

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

First Consumers National Bank  
Gregory Aube

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission (the "Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that First Consumers National Bank and Gregory Aube ("Respondents"), violated 2 U.S.C. § 441b(a).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(5)(A)(i) and 11 C.F.R. § 111.18(d).
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.

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**IV. The pertinent facts in this matter are as follows:**

- 1. First Consumers National Bank (the "Bank") is a national bank within the meaning of 2 U.S.C. § 441b(a). The Bank is a subsidiary of Spiegel, Inc.**
- 2. Gregory Aube is the former President of the Bank.**
- 3. The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that a national bank is prohibited from making a "contribution" of money or anything of value in connection with any election to any political office or campaign committee at the local, State or Federal level. 2 U.S.C. §§ 441b(a); 441b(b)(2); 431(8); 11 C.F.R. § 114.2(a). The prohibition applies equally to a national bank's officers and directors. 2 U.S.C. § 441b(a).**
- 4. National banks (including officers, directors or other representatives acting as agents for the bank) are also prohibited from "facilitating the making of contributions." 11 C.F.R. § 114.2(f).**
- 5. Generally, communications between a national bank and its executives are not considered a contribution. 2 U.S.C. § 441b(b)(2)(A). However, if the activity goes beyond communication to "facilitating the making of a contribution," it becomes a prohibited contribution by the bank or its officers or directors. See AO 1987-29; 11 C.F.R. § 114.2(f)(1) (defining facilitation). This is true even if the activity relates to contributions to a state political action committee. 11 C.F.R. § 114.2(a)(2).**
- 6. Facilitation includes directing staff to carry out a fundraising project as part of their work responsibilities, directing employees to use the bank as a "conduit**

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or intermediary” to collect and deliver contributions, or “using coercion” to urge any individual to make a contribution to a political committee which may include any financial reprisal. 11 C.F.R. § 114.2(f)(2) (examples of facilitation); *see also* AO 1986-4; AO 1982-2.

7. A solicitation can also be coercive if proper notice is not given. Under Section 114.5, if a “guideline for contribution” is made, the individual soliciting the suggested contribution must inform the solicited employee of “the political purposes of such fund at the time of such solicitation,” “of his right to refuse to so contribute without any reprisal,” “that the guidelines are merely suggestions,” and “that the individual is free to contribute more or less . . . and that the [Bank] . . . will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.” 11 C.F.R. § 114.5(a)(2)-(4); *see also* 2 U.S.C. § 441b(b)(3). Coercion can also occur if the Bank acts on these threats or pressures.

**Prohibited Contributions – National Banks (Facilitation of)**

8. From March to May 2000, the Bank facilitated the making of contributions by its managers to the OR BankPAC and Mr. Aube consented to this facilitation after Mr. Aube solicited Bank managers three times to make a \$50 contribution to the to the OR BankPAC.
9. Mr. Aube first solicited Bank managers in 2000 at a Managers’ dinner attended by 68 managers and officers of the Bank where he orally requested they make a contribution. These contributions were then to be given to Mr.

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Aube's secretary where they would then be forwarded in a group to the OR BankPAC.

10. Mr. Aube repeated his solicitation following the dinner by writing a memorandum on Bank letterhead that was distributed to all managers on April 10, 2000 (the "Memo"). The Memo states:

As I discussed at the Managers' dinner, our bonus plan is dependent in part on the regulatory landscape nationally, and in Oregon (which like the soil itself, is in constant danger of shifting).

Therefore, there is a constant need to be vigilant of potential changes in the law, and to hold discussions with candidates and lawmakers at both the state and federal level. At FCNB, we depend on the Oregon Bankers Association to perform this role, and the OBA has served us well.

As you know, vigilance over the election and lawmaking process and dialogues with lawmakers cost money, and certain OBA activities can only be funded with individual, not corporate, contributions.

Therefore, I am asking each manager to voluntarily contribute \$50 to the "OBA BankPac," by April 28 of this year. Your contributions will help assure the continuing success of FCNB, the OBA, and banking in Oregon.

Please forward your checks to [Mr. Aube's secretary's] attention, made payable to "Oregon BankPac," so that we can make an aggregate contribution.

