

STATE OF NEBRASKA
Department of Banking & Finance

In the Matter of:)	FINDINGS OF FACT
)	
Banner County Bank, Inc.)	CONCLUSIONS OF LAW
205 State Street)	
Harrisburg, Nebraska)	AND
)	
Bruce L. Madden)	CONSENT ORDER
205 State Street)	
Harrisburg, Nebraska)	

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Nebraska Banking Act [Neb. Rev. Stat. §§ 8-101 to 8-1,140 (Reissue 2007; Cum. Supp. 2008; Supp. 2009; LB 762, LB 890, and LB 891 (2010))] (“the Act”). Pursuant to Neb. Rev. Stat. § 8-139 (Reissue 2007) and 45 NAC 28, the DEPARTMENT has investigated the acts of Banner County Bank, Inc., 205 State Street, Harrisburg, Nebraska (“BANNER”), and Bruce L. Madden, 205 State Street, Harrisburg, Nebraska (“MADDEN”). Based upon its investigation, the DEPARTMENT, BANNER, and MADDEN hereby agree as follows:

FINDINGS OF FACT

1. BANNER is a state-chartered bank. BANNER’s primary regulator is the DEPARTMENT.
2. Banner Mortgage Company, L.L.C. (“BMC”) was a subsidiary of BANNER. BANNER owned a 51% membership interest in BMC. BMC was a mortgage loan

originator and had representatives in several states during September 2009. BMC discontinued business by the end of January 2010.

3. BMC's main office was located in Illinois.
4. An Executive Officer's License ("EOL"), issued by the DEPARTMENT, is necessary in order to allow an individual at a Nebraska state-chartered bank to exercise management decisions, determine bank policy, provide substantial employee supervision, including the power to hire or terminate, or perform other policy-dominant activity, pursuant to Section 8-139 of the Act and 45 NAC 28.
5. MADDEN was the Managing Officer of BMC during the time period May 2008 to December 2009. MADDEN was also an Executive Vice President of BANNER.
6. MADDEN has never held an EOL in Nebraska.
7. MADDEN entered into "Branch Manager Compensation Agreement" contracts with various individuals on behalf of BANNER between May 2008 and December 2009.
8. Branch Manager Compensation Agreement contracts were agreements between BANNER and an individual setting forth duties and obligations for a branch manager of BMC. BMC had several branch offices across the United States.
9. MADDEN entered into "Loan Originator Agreement" contracts with individuals on behalf of BANNER.
10. The Loan Originator Agreements were contracts with individuals charged with opening and closing new loans. The individuals were hired as employees of BANNER.

11. MADDEN hired and fired BMC employees.
12. BANNER's fidelity bond rider includes a "Mortgage Bankers Extended Errors & Omissions Rider," which covers BMC.
13. BANNER maintained possession of BMC personnel information.
14. BANNER issued W-2 Forms to employees of BMC.
15. The BANNER Board of Directors knew of, and authorized, MADDEN's activities. BANNER states that it relied on the advice of legal counsel regarding the organization and operation of BMC.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 8-139 (Reissue 2007) provides that no loan or investment shall be made by a bank, directly or indirectly, without the approval of an active executive officer and that no person shall act as an active executive officer of any bank until such bank shall apply for and obtain from the DEPARTMENT a license for such person to so act. Section 8-139 further provides that any person who shall act or attempt to act as an active executive officer of any bank, except under a license from the DEPARTMENT, or anyone who shall permit or assist such person to act or attempt to act as such, shall be guilty of a Class III felony. Section 8-139 provides that the DEPARTMENT may make and enforce reasonable regulations and prescribe forms to be used to carry out the intent of this section.

2. Neb. Rev. Stat. § 8-106 (Reissue 2007) provides that the Director shall have the power to make rules and to establish such regulations for the government of banks under his supervision as may in his judgment seem wise and expedient and which do not conflict with any of the provisions of law.

3. 45 NAC 28.002 defines an active executive officer to mean any employee of a financial institution, or any person under contract to perform services for a financial institution, who exercises management functions in said financial institution, or exercises major policy-making functions in said financial institution, or exercises substantial employee supervision including power to terminate employment, or is determined by the DEPARTMENT to be a policy-dominant individual in said financial institution.

4. 45 NAC 28.003 provides that any person desiring to exercise any or all of the functions of an active executive officer in a financial institution shall not perform any of such functions without having first acquired from the DEPARTMENT an appropriate EOL.

5. MADDEN exercised on-site supervisory management authority over BMC. MADDEN signed contracts on behalf of BANNER and BMC, and had direct control over personnel, including hiring, discharge, promotion, and compensation decisions. Employment contracts reviewed for loan originators state that the persons hired will be BANNER employees and persons hired were sent W-2 Forms by BANNER.

