

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK**

IN THE MATTER OF:	)	
	)	
	)	
	)	Number 2015-03
First National Community Bank	)	
Dunmore, Pennsylvania	)	

ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

The Financial Crimes Enforcement Network (“FinCEN”) has determined that grounds exist to assess a civil money penalty against First National Community Bank (“FNCB”), pursuant to the Bank Secrecy Act and regulations issued pursuant to that Act.¹

FNCB admits to the facts set forth below and that its conduct violated the Bank Secrecy Act. FNCB consents to the assessment of a civil money penalty and enters the CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (“CONSENT”) with FinCEN.²

The CONSENT is incorporated into this ASSESSMENT OF CIVIL MONEY PENALTY (“ASSESSMENT”) by reference.

FinCEN has authority to investigate banks for compliance with and violation of the Bank Secrecy Act pursuant to 31 C.F.R. § 1010.810, which grants FinCEN “overall authority for

¹ The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.

² FNCB makes the admissions as stated above and elsewhere in this document solely in connection with the resolution of this civil proceeding and for purposes of the imposition of the civil penalty set forth herein.

enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter.”

FNCB is a “financial institution” and a “bank” within the meaning of the Bank Secrecy Act and its implementing regulations. 31 U.S.C. § 5312(a)(2); 31 C.F.R. §§ 1010.100(d), (t)(1). FNCB is a community bank with approximately \$1 billion in assets. It is a large community bank in northeastern Pennsylvania with 19 branches.

Resolution with the Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (“OCC”) is FNCB’s primary federal regulator and examines certain banks, including FNCB, for compliance with the Bank Secrecy Act and its implementing regulations and similar rules under Title 12 of the United States Code. The OCC simultaneously brought an enforcement action against FNCB for violations of 12 C.F.R. § 21.11 related to failures to file suspicious activity reports on a timely basis. The OCC found that the Bank failed to file suspicious activity reports on a timely basis in connection with certain suspicious transactions occurring between 2005 and 2009. For these violations, the OCC ordered FNCB to pay a penalty amount of \$500,000.

II. DETERMINATIONS

From August 2005 through April 2009, FNCB willfully violated the Bank Secrecy Act by failing to detect or adequately report suspicious transactions involving millions of dollars in illicit proceeds from a judicial corruption scheme perpetrated by a former Pennsylvania state judge, among others. 31 U.S.C. § 5318(g); 31 C.F.R. § 1020.320.

Requirement to File Suspicious Activity Reports with FinCEN

The Bank Secrecy Act and its implementing regulations require banks to report to FinCEN transactions that involve or aggregate to at least \$5,000, are conducted by, at, or through

the bank, and that the bank “knows, suspects, or has reason to suspect” are suspicious. 31 U.S.C. § 5318(g); 31 C.F.R. § 1020.320(a)(2). A transaction is “suspicious” if the transaction:

(1) involves funds derived from illegal activities, or is conducted to disguise funds derived from illegal activities; (2) is designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act or regulations under the Act; or (3) has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including background and possible purpose of the transaction. 31 U.S.C. § 5318(g); 31 C.F.R. §§ 1020.320(a)(2)(i)-(iii).

Like other BSA filings, suspicious activity reports (“SARs”) play an important role in detecting possible criminal activity. FinCEN and law enforcement use SARs to, among other things, investigate money laundering, terrorist financing and other serious criminal activity.

Overview of FNCB’s Failure to File SARs

FNCB failed to identify red flags and consequently failed to timely report suspicious activities in accounts controlled by its then board member and former state judge, Michael Conahan, and others. The suspicious transactions were directly related to serious ongoing criminal activity for which Conahan and others were ultimately convicted. The unreported suspicious transactions that flowed through FNCB accounts displayed red flags that should have alerted FNCB to potential illicit activity and caused it to file SARs. Such red flags included (1) a law enforcement subpoena submitted in 2007 for information related to Conahan and other individuals and entities; (2) activity occurring as early as 2005, prior to receiving the subpoena, involving many large, round-dollar transactions often occurring on a single day; and (3) an abnormal volume of activity compared to account balances. Because FNCB failed to file SARs

in a timely manner, it deprived law enforcement of information that may have assisted law enforcement in tracking millions of dollars in related corrupt funds.

Conahan's Illegal Conduct and FNCB's SAR Filing Failures

In 2011, a federal district court judge in the middle District of Pennsylvania sentenced Conahan to 17.5 years in prison and ordered him to pay \$874,000 in restitution to Pennsylvania for taking over \$2.6 million in personal payments in connection with a scheme involving the construction, operation, and expansion of juvenile detention centers. Conahan misused his position as a judge to profit from, among other things, sending thousands of juveniles to detention facilities in which he had a financial interest.

Through his FNCB accounts, Conahan disguised his illegal proceeds originated by Pinnacle Group of Jupiter, LLC ("Pinnacle"), an entity Conahan created to purchase a condominium jointly with a co-conspirator, now former Judge Mark Ciavarella. On March 17, 2007, FNCB received a law enforcement subpoena for information on Conahan, Ciavarella, their respective wives, and other individuals, as well as Pinnacle and other related business entities. FNCB responded to the subpoena in which bank records involving Conahan and related parties were provided. A law enforcement request, such as the March 2007 subpoena, should have been identified as a red flag requiring further analysis of related accounts. FNCB, however, did not conduct any analysis or risk-rate the Conahan, Ciavarella, Pinnacle, or other accounts as required. The Bank Secrecy Act compliance officer received and responded to the subpoena but failed to file a SAR on any of the accounts referred to in the subpoena despite numerous other red flags on the accounts.

