

ORDER NO. 2017-022

| | | |
|--------------------------|---|-------------------------------------|
| IN THE MATTER OF: | § | BEFORE: |
| | § | |
| BRAD MARSHALL | § | THE BANKING |
| | § | COMMISSIONER OF TEXAS |
| | § | |
| CLEBURNE, TX | § | AUSTIN, TRAVIS COUNTY, TEXAS |

CONSENT ORDER PROHIBITING FURTHER PARTICIPATION, IMPOSING A PENALTY, AND ORDERING THE PAYMENT OF RESTITUTION

On this day, the matter of BRAD MARSHALL (Marshall or Respondent) located in Cleburne, Texas, was submitted to me, Charles G. Cooper, banking commissioner of the State of Texas (Commissioner), for consideration and action.

1. Marshall began employment at Pinnacle Bank (Bank), Cleburne in 2011. Marshall held various positions at the Bank from 2011 until late December, 2014. In January 2015, Marshall was promoted to the position of branch president for the Bank in Fossil Creek, Texas. Marshall resigned his position from the Bank October 14, 2016, and has not been employed in the field of banking since that date.
2. The Texas Department of Banking (Department) is the appropriate state banking agency to bring this enforcement action pursuant to Texas Finance Code (Finance Code) §§35.002, 35.003, 35.009 and 35.010, and the Commissioner has jurisdiction over Marshall and the subject matter of this proceeding.
3. Marshall has been informed of his right to receive a proposed order setting out with reasonable certainty the grounds for the ordering of restitution, for prohibition and for imposition of a penalty. Marshall was informed that he has the right to a hearing on the charges under Finance Code §§ 35.002(c), 35.003(c), 35.004, and 35.101 and Texas Government Code §2001.051. Marshall waives both of those rights and agrees to the

disposition of this matter pursuant to the provisions of Texas Government Code § 2001.056.

4. Marshall agrees to this Consent Order Prohibiting Further Participation, Imposing a Penalty, and Ordering the Payment of Restitution (Consent Order) without admitting or denying any specific violations of law or regulations, unsafe or unsound banking practices, and/or breaches of fiduciary duty.

For purposes of this proceeding, Marshall waives:

- a. service upon Respondent of this Order;
 - b. receipt of a Proposed Order detailing specific charges;
 - c. the right to present defenses to the allegations;
 - d. notice and a hearing to take evidence on the allegations;
 - e. the filing 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. review by the Texas Finance Commission of the Prohibition Order; and
 - h. judicial review of the Prohibition Order as provided by Texas Government Code § 2001.171 et seq., and any other challenge to the validity of the Prohibition Order.
5. Any violation of this Consent Order could subject Marshall 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.
 6. The Commissioner has considered the matter and believes that, based upon credible evidence, with respect to a state bank, Marshall's actions satisfy the statutory requirements for the issuance of a prohibition order as set forth in Finance Code § 35.003.

7. In particular, the Commissioner has determined the following:
 - a. Marshall has intentionally committed or participated in violations of law or regulations, unsafe or unsound practices, and/or breaches of fiduciary duty with regard to the affairs of the Bank;
 - b. because of these actions by Marshall, the Bank has suffered or will probably suffer financial loss or other damage; the interests of the Bank's depositors have been or could be prejudiced; and/or Marshall received financial gain or other benefit by reason of these actions; and
 - c. such actions involve personal dishonesty on the part of Marshall or demonstrate Marshall's willful and/or continuing disregard for the safety and soundness of the Bank.
8. The Commissioner has determined further that such violations of laws or regulations, unsafe or unsound practices, and/or breaches of fiduciary duty demonstrate Marshall's unfitness to serve as a director, officer, or employee of a state bank, holding company of a state bank, or state trust company, among other positions to which this order applies, or to directly or indirectly participate in any manner in the management of such entity. Accordingly, the entry of this Prohibition Order appears to be necessary and in the best interest of the public.
9. The Commissioner has considered the matter and believes that, based upon credible evidence, Marshall's actions satisfy the statutory requirements for the issuance of an order requiring the payment of restitution as set forth in Finance Code § 35.002.
10. The Commissioner finds that the order requiring the payment of restitution appears to be necessary and in the best interest of the Bank and its depositors, creditors, and shareholders.

