

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS
KANSAS CITY DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

MICHAEL W. GULLION,

Defendant.

Civil No.: 04-CV-2190-KHV

COMPLAINT

The United States Securities and Exchange Commission (“Commission”) files this Complaint against Defendant Michael W. Gullion (“Defendant” or “Gullion”) and would respectfully show the Court as follows:

SUMMARY

1. Michael W. Gullion, former board chairman and chief executive officer of Gold Banc Corporation, Inc. (“Gold Banc”), a Kansas-based bank holding company, used at least \$1.9 million in Gold Banc funds for his personal benefit, from January 1998 through December 2002. Gullion concealed his misconduct by circumventing the company’s internal controls, falsifying its books and records, and deceiving its auditors.

2. Gullion’s actions caused Gold Banc to keep inaccurate books and records, and to file inaccurate financial statements with the Commission in annual reports on Form 10-K and a quarterly report on Form 10-Q. The company’s inaccurate financial statements for the fiscal years ending December 31, 2000 and December 31, 2001 were also incorporated into an October

2002 registration statement for a \$49.3 million offering of Gold Banc's common stock and a December 2001 registration statement for an offering of common stock to company employees in connection with Gold Banc's 401(k) plan.

3. In March 2003, Gold Banc dismissed Gullion, after discovering his misconduct. Thereafter, Gold Banc conducted a special inquiry, issued financial restatements and obtained restitution from Gullion.

4. The Commission, in the interest of protecting the public from any further violations of the federal securities laws, brings this action against Gullion, alleging that he violated Section 17(a) of the Securities Act of 1933 (the "Securities Act"), Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rules 10b-5, 13b2-1 and 13b2-2 thereunder, and aided and abetted Gold Banc's violations of Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder. The Commission seeks permanent injunctive relief, an officer and director bar, and a civil penalty.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Section 27 of the Exchange Act [15 U.S.C. §78(aa)] and Title 28 U.S.C. Section 1331. Defendant, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business described in this Complaint. Venue is proper because many of the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the District of Kansas.

DEFENDANT

6. Michael W. Gullion, age 49, of Leawood, Kansas, served as Gold Banc's board chairman and CEO from 1978, when he founded the company, until his dismissal in March 2003.

RELATED ENTITY

7. Gold Banc is a Kansas corporation and bank holding company, with its corporate headquarters near Kansas City, Kansas. Its common stock is registered with the Commission under Section 12(g) of the Exchange Act and listed on NASDAQ. (References in this Complaint to “Gold Banc” shall mean and include all subsidiaries of Gold Banc.)

STATEMENT OF FACTS

8. Gullion’s unlawful conduct involved two separate courses of business. In one, Gullion diverted into his personal accounts \$1.9 million in Gold Banc funds that the company disbursed to purchase real estate for a suburban branch bank location (the “Real Estate Purchase”). In the other, Gullion benefited from unauthorized, interest free extensions of credit by Gold Banc (the “Unauthorized Extensions of Credit”).

The Real Estate Purchase

9. In November 2000, Gullion verbally directed Gold Banc employees to issue a \$1 million cashier’s check— purportedly earnest money for the purchase of a new branch location — payable to an “entity” supposedly representing Gold Banc in connection with the land purchase. The employees complied with Gullion’s instructions, and the transaction was recorded with a \$1 million debit to an “Other Assets” account.

10. In fact, the "entity" that Gullion designated to receive the \$1 million payment was not acting on Gold Banc’s behalf, and was only a business name that Gullion created for his own personal use. Gullion deposited the \$1 million check into a securities brokerage account that he opened in that business name. Gullion later applied the proceeds of the check to his personal use.

11. In April 2001, a real estate broker acting at Gullion's direction purchased approximately 27 acres of land for \$2.4 million, in the name of a nominee acting on behalf of Gold Banc. Gullion represented to Gold Banc employees, however, that the purchase price was \$4.4 million. As a result, Gold Banc wired \$4.4 million to the real estate broker for settlement of the transaction, and Gold Banc recorded a \$4.4 million debit to an "Other Assets" general ledger account.

12. At Gullion's direction, the real estate broker refunded \$1 million of the \$2 million overpayment via a wire transfer to Gold Banc, and refunded another \$900,000 by check payable to Gold Banc. Gullion intercepted the \$900,000 check, deposited it into a personal bank account, and applied the proceeds to his personal use. The remaining \$100,000 was applied to the broker's commission and to various professional fees associated with the purchase and development of the real estate.

13. In December 2002, Gullion arranged for Gold Banc to finance the nominee's acquisition of the 27 acres from Gold Banc, through a \$6 million loan by Gold Banc. Gold Banc recorded the transaction by increasing its loan assets by \$6 million, and reducing the "Other Assets" general ledger account by \$6 million.