6. MADDEN acted in a managerial manner on behalf of BMC and BANNER.

7. MADDEN's involvement in BMC constitutes the exercising of "executive officer" duties as that term is defined under the Act and 45 NAC 28.002. As such, MADDEN was required to hold an Executive Officer's License as required by the Act and 45 NAC 28.003.

8. Throughout all times relevant, BANNER knew of MADDEN's activities at BMC. BANNER held BMC personnel information at the Harrisburg bank location.

The BANNER Board of Directors knew of, and authorized, the activities of BMC and MADDEN.

9. Throughout all times relevant, BANNER should have known of the requirements of Section 8-139 and 45 NAC 28, and BANNER should have known that it should obtain an Executive Officer's License for MADDEN if he were to enter into contracts on behalf of BANNER or BMC, hire or fire employees, or if he was to establish bank policy.

10. The Findings of Fact constitute a sufficient basis for the Director to have determined that MADDEN exercised executive officer duties on behalf of BANNER and BMC without holding an appropriate Executive Officer's License; that BANNER authorized such activity; that BANNER and MADDEN have violated the Act; and that an administrative fine for the violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 8-139 (Reissue 2007).

11. Neb. Rev. Stat. § 8-1,134 (Reissue 2007) allows for a \$10,000.00 fine for the first violation of the Act. A fine of \$25,000.00 is permitted for subsequent violations of the Act.

12. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

13. It is in the best interest of BANNER and MADDEN, and it is in the best interest of the public, for BANNER, MADDEN, and the DEPARTMENT to resolve the issues included herein.

CONSENT ORDER

The DEPARTMENT, BANNER, and MADDEN agree as follows:

Stipulations: In connection with this Consent Order, BANNER, MADDEN, and the Director stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Consent Order shall resolve all matters related to BANNER and MADDEN regarding this matter. The facts set forth in this Consent Order may be considered by the DEPARTMENT in any future administrative action by the DEPARTMENT. This Consent Order shall not operate as a bar to BANNER or any other state-chartered bank from obtaining an EOL for MADDEN in the future.
3. This Consent Order shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Order.

BANNER and MADDEN further represent as follows:

1. They are aware of their right to a hearing on these matters at which they may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.
2. They are acting free from any duress or coercion of any kind or nature.
3. This Consent Order is executed solely for the purpose of avoiding further proceedings.
4. BANNER and MADDEN neither admit or deny any of the Findings of Facts or Conclusions of Law, nor do BANNER and MADDEN admit or deny any violation of the Act.

FURTHER, BANNER and MADDEN agree to take whatever action is necessary to ensure compliance with the provisions of the Act in the future. If, at anytime, the

DEPARTMENT determines that they have committed any other violations of the Act, the DEPARTMENT may take any action available to it under the Act.

IT IS, THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Order, BANNER shall pay a fine of seven thousand five hundred dollars (\$7,500.00) for the unauthorized executive officer activities of Bruce L. Madden in violation of Neb. Rev. Stat. § 8-139 (Reissue 2007).

2. Within ten (10) days after the effective date of this Consent Order, MADDEN shall pay a fine of twenty five hundred dollars (\$2,500.00) for his unauthorized executive officer activities in violation of Neb. Rev. Stat. § 8-139 (Reissue 2007).

3. Within ten (10) days after the effective date of this Consent Order, BANNER shall pay one half of the DEPARTMENT's investigation costs in the amount of one thousand five hundred dollars (\$1,500.00).

4. Within ten (10) days after the effective date of this Consent Order, MADDEN shall pay one half of the DEPARTMENT's investigation costs in the amount of one thousand five hundred dollars (\$1,500.00).

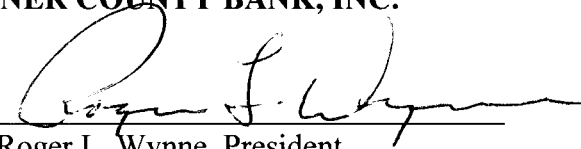
5. The payments assessed in this Consent Order shall be paid by separate checks or money orders in the amount of nine thousand dollars (\$9,000.00) from BANNER and four thousand dollars (\$4,000.00) from MADDEN to the DEPARTMENT. BANNER and MADDEN are separately responsible for their obligations. BANNER shall not pay the obligation of MADDEN.

6. In the event BANNER or MADDEN fails to comply with any of the provisions of this Consent Order, the DEPARTMENT may commence such action regarding BANNER or MADDEN as it deems necessary and appropriate in the public interest.

7. The effective date of this Consent Order will be the date of the Director's signature.

DATED this 29th day of July, 2010.


BANNER COUNTY BANK, INC.

By: 
Roger L. Wynne, President

205 State Street
Harrisburg, Nebraska 69345
(308) 436-5024

DATED this 29th day of July, 2010.

BRUCE L. MADDEN

By: 
Bruce L. Madden

205 State Street
Harrisburg, Nebraska 69345
(308) 436-5024

DATED this 30th day of July, 2010.

**STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE**



By: John Munn
John Munn, Director

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