

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)
)
)
James J. Shoffner, an Officer and) Re: No. CHI-99-03
Director, and J. Roy Shoffner, an Officer)
and Director of Middlesboro Federal Bank,) Date: February 24, 1999
FSB, Middlesboro, Kentucky)
(OTS No. 2438) _____)

STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed James J. Shoffner and J. Roy Shoffner (collectively, "Respondents") that the OTS is of the opinion that grounds exist to initiate an administrative cease and desist proceeding for affirmative relief against Respondents, institution-affiliated parties of Middlesboro Federal Bank, FSB, Middlesboro, Kentucky ("Middlesboro") (OTS No. 2438), pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b). ^{1/}

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue orders to cease and desist for affirmative relief where the respondent has consented to the issuance of the order;

WHEREAS, Respondents desire to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, except those as to jurisdiction (as set forth in Paragraph 1, below) which are admitted, hereby stipulate and agree to the following terms:

^{1/} All references to the United States Code ("U.S.C.") are as amended.

1. Jurisdiction.

(a) Middlesboro is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) James J. Shoffner, is an Officer and Director, J. Roy Shoffner, is a Director of Middlesboro and are "institution-affiliated parties" of Middlesboro as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against a savings association and/or its institution-affiliated parties. Therefore, Respondents are subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding for affirmative relief against them pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

2. OTS Findings of Fact. The OTS finds that: the Respondents, as a group acting in concert, violated 12 C.F.R. Part 574 pertaining to acquisitions of control of savings associations, by acquiring stock on April 1 and July 30, 1997, of Cumberland Mountain Bancshares Inc., holding company of Middlesboro, its wholly owned subsidiary savings association, in excess of 10% of total shares outstanding, without submitting the required notices or rebuttal filings. The Respondents obtained a profit of \$51,612 from their divestiture of said stock on November 17, 1997, which would not have otherwise accrued to them had they not acquired said stock.
3. Consent. Respondents consent to the issuance by the OTS of the accompanying Order to Cease and Desist for Affirmative Relief ("Order"). Respondents further agree to comply with the terms of the Order upon issuance and stipulate that the Order complies with all requirements of law.
4. Other Actions. The OTS agrees that in the event the Respondents file an application pursuant to 12 C.F.R. Part 574, it shall not be denied pursuant to 12 C.F.R. Sec. 574.7(g), solely on the basis of the issuance of the Order.
5. Finality. The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director or designee for the Central Region, OTS, it shall be a final order, effective, and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

6. Waivers. (a) Respondents waive their right to a written notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and further waive any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.
- (b) Respondents acknowledge and agree that their consent to the entry of the Order is for the purpose of resolving this OTS enforcement matter only pertaining to violations of 12 C.F.R. Part 574, and does not resolve, affect, or preclude any other civil or criminal proceeding which may be or has been brought by the OTS or another governmental entity.
- (c) By signing this document, Respondents agree that they will not assert the assessment or payment of any monies or providing any other financial relief as contemplated by the Order as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity. The OTS is of the view that the affirmative relief provisions of the Order (including those requiring payments pursuant to 12 U.S.C. § 1818(b)(6)(A)) are remedial and not punitive in nature, and Respondents do not and will not contest this.
- (d) Respondents waive any and all claims for the award of fees, costs, or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.
7. Indemnification. Respondents shall neither cause or permit Middlesboro (or any subsidiary thereof) to incur, directly or indirectly, any expense for the amount of the restitution under the Order or any legal (or other professional expenses) incurred relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from Middlesboro (or any subsidiary thereof) with respect to such amounts. Any payments received by or on behalf of Respondents in connection with this action shall be returned to Middlesboro.

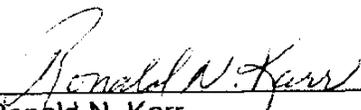
WHEREFORE, Respondents execute this Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

By:

Accepted by:

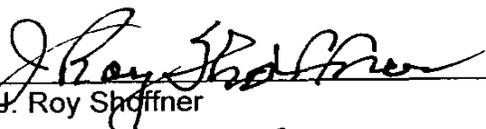
Office of Thrift Supervision


James J. Shoffner


Ronald N. Karr
Regional Director
Central Region

Date: 2/17/99

Date: 2-24-99


J. Roy Shoffner

Date: 2/17/99

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)