11. The Commissioner has considered the matter and believes that, based upon credible evidence, Marshall's actions satisfy the statutory requirements for the imposition of a penalty as set forth in Finance Code §§ 35.009 and 35.010.
12. The Commissioner has considered the factors listed in Finance Code § 35.010(b) and determined that it is appropriate for Marshall to pay a penalty in the amount of \$37,849, and restitution to Roger Bishop in the amount of \$4,500.

I. Order of Prohibition, Restitution and Imposing a Penalty

It is, therefore, ORDERED, ADJUDGED and DECREED that, pursuant to Finance Code §§ 35.003 and 35.007, without prior written approval of the banking commissioner, with respect to a state bank, holding company of a state bank, state trust company, or other entity chartered, registered or licensed by the banking commissioner under the laws of this state, including, but not limited to, a foreign bank or money services business, Marshall is perpetually prohibited from:

1. serving as a director, officer, or employee of a state bank, holding company of a state bank, or state trust company, or as a director, officer, or employee with financial responsibility of any other entity chartered, registered, permitted, or licensed by the banking commissioner under the laws of this state;
2. directly or indirectly participating in any manner in the management of such entity;
3. directly or indirectly voting for a director of such an entity; or
4. soliciting, procuring, transferring, attempting to transfer, voting, or attempting to vote any proxy, consent, or authorization with respect to voting rights in such an entity.

It is further ORDERED that, pursuant to Finance Code § 35.002(b-1), not later than thirty (30) days from the effective date of this order, Marshall shall pay restitution in the amount of

\$4,500 to Roger Bishop, a former Bank customer. Marshall shall provide the Department proof of payment of such restitution within forty-five (45) days from the effective date of this order.

It is further ORDERED that, pursuant to Finance Code §§ 35.009 and 35.010, not later than thirty days from the effective date of this order, Marshall shall pay \$7,849 to the Texas Department of Banking.

It is further ORDERED that, pursuant to Finance Code §§ 35.009 and 35.010, Marshall shall pay the remaining \$30,000 penalty to the Department in twelve equal payments of \$2,500 each, due on the first day of the month. The first such payment shall be due March 1, 2018. If any installment payment is not received within five calendar days of its due date, the entire sum becomes immediately due and payable, without further notice to Marshall.

II. Effective Date

This Consent Order against Respondent BRAD MARSHALL is effective December 28, 2017, and is final and nonappealable as of that date. The Commissioner may enforce this Consent Order pursuant to Finance Code §§ 35.009 and 35.011 (c). If the Commissioner has reason to believe that Marshall has violated or is about to violate a provision of this Consent Order in regard to prohibition, the Commissioner may take appropriate action authorized under Finance Code § 35.009. The provisions of this Consent Order in regard to prohibition will remain effective and in force except in the event that, and until such time as, the provisions in regard to prohibition shall have been modified, terminated, suspended, or set aside in accordance with Finance Code § 35.0071.

It is so ORDERED.

Signed on this 28th day of December, 2017.

/s/ Robert L. Bacon for
Charles G. Cooper
Texas Banking Commissioner

AGREED AS TO FORM AND SUBSTANCE:

/s/ Brad Marshall
Brad Marshall
Respondent

State of Texas §
 §
County of Travis §

Sworn to and subscribed before me on the 27th day of December, 2017, by Brad Marshall.

/s/ Florence Huynh
Notary Public

APPROVED AS TO FORM:

/s/ Deborah H. Loomis for
Catherine Reyer
General Counsel
Texas Department of Banking

Date: December 28, 2017

/s/ Ryne Sandel
Ryne Sandel
Attorney for Brad Marshall
Whalen Law Office

Date: December 27, 2017