

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

IN THE MATTER OF)
JOHN C. RIDDLE, DIRECTOR)
TEXAS NATIONAL BANK)
HOUSTON, TEXAS)

AA-EC-91-131
AA-EC-91-132

DECISION AND ORDER ON REQUEST FOR PRIVATE HEARING

I. SUMMARY

Respondent John C. Riddle, former vice-chairman and director of the Board of Directors of Texas National Bank, Houston, Texas ("Bank"), has requested a private hearing in the above administrative proceedings scheduled to begin on February 11, 1992. On November 13, 1991, the Enforcement and Compliance Division ("E&C") of the Office of the Comptroller of the Currency ("OCC") filed a response opposing the request.

After fully considering the applicable law and the arguments of the parties, the Comptroller has determined that a private hearing is not necessary in this matter to protect the public interest. Therefore, the Respondent's request is denied.

II. APPLICABLE LAW

Until recently, OCC administrative hearings were required by statute to be private, unless the Comptroller determined that a public hearing was in the public interest. See 12 U.S.C.

§ 1818(h)(1) (1989). However, section 2547 of the Crime Control Act of 1990 ("Act"), Public Law No. 101-647, enacted November 29, 1990, repealed the private hearing presumption in 12 U.S.C.

§ 1818(h)(1) and amended section 8(u)(2) of the Federal Deposit Insurance Act to read:

All hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

12 U.S.C. § 1818(u)(2).

On August 9, 1991, the OCC promulgated new Uniform Rules of Practice and Procedure ("Uniform Rules") applicable to all actions commenced on or after that date. See Uniform Rules, 56 Fed. Reg. 38,024 (1991) (to be codified at 12 C.F.R. Part 19). Section 19.33 of the Uniform Rules reiterates the public hearing presumption set forth in 12 U.S.C. § 1818(u)(2). See 12 C.F.R. § 19.33 (1991).

III. PROCEDURAL BACKGROUND

On August 21, 1991, the OCC issued a Notice of Intention to Prohibit Further Participation pursuant to 12 U.S.C. § 1818(e)(1) and a Notice of Assessment of a Civil Money Penalty pursuant to 12 U.S.C. § 93(b) (collectively, "Notices"). On September 30, 1991, the Respondent was personally served with the Notices. A hearing, previously scheduled for November 25, 1991, has been

postponed to February 11, 1992.

On October 20, 1991, Respondent submitted an answer to the charges set forth in the Notices and a request for a private hearing. Respondent's request for a private hearing does not state a reason why the request should be granted.

E&C has filed a response to the Respondent's request, arguing that a public hearing would serve the public interest by showing that the OCC is willing to take strong action to prevent the kinds of activities allegedly engaged in by Respondent, namely, violations of law, unsafe and unsound practices, and breaches of fiduciary duty. Response at 4-5. In addition, E&C asserted that, if it becomes necessary to introduce the financial records of third party customers and borrowers into evidence, E&C will take measures to protect the confidentiality of that information by filing any document under seal if the disclosure of the document would be contrary to the public interest.

Alternatively, E&C stated it may redact all nonparty confidential information from the documents it plans to submit into evidence at the hearing. Thus, the personal financial information of individual borrowers will remain confidential. Id. at 5.

IV. DISCUSSION

Section 1818(u)(2) contains a presumption favoring a public

hearing, unless the Comptroller determines that holding a public hearing would be contrary to the public interest. Respondent has not presented any reason, nor does the Comptroller find any reason, why the hearing should not be public.

The public interest requires an open hearing. The Notices allege that the Respondent engaged in serious violations of law. An open hearing serves the public interest by apprising the public of actions that adversely affect the safety and soundness of the Bank. A public hearing will increase public confidence in the banking system by demonstrating that the OCC will take strong enforcement action against individuals alleged to have engaged in such practices. Additionally, a public hearing will have a deterrent effect on other individuals holding a position of trust in the nation's banks.

Even when a hearing is public, safeguards are available to protect the confidentiality of persons who are not parties to the proceeding. Section 1818(u) authorizes the OCC to file any document or part of document under seal. See 12 U.S.C. § 1818 (u)(6). E&C has stated that it is prepared to take measures pursuant to section 1818(u)(6) to preserve confidentiality if it becomes necessary to introduce a borrower's financial records into evidence. In addition, the administrative law judge has broad authority to address any remaining concerns regarding confidential information by ordering that documents be produced,

and portions of the hearing be held, in private. 12 C.F.R.
§ 19.33(b) (1991).

V. ORDER

For the reasons described above, it is hereby ordered that the
request for a private hearing by Respondent John C. Riddle is
DENIED.

So ordered this 19th day of December, 1991.

Robert L. Clarke
Comptroller of the Currency