James J. Shoffner, an Officer and)
Director, and J. Roy Shoffner, an Officer)
and Director of Middlesboro Federal Bank,)
FSB, Middlesboro, Kentucky)
(OTS No. 2438))
_____)

Re: No. CHI-99-03

Date: February 24, 1999

ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, James J. Shoffner and J. Roy Shoffner (collectively, "Respondents") have executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief ("Stipulation"); and

WHEREAS, the Respondents, in the Stipulation, have consented and agreed to the issuance of this Order to Cease and Desist for Affirmative Relief ("Order") pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b).^{1/}

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Directors of the OTS the authority to issue orders to cease and desist for affirmative relief on behalf of the OTS where an institution-affiliated party has consented to the issuance of the order.

WHEREAS, on the basis of the consent evidenced in the Stipulation, the Regional Director of the Central Region is of the opinion that grounds exist for the issuance of this Order, pursuant to 12 U.S.C. Sec. 1818(b)(i)(2).

NOW THEREFORE, IT IS ORDERED THAT:

1. Statutory and Regulatory Obligations.

Respondents shall cease and desist from any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling or the aiding and abetting of any unsafe or unsound practice or any violation of 12 U.S.C. Secs. 1817(j), the Change in Bank Control Act; 1467a(e), the Savings and Loan Holding Company Act; and 12 C.F.R. Part 574, pertaining to acquisition of control of savings associations and savings association holding companies;

^{1/} All references to the United States Code ("U.S.C."), are as amended.

2. Restitution.

(a) The Respondents shall, within thirty (30) days of the Effective Date of this Order, pay restitution to Cumberland Mountain Bancshares, Inc., Middlesboro, Kentucky ("Cumberland"), holding company of Middlesboro Federal Bank, FSB, Middlesboro, Kentucky ("Middlesboro"), its wholly owned subsidiary savings association, in the amount of \$51,612.00. Which amount represents the profit made on the sale of Mountain Bancshares stock, the purchase of which caused the violations of 12 C.F.R. Part 574; and

(b) The restitution payment shall be tendered by delivering one or more certified or cashier's check(s) made payable to Cumberland, together with a cover letter stating that the check(s) relates to Cumberland and Middlesboro, referencing the Order number, and attaching copies of the Order and Stipulation, and sent to the following address: Cumberland Mountain Bancshares, P.O. Box 639, Middlesboro, Kentucky 40965. A copy of the cover letter to Cumberland and a photocopy of the check(s) shall be sent to: Tracy Bauer, Assistant Regional Counsel, Office of Thrift Supervision, 200 West Madison St., Suite 1300, Chicago, Illinois 60606.

3. Miscellaneous Provisions.

(a) Respondents shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

(b) It is expressly and clearly understood that if, at any time, the OTS deems it appropriate in fulfilling the responsibilities placed upon it by the several laws of the United States of America to undertake any action affecting Respondents, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the OTS from doing so.

4. Definitions.

All technical words or terms used in this Order and the Stipulation for which meanings are not specified or otherwise provided by the provisions of this Order shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, the Home Owners' Loan Act ("HOLA"), the FDIA, or OTS Publications. Any such technical words or terms used in this Order and the

Stipulation and undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Publications shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

5. Successor Statutes, Regulations, Guidance, Amendments.

Reference in this Order and the Stipulation to provisions of statutes, regulations, and OTS Publications shall be deemed to include references to all amendments to such provisions as have been made as of the date this Order was executed and issued by the OTS, through its authorized representative whose signature appears below ("Effective Date") and references to successor provisions as they become applicable.

6. Duration, Termination, or Suspension of Order.

(a) This Order shall: (i) become effective as of the Effective Date, and (ii) remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director or the Regional Director (including any authorized designee thereof).

(b) The Regional Director in his or her sole discretion, may, by written notice, suspend, modify, or terminate any or all provisions of this Order.

7. Time Limits.

Time limitations for compliance with the terms of this Order run from the Effective Date of this Order, unless otherwise noted.

8. Effect of Headings.

The section headings herein are for convenience only and shall not affect the construction hereof.

9. Separability Clause.

In case any provision in this Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his/her sole discretion determines otherwise.

10. Successors in Interest/Benefit.

The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Order, express or implied, shall give to any person or entity, other than the parties hereto, and the Federal Deposit Insurance Corporation and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim under this Order.

THE OFFICE OF THRIFT SUPERVISION

By:



Ronald N. Karr, Regional Director
Central Region