

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

IN THE MATTER OF)
NOTICE OF DISAPPROVAL OF CHANGE)
IN BANK CONTROL,)
UNITED COMMERCE BANK OF HIGHLAND) AA-EC-92-147
VILLAGE, N.A.,)
HIGHLAND VILLAGE, TEXAS)
_____)

DECISION AND ORDER ON MOTION FOR PRIVATE HEARING

Applicant Gary L. Acker (Applicant) has filed with the Office of Financial Institution Adjudication and the Office of the Comptroller of the Currency (OCC) a request for a private hearing in this proceeding. For the reasons set forth below, Applicant's request is denied.

I. PROCEDURAL HISTORY

Applicant filed with OCC a notice of intent to acquire a controlling interest in the United Commerce Bank of Highland Village, N.A., Highland Village, Texas (Bank) on April 3, 1992. OCC issued a Notice of Disapproval (Notice) dated July 2, 1992, rejecting Applicant's proposal. The Notice stated that Applicant's "control of this troubled bank would not be in the interest of its depositors or the public" and posed the risk of a loss to the Bank Insurance Fund. Notice at 1. The Notice cited Applicant's performance as the majority shareholder of a Los Angeles thrift, his "difficulties with the FDIC" when he controlled a bank in Texas, and the belief that he failed to provide all of the information OCC requested. Id.

By correspondence dated July 7, 1992, Applicant requested a hearing on this matter. Hearing Request at 1. In this letter he indicated that he desired a private hearing because "the [B]ank is troubled and any further adverse publicity should be avoided." Id. OCC Enforcement Counsel opposed Applicant's request, arguing primarily that Applicant failed to show that a public hearing would have an adverse impact upon the public interest. Enforcement Counsel's Response to Applicant's Request for a Private Hearing at 2. Indeed, Enforcement Counsel argues that a public hearing would further the public interest. Id. at 3.

II. DISCUSSION

The Change in Bank Control Act (CBCA), codified at 12 U.S.C. § 1817(j), provides that an applicant whose application to acquire control of a bank is denied may request a hearing on the matter. 12 U.S.C. § 1817(j)(4). The OCC Rules of Practice and Procedure, which govern administrative hearings held pursuant to CBCA applications, provide in turn that all such hearings shall be public unless the Comptroller determines that the public interest requires a private hearing. 12 C.F.R. §§ 19.1(c) (providing for the Rules' applicability in proceedings filed pursuant to the CBCA) and 19.33(a) (all hearings are public unless Comptroller, in his sole discretion, determines that public interest requires otherwise). Applicant bears the burden of showing why the presumption in § 19.33(a) in favor of a public hearing should be rejected.

In administrative enforcement proceedings subject to § 19.33(a), six factors have been considered in determining whether a private hearing is in the public interest: 1) deterrence, 2) public confidence in the banking system and bank regulation, 3) the safety and soundness of the bank and of the banking system, 4) the protection of customers and shareholders, 5) the privacy of nonparty customers and borrowers, and 6) the confidentiality of bank examinations and of enforcement matters. In re Coleman, AA-EC-91-224 at 4 (Comp. Dec. Feb. 11, 1992). Consideration of these factors, with one exception noted below, is also appropriate in the present case.

Factor one -- deterrence -- need not be considered in this matter because this is not an enforcement action where deterrence is one objective of the proceeding. Rather, this matter involves a review of a corporate decision made by OCC staff.

Factor two -- public confidence in the banking system and bank regulation -- clearly counsels for a public hearing in this proceeding. ~~A public hearing in this matter will increase public~~ confidence in the banking system by demonstrating that OCC thoroughly reviews all transfers of control of national banks in order to protect the integrity of both the individual bank and the banking system. Moreover, the public will be able to witness a portion of OCC's decision-making process and draw its own conclusions on the fairness and prudence of OCC's decision.

Consideration of factor three -- the safety and soundness of the bank and of the banking system -- supports the conclusion

that a public hearing is appropriate in this matter. Here, the grounds given by OCC for denying Applicant's CBCA application were focused upon his qualifications. See Notice at 2.

Accordingly, the hearing is likely to focus upon the issues related to Applicant's qualifications to acquire the Bank, as opposed to the condition of the Bank itself. In light of the foregoing, a public hearing is unlikely to cause harm to the bank, and any risk of harm is outweighed by the benefits of a public forum. Finally, there is nothing in this case remotely suggesting that a public hearing in this matter would adversely affect the banking system in general.

Examination of the remaining factors -- factors four (the protection of customers and shareholders), five (the privacy of nonparty customers and borrowers), and six (the confidentiality of bank examinations and of enforcement matters) -- does not indicate that a private hearing is warranted. Applicant does not argue -- and the facts presented by the record before me do not indicate -- that a public hearing would adversely affect customers or shareholders, infringe privacy of non-party customers or borrowers, or disclose confidential examination or enforcement information. Additionally, as was noted above in consideration of factor two, a public hearing is likely to impress upon shareholders and customers the fairness and vigilance of OCC's regulation of this institution. Moreover, if it becomes necessary to utilize the confidential information identified in factors four, five or six, both the Administrative

Law Judge (ALJ) and Enforcement Counsel have the procedural tools to address these concerns. See 12 C.F.R. §§ 19.5(b) (ALJ powers to limit public access to hearings) and 19.33(b) (authority of Enforcement Counsel to file documents under seal and of ALJ to preserve confidentiality of such documents).¹

In sum, I conclude that the public interest in this case is served by holding an open, public hearing. Accordingly, Applicant's request for a private hearing in this matter is denied.

ORDER

For the reasons set forth above, it is hereby ordered that the request for a private hearing by Applicant Gary L. Acker is DENIED.

So ordered this 2nd day of December, 1992.

Stephen R. Steinbrink
Acting Comptroller of the Currency

¹See also In re Lakeside Nat'l Bank, AA-SW-90-165 at 4 (Comp. Dec. May 14, 1991) (redaction of documents sufficient to preserve customers privacy interests); In re Dunlap, AA-EC-91-175 at 4-5 (Comp. Dec. Nov. 13, 1991) (ALJ has "broad authority" to protect confidential information). Cf. 12 U.S.C. § 1818(u)(6) (authorizing OCC's filing documents under seal in administrative enforcement actions).