

UNITED STATES OF AMERICA
BEFORE
THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
AND
THE FEDERAL DEPOSIT INSURANCE CORPORATION

IN THE MATTER OF)
HURST TECHNOLOGIES, INC)
ORLANDO, FLORIDA)

CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (Comptroller) and the Federal Deposit Insurance Corporation (FDIC) (Banking Regulators) have examined HURST TECHNOLOGIES, INC. (HURST).

WHEREAS, HURST, by and through its president and sole shareholder has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated October 2, 2001, (Stipulation and Consent) which is accepted by the Banking Regulators. By this Stipulation and Consent, which is incorporated herein by reference the same as if fully set forth, HURST has consented to the issuance of this Consent Order;

WHEREAS, HURST is a provider of services to national banks and other financial institutions (Client Banks) within the meaning of 12 U.S.C. § 1867(c). The Banking Regulators have authority to enter into this Consent Order pursuant to 12 U.S.C. §§ 1867(c) & (d).

WHEREAS, HURST is an “institution-affiliated party” within the meaning of 12 U.S.C. § 1813(u).

WHEREAS, this Consent Order shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1), and shall be construed to be

a “written agreement” for the purposes of section 8 of the Federal Deposit Insurance Act, 12 U.S.C. § 1818 and 12 U.S.C. § 1786(s)(1)(A).

WHEREAS, the Comptroller, through his National Bank Examiners, and on behalf of the Federal Financial Institutions Examination Council (FFIEC), has criticized HURST as not being adequately capitalized and therefore, presenting financial and safety and soundness risks to the Client Banks. In addition, HURST’s current financial condition may not ensure that all Client Banks’ computer-related products and operations will continue to function and be operational.

WHEREAS, HURST waives the right to challenge the validity of this Consent Order, these statutes, or any other provision of law.

NOW, THEREFORE, pursuant to the authority vested in them by 12 U.S.C. §§ 1818(b), 1818(b)(6)(D), and 1867(d), the Banking Regulators hereby order that:

Article I

Capital Requirement

(1) Within fifteen (15) calendar days from the effective date of this Consent Order, HURST shall achieve and thereafter maintain total equity capital, as determined by generally accepted accounting principles (GAAP), in an amount acceptable to the Banking Regulators.

This capital requirement may be achieved through any one or more of the following:

- (a) the infusion of cash, marketable securities, or other non-cash capital contribution to HURST that is acceptable to the Banking Regulators;
- (b) the conversion of HURST’s existing debt to equity; and/or
- (c) a signed and accepted letter of intent for the acquisition of HURST’s core and item processing units by another data processing service provider or other entity that is

acceptable to the Banking Regulators (Acceptable Acquirer). All letters of intent or offers to purchase or sell shall state that the transaction is contingent upon the acceptance by the Banking Regulators as provided in this paragraph.

(2) Any infusion of non-cash as a capital contribution in HURST or conversion of debt to equity undertaken by HURST pursuant to paragraph (1) of this Article shall be certified in writing by an independent certified public accountant as having been recorded in accordance with GAAP.

(3) In order to be considered an Acceptable Acquirer of HURST pursuant to paragraph (1) of this Article, such entity must, at a minimum (i) have in place sufficient managerial and technical personnel and expertise to adequately perform the duties and obligations of HURST under its existing contracts with the Client Banks; (ii) have audited financial statements for the most recently completed fiscal year; and (iii) possess equity capital in an amount acceptable to the Banking Regulators.

Article II

Access to HURST Financial Information

(1) Within three (3) days from the effective date of this Consent Order, HURST shall make available for inspection by the Client Banks at HURST's offices complete and accurate financial and operating information reflecting HURST's current financial and operational performance. The content of the financial information shall include, but not be limited to, HURST's financial statements comprised of a balance sheet, statement of income and expense, statement of change in financial position and notes to financial statements, and management's discussion and analysis of HURST's financial condition and results of operations.

Article III

Transition of Client Banks and Rescission of Contracts

(1) In the event HURST fails to comply with the capital requirement contained in paragraph (1) of Article I (as solely determined in the discretion of the Banking Regulators) within fifteen (15) calendar days from the effective date of this Consent Order, or if at any time prior to the end of the fifteen day period HURST advises the Banking Regulators that it is unable to comply with the capital requirement, HURST shall within five (5) calendar days thereafter;

(a) implement a schedule for the orderly transition of the Client Banks then being serviced pursuant to a contract with HURST to another data processing service provider;

(b) identify and provide to the Client Banks the names of data processing service providers with compatible applications to facilitate an orderly transition of the Client Banks to alternate data processing service providers;

(c) fully cooperate with and provide transition assistance to the Client Banks and alternative service providers to transfer each Client Banks' data records (including master files, transaction files and source documents) on a timely basis; and

(d) execute a mutual rescission of the then existing contracts with each of the Client Banks which is acceptable to the Client Banks and which, at a minimum (i) provides for HURST's immediate waiver and release of any right to notice of termination by the Client Banks; (ii) provides for HURST's immediate waiver and release of any right or claim to any fees or charges for early termination of the HURST contracts by the Client Banks, including any right or claim to termination fees, penalties, damages, attorney fees and/or obligation to indemnify;

and (iii) provides that the remaining contractual rights and obligations of the parties will cease no later than November 30, 2001.

(2) During the transition of the Client Banks to other service providers as required by paragraph (1) of Article II, HURST shall make all reasonable efforts to retain key personnel to enable HURST to comply with the provision of this Order.

(3) Nothing in this Consent Order is intended to, or shall have the effect of, preventing, precluding or in any way inhibiting any of the Client Banks from at any time exercising any rights they may have under the terms of their respective HURST contracts, including but not limited to, the exercise of any termination or cancellation provisions of such contracts.