Thanks, Greg

The Memo then listed the names of managers who had not yet made a contribution. Below the list of names was a footnote stating, "Managers whose names do not appear on the above distribution list have already given their checks to [Mr. Aube's secretary]. Note: I am turning your checks into the Oregon Bankers Association (BankPAC) on Friday, April 28."

11. Managers were again solicited in the form of an electronic mail message from Mr. Aube's secretary, at his direction, distributed to the "FCNB\_Managers" on May 16, 2000 – "Subject: Oregon BankPAC Contributions" (the "Email").

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The Email states: "There are still quite a few Managers who have not turned in their \$50.00 contribution for the Oregon BankPAC. ¶ If you have not done so, Mr. Aube would appreciate your contribution check by Friday, May 19. Make check out to: Oregon BankPAC. ¶ Forward your checks to [Mr. Aube's secretary]. ¶ Thanks very much, [Mr. Aube's secretary]."

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12. In the written solicitations Bank managers were not told that they had a specific right to refuse to contribute without reprisal, that the contribution guideline of \$50 was merely a suggested amount and that the individual was free to contribute more or less, or that the Bank would not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute. 11 C.F.R. § 114.5(a)(2)-(4).
13. Mr. Aube directed his secretary as a part of her work for the Bank to collect the contributions from managers and forward them to the OR BankPAC on no less than two occasions. Using Bank meetings, Bank stationery, the Bank's computer network server and the Bank's secretary to collect and forward contributions constitutes exactly the type of facilitating the making of a contribution prohibited by Section 114.2(f)(1). 2 U.S.C. § 441b(a); *see also* 11 C.F.R. § 114.2(f)(2)(i)(A). Moreover, although the Memo does ask for voluntary contributions, merely including the word once does not diminish the coercive nature of the solicitations or satisfy the requirements of 11 C.F.R. § 114.5(a)(2)-(4).

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14. Of the managers and officers who were solicited, the Bank facilitated the making of contributions and Mr. Aube consented to this facilitation when the Bank solicited, collected, and forwarded 44 contributions to the non-federal fund (state) of the Oregon BankPAC totaling \$1,570, during the 2000 election cycle.
  15. Upon the Commission's investigation of the 2000 solicitation and contributions, the Bank voluntarily disclosed that a similar practice occurred in 1999 in which the Bank facilitated the making of contributions to the OR BankPAC and Mr. Aube consented to that facilitation.
  16. Respondents have made affirmative representations to the Commission that the events surrounding the violations of the Act were isolated to the period prior to January 1, 2001, and that to the best of the Bank's information and belief, the Bank has not made any other prohibited contributions itself, or facilitated the making of any other prohibited contributions by its executives or employees, with regard to any local, state or federal election or activity in the last five years.

V. Respondents violated 2 U.S.C. § 441b(a) by facilitating and consenting to the facilitation of the making of prohibited contributions to a state political action committee in 1999 and 2000. Respondents will cease and desist from violating 2 U.S.C. § 441b(a).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Sixteen Thousand Five Hundred Dollars (\$16,500.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. Respondents have informed the Commission that as of April 30, 2003, they will no longer have a charter as a national bank and will be reorganizing as a corporation. This Agreement shall be binding on Respondents until such time as the national bank charter is revoked, or at any time thereafter if the corporate entity succeeding or following Respondents regains a national bank charter.

VIII. Respondents agree that the Commission's acceptance of this agreement is conditioned on the truthfulness and completeness of information provided to the Commission. Respondents further agree that if they falsely state or fail to disclose material information concerning the nature of the solicitations, including but not limited to information about the facilitating the making of the contributions or the use of coercion in the making of contributions, such false statement or omission shall constitute a violation by Respondents of this agreement. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

X. Respondents shall have no more than thirty days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement.

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XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton  
General Counsel

BY: *Rhonda J. Vosdingh* *9/12/03*  
Rhonda J. Vosdingh Date  
Associate General Counsel  
for Enforcement

FOR THE RESPONDENTS:

*M. R. Stettin, Treasurer* *2/13/03*  
First Consumers National Bank Date

*Gregory Aube* *February 4, 2003*  
Gregory Aube Date

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