

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF: The Tri-County Bank 106 North Main Street Holt County Stuart, Nebraska))))))	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CONSENT ORDER
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THIS MATTER comes to the attention of 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 2022) (“the Act”).

The Department has investigated matters surrounding The Tri-County Bank, 106 North Main Street, Stuart, Holt County, Nebraska (“Tri-County”) and issues regarding unauthorized alterations to customer bank statements. As a result of such investigation, and being duly advised and informed in the matter, the Director of the Department and Tri-County enter into the following Findings of Fact, Conclusions of Law, and Consent Order.

FINDINGS OF FACT

1. Tri-County is a Nebraska state-chartered bank under the supervision of the Department.

2. Tri County Company, 106 North Main Street, Stuart, Holt County, Nebraska, is a one-bank holding company that owns one hundred percent of the outstanding stock of Tri-County. Tri-County Company is subject to the Nebraska Bank Holding Act of 1995 (Neb. Rev. Stat. §§ 8-908 to 8-918 (Reissue 2012)) and is registered with the Department pursuant to Neb. Rev. Stat. § 8-913 (Reissue 2012).

3. On or about June 1, 2023, the Nebraska Auditor of Public Accounts (“Auditor”) issued a subpoena duces tecum (“Auditor Subpoena”) to Tri-County to obtain information relating to customer bank statements for accounts belonging to the Rock County Treasurer (“Rock County”).

4. The Department received notification from the Auditor regarding the Auditor Subpoena, along with information alleging that Tri-County had made unauthorized alterations to the customer bank statements of public accounts belonging to Rock County.

5. On or about August 11, 2023, the Department issued a subpoena duces tecum (“Department Subpoena”) to Tri-County, to the attention of its President, requiring the production of information and documentation regarding the allegedly altered customer bank statements.

6. Tri-County, through its retained counsel, provided responsive documents and a narrative response to the Department on September 1, 2023.

7. Per the responsive documents, Rock County held multiple accounts at Tri-County.

8. On or about January 4, 2022, Rock County orally requested closure of a Rock County account with a transfer of those funds into a different Rock County account.

9. After the closure of the January 2022 statement period, customer bank statements were issued to Rock County for each of its accounts.

10. On or about February 16, 2022, after Rock County received the January 2022 customer bank statements, Rock County discovered that due to alleged miscommunications or error within the oral communications between Rock County and Tri-County, the transfer of funds was not effectuated as Rock County had intended or desired.

11. Rock County requested that Tri-County correct the transfer error and reissue a January 2022 statements for the affected accounts, which would show that the error had been corrected and that all funds had been transferred, as requested, as of January 4, 2022.

12. Responsive documents show that Tri-County has a Customer Complaint Policy, which requires that employees of Tri-County forward customer complaints to the Chief Risk Officer of Tri-County.

13. Tri-County's Customer Complaint Policy does not clearly specify what constitutes a customer complaint.

14. Responsive documents admit that Tri-County does not have a policy or practice that would permit any employee to alter a customer bank statement after it is issued.

15. Responsive documents admit that two Tri-County employees failed to follow the Customer Complaint Policy, and the other policies and practices of Tri-County.

16. Responsive documents admit that the two Tri-County employees improperly edited January 2022 statements of the affected accounts ("Altered Statement") using a computer software program, to show that Rock County's desired transfer had been completed and effected prior to the closure of the January 2022 statement period. The two Tri-County employees then provided the Altered Statements to Rock County.

17. Responsive documents admit that, despite the contents of the Altered Statement, Tri-County did not make any changes to Rock County's accounts that would reflect that Rock County's desired transfer had occurred prior to the closure of the January 2022 statement period. Further, Tri-County admits that such changes would not be technically possible to achieve in light of the manner in which Rock County's accounts were established at Tri-County.

18. The Altered Statements provided to Rock County were false and misleading and did not accurately reflect Tri-County's maintained books and records.

19. The Altered Statement led Rock County to believe that it had achieved the desired effect of the closure and transfer transactions that it had requested in January 2022.

20. On or about February 17, 2022, after Tri-County provided the Altered Statements to Rock County, the transfer of funds for the Rock County accounts, as requested originally on January 4, 2022, were effected correctly. The information establishes that, despite the delay in effecting the transaction, as intended by Rock County, there were no allegations that any Rock County funds were missing or attributed to a depositor other than Rock County.

21. In May 2023, the Auditor initiated an audit of Rock County for the time frame of July 1, 2021, through June 30, 2022, that included examination of its accounts. In connection with this audit, Rock County signed a release authorizing Tri-County to provide the Auditor with Rock County account records for calendar year 2022. Tri-County provided Rock County's unaltered, original customer bank statements to the Auditor.

22. Due to the inconsistencies between the Altered Statement that Rock County provided to the Auditor and the unaltered statements that Tri-County provided to the Auditor, the Auditor requested additional information from both Rock County and Tri-County.

23. Tri-County's narrative response to the Department Subpoena indicated that at no time were Tri-County's Board of Directors ("Board") or management aware of the violations of its policies and practices with respect to the Rock County accounts, until its investigation into the matter, which Tri-County conducted in response to the Department Subpoena. Accordingly, there was a time delay of more than a full calendar year before Tri-County's Board and management became aware of these violations.

