

{{04-30-05 p.C-12367.1}}

[¶12,367] In the Matter of Phillip B. Barnhill, First Citizens Bank & Trust, Raleigh, North Carolina, Docket No. 04-247e (2-25-05).

Respondent is prohibited from participating in the conduct of affairs of, or exercising voting rights in, any insured institution without the prior written approval of the FDIC.

[.1] Prohibition, Removal, or Suspension—Prohibition From—Participation in Conduct of Affairs

[.2] Prohibition, Removal, or Suspension—Prohibition From—Voting Rights, exercise of

**In the Matter of
PHILLIP B. BARNHILL,
individually, and as an institution-affiliated party of
FIRST CITIZENS BANK & TRUST
RALEIGH, NORTH CAROLINA
(Insured State Nonmember Bank)
ORDER OF PROHIBITION FROM FURTHER PARTICIPATION**

FDIC-04-247e

Phillip B. Barnhill ("Respondent") has been advised of the right to receive a NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION ("NOTICE") issued by the Federal Deposit Insurance Corporation ("FDIC") detailing the unsafe or unsound banking practices and/or breaches of fiduciary duty for which an ORDER OF PROHIBITION FROM FURTHER PARTICIPATION ("ORDER") may issue, and has been further advised of the right to a hearing on the alleged charges under section 8(e) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. §1818(e), and the FDIC's Rules of Practice and Procedure, 12 C.F.R. Part 308. Having waived those rights, Respondent entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER OF PROHIBITION FROM FURTHER PARTICIPATION ("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 unsafe or unsound banking practices and/or breaches of fiduciary duty Respondent consented to the issuance of an ORDER by the FDIC.

The FDIC considered the matter and determined it had reason to believe that:

- (a) Respondent has engaged or participated in unsafe or unsound banking practices and/or breaches of fiduciary duty while an institution-affiliated party of First Citizens Bank & Trust, Raleigh, North Carolina (the "Bank");
- (b) by reason of such practices the Bank has suffered financial loss or other damage and/or Respondent has received financial gain or other benefit; and
- (c) such practices involve personal dishonesty on the part of Respondent and/or demonstrate Respondent's willful or continuous disregard for the safety or soundness of the Bank.

The FDIC further determined that such practices demonstrate 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, therefore, accepts the CONSENT AGREEMENT and issues the following:

ORDER OF PROHIBITION FROM FURTHER PARTICIPATION

1. Phillip B. Barnhill, Respondent, 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:

[.1] (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);

[.2] (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.

2. This ORDER will 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.

Pursuant to delegated authority.

Dated this 25th day of February, 2005.

Last
Updated legal@fdic.gov
5/28/2005