14. In arranging the financing, Gullion presented a purported broker's letter, which Gullion had actually written, as evidence that Gold Banc's \$1 million payment in November 2000 was for earnest money (even though Gullion had actually applied those funds to his personal use). Gullion also presented a purported settlement statement, which Gullion had prepared, showing that Gold Banc paid \$4.4 million for the 27 acres, whereas the actual purchase price was \$2.4 million. The loan was made in disregard of Gold Banc's loan origination policies. Gold Banc did not obtain any down payment, appraisal or personal guaranty. The

nominee had no other assets or income to repay the loan, and no development plans for the property.

Unauthorized Extensions of Credit

15. From January 1998 through December 2002, Gullion caused Gold Banc and its banking subsidiaries to enter into various Unauthorized Extensions of Credit, which prevented overdrafts in Gullion's personal accounts. Gullion had instructed bank employees to prevent overdrafts in his personal accounts, which they did by charging various Gold Banc accounts, including Gold Banc's Federal Reserve, accrued other expenses, and furniture and fixtures accounts, to transfer funds into Gullion's personal accounts. Although Gullion repaid most of the Unauthorized Extensions of Credit before his March 2003 dismissal, Gullion benefited improperly from these unauthorized interest free loans.

Concealment of Unlawful Conduct

16. Gullion concealed his unlawful conduct by making false statements and creating false records that did not accurately and fairly reflect Gold Banc's transactions and the disposition of its assets, or by causing others to do those things.

17. The \$1.9 million that Gullion received in connection with the Real Estate Purchase was not recorded as an expense, because Gullion made false statements that caused Gold Banc to credit the amounts to asset accounts, thereby understating the company's expenses.

18. The Unauthorized Extensions of Credit were misclassified as expenditures for the benefit of Gold Banc, rather than as loans or other disbursements to Gullion for his personal benefit.

19. Gullion also concealed his unlawful conduct by falsely representing to Gold Banc's auditors that he was not aware of any fraud or misrepresentations involving managers ith

significant internal controls responsibilities. Gullion had, however, circumvented internal controls, including by causing Gold Banc to fail to report his overdrafts, as required by federal banking regulations, and by not securing board approval for the extensions of credit, as required by banking regulations and Gold Banc's policies.

Resulting Financial Misstatements

20. The \$1.9 million that Gullion received in connection with the Real Estate Purchase was not booked as an expense during the fiscal years ended December 31, 2000 and 2001, or during the quarter ended June 30, 2001. Consequently, Gold Banc overstated its income and earnings in the Forms 10-K that it filed with the Commission for 2000 and 2001, and also overstated its income in the Forms 10-Q that it filed for the second and third quarters of 2001.

21. Gullion signed those periodic filings. Gullion also signed the October 2002 registration statement for a \$49.3 million offering of Gold Banc's common stock, and a December 2001 registration statement for an offering of common stock to company employees in connection with Gold Banc's 401(k) plan, both of which incorporated the misstated financials.

Restatements of Gold Banc Financials

22. In its restatement for the year ended December 31, 2000, Gold Banc recorded an additional pre-tax expense of \$1.0 million, based on Gullion's misconduct in connection with the Real Estate Purchase. Along with other adjustments in the restatement, this decreased Gold Banc's previously reported pre-tax earnings by 66.7%, from the previously reported \$821,000 to \$274,000. Had Gold Banc's only adjustment been to increase expenses by \$1 million, Gold Banc's pre-tax earnings of \$821,000 would have become a pre-tax loss of \$179,000, a 122%

decrease. The company's previously reported loss per share increased by 16.7%, from \$(0.12) to \$(0.14).

23. In its restatement for the year ended December 31, 2001, Gold Banc recorded an additional pre-tax expense of \$900,000, based on Gullion's improper receipt of the \$900,000 refund associated with the land purchase. The additional expense, along with other adjustments made in the restatement, decreased Gold Banc's previously reported pre-tax earnings by 5.5%, from \$29,173,000 to \$27,574,000, and reduced its previously reported earnings per share by 2.9%, from \$0.69 to \$0.67. Had Gold Banc's only adjustment been to increase expenses by \$900,000, Gold Banc's pre-tax earnings would have dropped from \$29,173,000 to \$28,273,000, a 3.1% decrease.

24. Gold Banc's report on Form 10-Q for the quarter ended June 30, 2001, which encompassed \$900,000 that Gullion received in connection with the Real Estate Purchase, was also materially misleading. Had Gold Banc properly expensed the \$900,000, the pre-tax income reported in the Form 10-Q would have decreased by 10.5%, from \$8,542,000 to \$7,642,000. Gold Banc's report on Form 10-Q for the quarter ended September 30, 2001 also overstated income, because the \$900,000 was not properly expensed.

