, containing a statement of the conduct alleged to constitute a violation. Respondent has been informed and understands that she has the right to a hearing on the allegations under *Texas Finance Code* §35.010 and *Texas Government Code* §§2001.051 and 2001.171. Respondent waives both of those rights and agrees to the disposition of this matter pursuant to the provisions of *Texas Government Code* §2001.056.
6. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions authorized by *Texas Finance Code* Chapter 35, Subchapter A and other provisions of Texas law. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Chapter 35 or other applicable law.
7. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
 - a. Service upon Respondent of this Order;
 - b. The right to present defenses to the allegations stated in this Order;
 - c. Notice and hearing prior to imposition of this Order;
 - d. The filing of proposed findings of fact and conclusions of law;
 - e. The issuance of a proposal for decision by an administrative law judge;
 - f. The filing of exceptions and briefs with respect to such proposal for decision;
 - g. Any review of this Order by the Texas Finance Commission; and

- h. Judicial review of this Order as provided by *Texas Finance Code* §35.011, *Texas Government Code* §2001.171 et seq., and any other challenge to the validity of this Order.
8. The Commissioner has considered the matter and finds as follows:
 - a. Respondent caused losses to the Bank by her activities, including misusing repossessed assets, testifying falsely under oath to the Commissioner and refusing to be examined by the Commissioner, concealing information from the Commissioner by causing the Bank's security camera to be turned off, and violating the Commissioner's order to timely return Bank property to the Bank.
 - b. These activities also served as the basis for Emergency Order to Cease and Desist Activity (Order No. 2014-013) and Consent Removal Order (Order No. 2014-014).
 - c. These activities constitute violations of *Texas Finance Code* Title 3, Subtitle A, and as a result of those violations exposed the Bank and its depositors, creditors, and shareholders to harm.
 - d. Respondent's failure to return property timely to the Bank constitutes a violation of a final order issued by the Commissioner.
 - e. Consequently, pursuant to *Texas Finance Code* §35.009, the Commissioner finds that Respondent's conduct caused violations that provide grounds for the Commissioner to initiate an administrative penalty proceeding in accordance with *Texas Finance Code* §§35.010 and 35.011.
 - f. On April 21, 2017, the Federal Deposit Insurance Corporation ("FDIC") ordered Respondent to pay \$30,000 for the same conduct.
 - g. On May 5, 2017, the Department wrote Respondent and requested her to fill out a financial statement and to authorize the Department to obtain more information about her financial status. The Department informed Respondent that the administrative penalty would be based on financial information she submits and any financial information already known to the Commissioner. Respondent did not respond to this request.
 - h. The Commissioner has considered the facts as stated herein, in conjunction with *Texas Finance Code* §35.010(a)(3), and finds that the Commissioner is not required to

identify corrective action that Respondent must take to avoid or reduce the amount of a penalty that would otherwise be imposed under this section.

- i. The Commissioner has further considered these violations and determines that, in accordance with *Texas Finance Code* §35.010(b), the agreed upon penalty is appropriate with respect to the financial resources and good faith of Respondent, the gravity of Respondent's violations, the history of Respondent's previous violations, an offset of the amount of the penalty by the penalty that was imposed on Respondent by the FDIC, and such other matters as justice requires.
 - j. Based on these findings and considerations, the Commissioner finds that Respondent's conduct as stated above constitutes violations that warrant the imposition of a penalty of \$75,000.
9. Respondent agrees she will not seek or accept indemnification from any bank chartered by the State of Texas for the administrative penalty assessed and paid in this matter.
 10. Respondent enters into the Consent Order solely for the purpose of this proceeding, and, without admitting or denying any violations of law or regulations or orders issued by the Banking Commissioner.
 11. Respondent consents to the issuance of this Consent Order and has agreed to comply with the terms that are set out in the Order below.

ORDER

It is, therefore, ORDERED, ADJUDGED and DECREED that, Respondent will pay \$75,000 to the Department as an administrative penalty under *Texas Finance Code* §35.010. The penalty shall be payable to the Department by August 17, 2018.

It is further ORDERED that Respondent is prohibited from seeking or accepting indemnification from any bank chartered by the State of Texas for the administrative penalty assessed and paid in this matter.

EFFECTIVE DATE

This Consent Order against Respondent is effective August 9, 2018, and subject to its terms, Respondent may not appeal.

It is so ORDERED.

Signed this 1st day of November, 2018.

/s/ Charles G. Cooper
Charles G. Cooper
Banking Commissioner of the State of Texas

AGREED AS TO FORM AND SUBSTANCE:

/s/ Diane R. Parker
Diane R. Parker

Date: October 24, 2018

APPROVED AS TO FORM:

/s/ J. Brett Harrison
J. Brett Harrison
Bain, Files, Jarrett, Bain & Harrison, P.C.
Attorney for Respondent

Date: 2018

/s/ Deborah H. Loomis
Deborah H. Loomis
Deputy General Counsel
Texas Department of Banking

Date: November 1, 2018