

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

_____)	
In the Matter of)	
)	
BRETT J. CARTER, individually,)	ORDER OF PROHIBITION
and as a former institution-affiliated party of)	FROM FURTHER
)	PARTICIPATION AND
PROFICIO BANK)	ORDER TO PAY CIVIL MONEY
COTTONWOOD HEIGHTS, UTAH)	PENALTY
)	
(INSURED STATE NONMEMBER BANK))	FDIC-15-0279e
)	FDIC-15-0280k
_____)	

Brett J. Carter (“Respondent”) has been advised of the right to receive a NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION and a NOTICE OF ASSESSMENT OF A CIVIL MONEY PENALTY (“NOTICE”) issued by the Federal Deposit Insurance Corporation (“FDIC”) detailing the violations of law, unsafe or unsound banking practices, and/or breaches of fiduciary duty for which an ORDER OF PROHIBITION FROM FURTHER PARTICIPATION AND ORDER TO PAY CIVIL MONEY PENALTY (“ORDER”) may issue, and has been further advised of the right to a hearing on the alleged charges under sections 8(e) and 8(i) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. §§ 1818(e) and 1818(i), and the FDIC’s Rules of Practice and Procedure, 12 C.F.R. Part 308. Having waived those rights, the Respondent entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER OF PROHIBITION FROM FURTHER PARTICIPATION AND ORDER TO PAY CIVIL MONEY PENALTY (“CONSENT AGREEMENT”) with a representative of the Legal Division of the FDIC, whereby solely for the purpose of this proceeding and without admitting or denying any violations of law, unsafe or unsound banking

practices, and/or any breaches of fiduciary duty, the Respondent consented to the issuance of an ORDER by the FDIC. The FDIC considered the matter and determined that:

(a) The Respondent has engaged or participated in violations of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607, and its implementing regulation, Regulation X, 12 C.F.R. Part 1024, and/or has engaged or participated in, unsafe or unsound banking practices, and/or breaches of fiduciary duty as an institution-affiliated party of Proficio Bank, Cottonwood Heights, Utah (“Bank”) by agreeing to pay fees for the referral of mortgage loan business;

(b) By reason of such violations of law, unsafe or unsound banking practices, and/or breaches of fiduciary duty, the Bank has suffered financial loss or other damage, the interests of the Bank’s depositors have been or could have been prejudiced and/or the Respondent received financial gain or other benefit; and

(c) Such violations, practices and/or breaches of fiduciary duty involve personal dishonesty on the part of the Respondent and/or demonstrate the Respondent’s willful and/or continuing disregard for the safety or soundness of the Bank.

The FDIC further determined that such violations, practices and/or breaches of fiduciary duty demonstrate the Respondent’s unfitness to serve as a director, officer, person participating in the conduct of the affairs or as an institution-affiliated party of the Bank, any other insured depository institution, or any other agency or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A).

The FDIC further determined, after taking into account the financial resources and good faith of the Respondent, the gravity of the violations, practices, and breaches by the Respondent, the history of previous violations, practices, and breaches by the Respondent, and such other

matters as justice may require, that a civil money penalty is appropriate under section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B).

The FDIC, therefore, accepts the CONSENT AGREEMENT and issues the following:

ORDER OF PROHIBITION
FROM FURTHER PARTICIPATION

1. Brett J. Carter is hereby, without the prior written approval of the FDIC and the appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D), prohibited from:

(a) participating in any manner in the conduct of the affairs of any financial institution or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A);

(b) soliciting, procuring, transferring, attempting to transfer, voting, or attempting to vote any proxy, consent or authorization with respect to any voting rights in any financial institution enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A);

(c) violating any voting agreement previously approved by the appropriate Federal banking agency; or

(d) voting for a director, or serving or acting as an institution-affiliated party.

ORDER TO PAY CIVIL MONEY PENALTY

2. Brett J. Carter is hereby assessed a civil money penalty of Five Thousand Dollars (\$5,000.00). The Respondent shall pay the civil money penalty to the Treasury of the United States. The Respondent is prohibited from seeking or accepting indemnification from any third party, including from any insured depository institution, for the civil money penalty assessed and paid in this matter.

This ORDER shall become effective upon its issuance by the FDIC. The provisions of this ORDER will remain effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

Issued pursuant to delegated authority this 28th day of September, 2016.

_____/s/_____
Sylvia H. Plunkett
Senior Deputy Director
Division of Depositor and Consumer Protection