Market Impact of the Disclosure of Gullion's Misconduct

25. The initial public disclosures regarding Gullion's misconduct had an immediate, material impact on the price of Gold Banc's stock. On March 13, 2003, the day before the company filed a Form 8-K announcing Gullion's misconduct and dismissal, the stock closed at \$10 on Nasdaq. The day of the announcement, the stock closed at \$8.99, a 10% decline from the preceding day. The stock thereafter traded at approximately \$8.50 through April 16, 2003, when Gold Banc issued its restatements.

FIRST CLAIM
Violation of Section 17(a) of the Securities Act

26. Plaintiff Commission repeats and incorporates paragraphs 1 through 26 of this Complaint by reference as if set forth verbatim.

27. Gullion, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by the use of the mails, has: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business, which operated or would operate as a fraud or deceit upon the purchaser.

28. Gullion engaged in the above-referenced conduct with the requisite intent.

29. By reason of the foregoing, Gullion violated, and unless enjoined, will continue to violate the provisions of Section 17(a) of the Securities Act [15 U.S.C. § 77q].

SECOND CLAIM
Violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

30. Plaintiff Commission repeats and incorporates paragraphs 1 through 26 of this Complaint by reference as if set forth verbatim.

31. Gullion, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails has: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not

misleading; or (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

32. Gullion made the above-referenced misrepresentations and omissions knowingly or with recklessness regarding the truth.

33. By reason of the foregoing, Gullion violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

THIRD CLAIM
Violations of Section 13(b)(5) of the Exchange Act
and Rules 13b2-1 and 13b2-2 thereunder

34. Plaintiff Commission repeats and incorporates paragraphs 1 through 26 of this Complaint by reference as if set forth verbatim.

35. Gullion knowingly circumvented Gold Banc's system of internal accounting controls.

36. Gullion, directly or indirectly, falsified or caused to be falsified books, records and/or accounts of Gold Banc that were subject to Section 13(b)(2)(A) of the Exchange Act.

37. Gullion, as an officer of Gold Banc, directly or indirectly,

- a) made, or caused to be made, a materially false or misleading statement, or
- b) omitted to state, or caused another person to omit to state, material facts

that were necessary in order to make statements made, in the light of the circumstances under which such statements were made, not misleading to an accountant in connection with (1) an audit or examination of the financial statements of the issuer required to be made pursuant to Section 13 of the Exchange Act or (2) the preparation or filing of a document or report required to be filed with the Commission pursuant to Section 13 of the Exchange Act or otherwise.

38. By reason of the foregoing, Gullion violated, and unless enjoined, will continue to violate Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2].

FOURTH CLAIM
Aiding and Abetting Violations of Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder

39. Plaintiff Commission repeats and incorporates paragraphs 1 through 26 of this Complaint by reference as if set forth verbatim.

40. Gold Banc failed to file with the Commission, in accordance with Commission rules and regulations:

(a) such information and documents as the Commission requires to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act [15 U.S.C. §78I], and

(b) such timely and accurate annual reports, certified if required by the rules and regulations of the Commission by independent public accountants, and such timely and accurate quarterly reports, as the Commission may prescribe.

41. Gold Banc failed to make and keep books, records and accounts that, in reasonable detail, accurately and fairly reflect Gold Banc's transactions and dispositions of its assets;

42. Gold Banc failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

(a) transactions are executed in accordance with management's general or specific authorization;

(b) transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets;

(c) access to assets is permitted only in accordance with management's general or specific authorization; and

(d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

43. By reason of the foregoing, Gold Banc violated Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§ 78m(a) and (b)(2)], and Commission Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13] thereunder.

44. Gullion aided and abetted Gold Banc's violations of Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§ 78m(a) and (b)(2)], and Commission Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13] thereunder.

RELIEF REQUESTED

The Commission seeks the following relief:

I.

An order permanently enjoining and restraining Gullion from further violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2], and from further aiding and abetting violations of Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§ 78m(a) and (b)(2)] and Rules 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.13a-1 and 240.13a-13];

II.

An order permanently enjoining and restraining Gullion from acting as a director or officer of any issuer having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. §78I] or required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)];

III.

An order directing Gullion to pay a civil money penalty, pursuant to Section 20(d)(2)(C) of the Securities Act [15 U.S.C. § 77t(d)(2)(C)] and Section 21(d)(3)(B)(iii) of the Exchange Act [15 U.S.C. § 78u(d)(3)(B)(iii)];

IV.

Such other and further relief as the Commission may show itself entitled.

Respectfully submitted,

DATED: May 4, 2004

s/ Timothy P. Davis
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