Under its own program, FNCB should have identified a number of transactions involving Pinnacle as suspicious. First, transactions and documents in FNCB's possession revealed an

unusual and substantial reported increase in the value of Conahan's condominium, purchased through Pinnacle, over a short period of time. Within just twelve weeks of purchasing the property, Conahan refinanced the condominium, taking the entire payment in cash (a full "cash out" refinancing). Both the full "cash-out" refinancing and the purported increase in value should have been identified as red flags warranting further review.

Second, reviewing the accounts and documents in FNCB's possession related to individuals and entities identified in the subpoena would have allowed the Bank to detect red flags associated with dramatic increases in Conahan and Ciavarella's respective incomes. From 2004 to 2005, Conahan's and Ciavarella's incomes nearly quadrupled, purportedly as a result of rental income from the condominium purchased through Pinnacle. The respective amounts Pinnacle paid to Conahan and Ciavarella, however, far exceeded the value of the property – which was Pinnacles' only asset to generate payments. Specifically, the amounts of the rental payments made to Pinnacle's account at a third-party institution reflected a disproportionately high rental income of over \$70,000 per month compared to the value of a three-bedroom condominium purchased for only \$800,000. Both the dramatic increase in personal income and the disproportionately high rental incomes are significant red flags that FNCB would have identified had it conducted a further review of the accounts identified in the subpoena as it was required to do.

In addition, FNCB did not respond to red flags related to the type, size, and frequency of the various payments made among Pinnacle, Conahan, and Ciavarella through FNCB. FNCB had internal controls in place that identified large, round-dollar transactions as red flags requiring further review. FNCB also had internal controls in place to identify as red flags large balance changes that occur on a single day. Despite the fact that many transactions conducted by

Pinnacle, Conahan, and Ciavarella involved multiple large, round-dollar transactions that often occurred on the same day, FNCB failed to review these transactions and, as a result, failed to identify or act on significant red flags, including failing to consider reporting or actually reporting suspicious activity, despite having information in multiple accounts that collectively raised ample concern that the flow of funds through Pinnacle, and other loans, was atypical of normal loan activity.

Although FNCB ultimately filed SARs in connection with the suspicious activity, it only did so at the behest of an OCC examiner and after Conahan first pled guilty to related criminal offenses in 2009.³ The SARs reported suspicious activity totaling about \$6.3 million. By the time FNCB filed the SARs, withdrawals from the suspect accounts had left the balances substantially depleted.

III. CIVIL MONEY PENALTY

FinCEN has determined that FNCB willfully violated the reporting requirements of the Bank Secrecy Act and its implementing regulations, as described in this CONSENT, and that grounds exist to assess a civil money penalty for these violations. 31 U.S.C. § 5321 and 31 C.F.R. § 1010.820.

FinCEN has determined that the penalty in this matter will be \$1.5 million of which \$500,000 will be concurrent with the penalty imposed by the OCC. Accordingly, the assessment will be satisfied by paying \$1 million to the United States Department of the Treasury and by paying \$500,000 in satisfaction of, and in accordance with, the penalty imposed by the OCC.

³ Conahan initially pled guilty to fraud and tax charges in February 2009. The court rejected the initial guilty plea in July 2009. Memorandum and Order, *United States v. Michael T. Conahan and Mark A. Ciavarella, Jr.*, No. 03:-09-CR-28 (M.D.Pa. 2009).

IV. CONSENT TO ASSESSMENT

To resolve this matter, and only for that purpose, FNCB admits that it violated the Bank Secrecy Act's reporting requirements and consents to the assessment of a civil money penalty in the sum of \$1.5 million.

FNCB recognizes and states that it enters into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by FinCEN or any employee, agent, or representative of FinCEN to induce FNCB to enter into the CONSENT, except for those specified in the CONSENT.

FNCB understands and agrees that the CONSENT embodies the entire agreement between FNCB and FinCEN relating to this enforcement matter only, as described in Section II above. FNCB further understands and agrees that there are no express or implied promises, representations, or agreements between FNCB and FinCEN other than those expressly set forth or referred to in this document and that nothing in the CONSENT or in this ASSESSMENT is binding on any other agency of government, whether Federal, State or local.

V. RELEASE

Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, settles all claims that FinCEN may have against FNCB for the conduct described in Section II of the CONSENT. Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, does not release any claim that FinCEN may have, or waive FinCEN's right to bring any enforcement action based on such claims, for conduct by FNCB other than the conduct expressly described in Section II of the CONSENT, or any claim that FinCEN may have against any party other than FNCB, such parties to include, without limitation, any current or former partner, director, officer, or employee of FNCB. Upon request,

FNCB shall truthfully disclose to FinCEN all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to the participation of its current or former directors, officers, employees, agents, or others.

BY:

/S/

2/27/2015

Jennifer Shasky Calvery

Date:

Director

FINANCIAL CRIMES ENFORCEMENT NETWORK

U.S. Department of the Treasury