Article IV

New Business

(1) From and after the effective date of this Consent Order, and for so long as HURST remains in noncompliance with the capital requirement of paragraph (1) of Article I, HURST shall not pursue any new data processing business with, market its data processing services to, or renew or enter into any new data processing service contracts with any depository institution regulated or examined by any of the FFIEC member agencies.

Article V

Progress Reports

(1) Within five (5) days after the effective date of this Consent Order, and every five (5) days thereafter, HURST shall submit a written progress report, addressing HURST's

compliance with each of the Articles of the Order, to the Office of the Comptroller of the Currency at the following address and by facsimile to: Archie L. Bransford, Jr., Deputy Comptroller, Southeastern District, Office of the Comptroller of the Currency, 245 Peachtree Center Avenue, Marquis I Tower, Suite 600, Atlanta, Georgia 30303, facsimile 404-588-4532, with copies provided to the Federal Deposit Insurance Corporation at the following address: Christopher Spoth, Acting Regional Director, Federal Deposit Insurance Corporation, 1201 Peachtree Street, Suite 1800, Atlanta, Georgia 30309, facsimile 404-817-8886.

Article VI

Closing

(1) Each provision of this Consent Order shall remain effective and enforceable until the Banking Regulators agree to stay, modify, terminate or suspend this Consent Order in writing.

(2) Any time limitations in this Consent Order not identified specifically by date shall begin to run from the effective date of this Consent Order. Any time limitations in this Consent Order may be extended by the joint agreement of the Banking Regulators for good cause upon written application of HURST.

(3) It is understood and agreed that if, at any time, the Banking Regulators deem it appropriate in fulfilling the responsibilities placed upon them by the several laws of the United States of America to undertake any action affecting HURST, nothing in this Consent Order shall in any way inhibit, estop, bar or otherwise prevent the Banking Regulators from so doing.

(4) This Consent Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b) and expressly does not form, and may not be construed to

form, a contract binding on the Banking Regulators or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Banking Regulators may enforce any of the commitments or obligations herein undertaken by HURST under its supervisory powers, including 12 U.S.C. §§ 1818(b)(1) and 1818(i), and not as a matter of contract law. HURST expressly acknowledges that neither HURST nor the Banking Regulators has any intention to enter into a contract. HURST also expressly acknowledges that no officer or employee of the Banking Regulators has statutory or other authority to bind the United States, the U.S. Treasury Department, the Banking Regulators, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Banking Regulators' exercise of their supervisory responsibilities. The terms of this Consent Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

- (5) This Consent Order shall be effective as of the date of execution by HURST.

IT IS SO AGREED, this 4th day of October, 2001.

Office of the Comptroller of the Currency

/s/ Archie L. Bransford Jr.

By: _____

Federal Deposit Insurance Corporation

/s/ Christopher Spoth

By: _____

IN TESTIMONY WHEREOF, the undersigned, as president and sole shareholder and acting on behalf of HURST, has hereunto set her hand on behalf of the corporation.

/s/ Eva Mae Hurst

Oct. 2, 2001

Eva Mae Hurst
Hurst Technologies, Inc.

Date

UNITED STATES OF AMERICA
BEFORE
THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
AND
THE FEDERAL DEPOSIT INSURANCE CORPORATION

IN THE MATTER OF)
HURST TECHNOLOGIES, INC)
ORLANDO, FLORIDA)

STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (Comptroller) and the Federal Deposit Insurance Corporation (FDIC) (Banking Regulators) intend to initiate cease and desist proceedings against HURST TECHNOLOGIES, INC. (HURST) pursuant to 12 U.S.C. § 1818(b).

WHEREAS HURST, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated October 2, 2001 (Order);

In consideration of the above premises, the Banking Regulators, through their designees, and HURST, through its president and sole shareholder, hereby stipulates and agrees to the following:

Article I

(1) HURST is a provider of services to national banks and other financial institutions (Client Banks) within the meaning of 12 U.S.C. § 1867(c) and is an “institution-affiliated party” within the meaning of 12 U.S.C. § 1813(u).

(2) The Banking Regulators have authority to enter into this Consent Order pursuant to 12 U.S.C. §§ 1818(b), 1818(b)(6)(D), and 1867(c) & (d).

Article II

(1) HURST, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Consent Order by the Banking Regulators. HURST further agrees that said Consent Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Consent Order shall become effective upon its issuance and shall be fully enforceable by the Banking Regulators under the provisions of 12 U.S.C. § 1818(i).

Article III

- (1) HURST, by signing this Stipulation and Consent, hereby waives:
- (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
 - (b) any and all procedural rights available in connection with the issuance of the Consent Order;
 - (c) all rights to seek any type of administrative or judicial review of the Consent Order; and
 - (d) any and all rights to challenge or contest the validity of the Consent Order.

Article IV

(1) HURST agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Banking Regulators from taking any other action affecting HURST if, at any time, they deem it appropriate to do so to fulfill the responsibilities placed upon them by the several laws of the United States of America.

IN TESTIMONY WHEREOF, the undersigned designees have hereunto set their hands on behalf of the Banking Regulators.

This 4th day of October, 2001.

Office of the Comptroller of the Currency

/s/ Archie L. Bransford
By: _____

Federal Deposit Insurance Corporation

/s/ Christopher Spoth
By: _____

IN TESTIMONY WHEREOF, the undersigned, as president and sole shareholder and acting on behalf of HURST, has hereunto set her hand on behalf of the corporation.

/s/ Eva Mae Hurst

Eva Mae Hurst
Hurst Technologies, Inc.

Oct. 2, 2001

Date