24. Tri-County's narrative response also provided that its investigation into this matter revealed at least three other instances in which the two Tri-County employees had altered customer bank statements or bank records in contravention of policies and practices, dating back to at least 2021.

25. Tri-County's narrative response indicates that Tri-County's Board and management were not aware of these prior violations of its policies and practices, for a period of no less than two years, and that they were only uncovered due to the investigation relating to the Department Subpoena.

26. The actions of Tri-County, and specifically of the two Tri-County employees at issue in this matter, constitute a material misrepresentation to its depositors, the Auditor, and the Department, concerning Tri-County's deposits, accounts, transactions, and books and records.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 8-1,134(2) (Reissue 2022) provides, in part, that the Director may by Order impose a fine, in addition to the costs of the investigation, upon a person found to have violated any provision of Chapter 8 of the Nebraska Statutes or the rules, regulations or Orders of the Department.

2. Section 8-1,134(2) (Reissue 2022) further provides that the fine shall not exceed ten thousand dollars per violation for the first offense and twenty-five thousand dollars per violation for a second or subsequent offense involving a violation of the same provision of Chapter 8 and that an alleged violator shall have an opportunity for a fair hearing.

3. Neb. Rev. Stat. § 8-107 (Reissue 2022) provides that the Department has the authority to require any bank to open and keep such books or accounts for the purpose of keeping accurate and convenient records of the accounts and transactions of such bank.

4. Neb. Rev. Stat. § 8-175 (Reissue 2022) provides that any person who fails to make true and correct entry in the books and records of such bank of its business and transactions or mutilates, alters, destroys, secretes, or removes any of the books and records of the bank without the written consent of the Director is in violation of the Act.

5. Based upon Findings of Fact Nos. 16 through 20 and 24 through 26, inclusive, the Director concludes that Tri-County has violated Neb. Rev. Stat. § 8-107.

6. Based upon Findings of Fact Nos. 16 through 20 and 24 through 26, inclusive, the Director concludes that Tri-County has violated Neb. Rev. Stat. § 8-175.

7. The facts listed in the Findings of Fact constitute a sufficient basis for the Director to have determined that Tri-County has violated the Act and that an administrative fine of not more than Ten Thousand Dollars (\$10,000.00) for each separate violation, and Twenty-Five Thousand Dollars (\$25,000.00) for any second or subsequent violations, plus the costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 8-1,134 (Reissue 2022).

8. Under the statutory framework of the Act, the Director has the legal and equitable authority to fashion significant remedies.

9. It is in the best interests of Tri-County, and it is in the best interests of the public, for Tri-County and the Department to resolve the issues included herein.

CONSENT ORDER

The Department and Tri-County agree as follows:

Stipulations: In connection with this Consent Order, Tri-County 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 raised by the issues contained within the Findings of Fact above. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the Department.

3. This Consent Order shall be in lieu of all other proceedings available to the Department, except as specifically referenced in this Consent Order.

Tri-County further represents as follows:

1. Tri-County is aware of its 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. Tri-County is acting free from any duress or coercion of any kind or nature.

3. This Consent Order is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for the purpose of this Consent Order and for no other purpose.

4. IT IS THEREFORE AGREED as follows:

5. Within thirty days from the effective date of this Order, Tri-County shall provide training on all of its internal policies and procedures to the two Tri-County employees at issue in this matter. Proof of completion of such training shall be provided to the Department within sixty days.

6. Within thirty days from the effective date of this Order, Tri-County shall provide training on the Customer Complaint Policy and Employee Code of Conduct to all employees. Proof of completion of such training shall be provided to the Department within sixty days.

7. Tri-County's compliance with this Consent Order will also be subject to review during the next scheduled safety and soundness examination, visitation, or other supervisory review of Tri-County that is conducted by the Department.

8. Within ten days after the effective date of this Consent Order, Tri-County shall pay a total fine in the amount of Ten Thousand Dollars (\$10,000.00) for the violations of the Act, as noted in this Findings of Fact, Conclusions of Law, and Consent Order.

9. Within ten days after the effective date of this Consent Order, Tri-County shall pay investigation costs incurred by the Department in the amount of Five Thousand Dollars (\$5,000.00).

10. Tri-County shall pay the fine and costs to the Department by check or money order, in accordance with this Consent Order. At its option, Tri-County may transmit payment electronically to the Department, which will provide ACH transfer instructions upon request.

11. In the event that Tri-County fails to comply with any provisions of this Consent Order, the Department may commence such action regarding Tri-County as it deems necessary and appropriate in the public interest.

12. If at any time, the Department determines that Tri-County has committed any other violations of the Act, the Department may take any action available to it under the Act.

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

DATED this 5th day of December, 2023.

THE TRI-COUNTY BANK

DocuSigned by:

Jon D. Schmaderer

By: 242ABD870F3F4D2...

Jon D. Schmaderer, President and CEO
106 North Main Street
Stuart, Nebraska 68780

DATED this 6th day of December, 2023.



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

DocuSigned by:

Kelly Lammers

By: 81A8ACE4898B41D...

Kelly Lammers, Director

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