

Order No. 2018-027

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
CHARLES CONEY BURGESS,	§	
INDIVIDUALLY AND AS CHAIRMAN	§	COMMISSIONER OF TEXAS
OF THE BOARDS OF HERRING BANK	§	
AND HERRING BANCORP, INC.	§	
	§	
AMARILLO, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, the matter of CHARLES CONEY BURGESS (Burgess or Respondent) of Amarillo, Texas, was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

1. Respondent serves as Chairman of the Board of Directors of Herring Bank, Amarillo, Texas, and Chairman of the Board of Directors of Herring Bancorp, Inc.
2. Herring Bank is a Texas state-chartered bank and is wholly owned by Herring Bancorp, Inc., a Texas bank holding company.
3. The Texas Department of Banking (Department) is the appropriate state banking agency to bring this enforcement action pursuant to *Texas Finance Code* (Finance Code) §§35.009 and 35.010 and the Commissioner has jurisdiction over Respondent and the subject matter of this proceeding.
4. Respondent has been informed of his right to receive a proposed order containing a statement of the conduct alleged to constitute a violation and identifying corrective action the person must take to avoid or reduce the amount of a penalty that would otherwise be imposed. Respondent was informed that he has the right to a hearing on the charges under Finance Code §§35.004 and 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 and *Texas Finance Code* §31.201(d).

5. Respondent agrees to this Consent Order without admitting any specific violations of law or regulations.
6. For purposes of this proceeding, Respondent waives:
 - a. the right to present defenses to the allegations;
 - b. a hearing to take evidence on the allegations;
 - c. the filing of a Proposal for Decision by an Administrative Law Judge;
 - d. the filing of exceptions and briefs with respect to such Proposal for Decision;
 - e. review by the Texas Finance Commission of the Removal Order; and
 - f. judicial review of the Removal Order as provided by *Texas Government Code* §2001.171 et seq., and any other challenge to the validity of the Consent Order.
7. Any violation of this Consent Order could subject Respondent to additional regulatory or enforcement actions authorized by the Finance Code. Nothing in this Consent Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas.
8. The Commissioner has considered the matter and reasonably believes that, based upon examination and other credible evidence, Respondent's actions satisfy the statutory requirements for the issuance of a Consent Order as set forth in Finance Code §35.009 and 35.010.
9. In particular, the Commissioner has determined the following:
 - a. Respondent has:
 - i. engaged in a breach of his fiduciary duty;
 - ii. conducted business in an unsafe or unsound manner; and

- iii. violated *Texas Finance Code* Title 3, Subtitle A or another applicable law of this state, and, as a result of that violation, exposed or could have exposed the bank or the bank's depositors, creditors, or shareholders to harm; and
 - b. that it is appropriate that he pay a penalty and costs in the amount set forth below.
10. Respondent agrees that he will not seek or accept indemnification from Herring Bank or Herring Bancorp, Inc. for the administrative penalty or costs assessed and paid in this matter.
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, pursuant to *Texas Finance Code* §35.010 CHARLES CONEY BURGESS:

1. shall pay a penalty in the amount of \$75,000.00 to the Texas Department of Banking no later than March 29, 2019; and,
2. shall reimburse the Texas Department of Banking for its costs incurred in investigating and prosecuting this action in the amount of \$161,545.00 no later than December 28, 2018.

It is further Ordered that CHARLES CONEY BURGESS is prohibited from seeking or accepting indemnification from Herring Bank or Herring Bancorp, Inc. for the administrative penalty or costs assessed and paid in this matter.

Effective Date

This Consent Order against Respondent CHARLES CONEY BURGESS is effective October 9, 2018, and is final and non-appealable as of that date.

It is so ORDERED.

Signed on this 9th day of October 2018.

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

AGREED AS TO FORM AND SUBSTANCE:

/s/ Charles Coney Burgess
Charles Coney Burgess
Respondent

State of Texas §
 §
County of Travis §

Sworn to and subscribed before me on the 9th day of October, 2018, by Charles Coney Burgess.

(S E A L)

Dee A. Wood
Notary Public

APPROVED AS TO FORM:

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

Date: October 9, 2018

/s Manuel G. Berrelez
Manuel G. Berrelez
Attorney for Charles Coney Burgess
Vinson & Elkins LLP

Date: October 9, 2018