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UNITED STATES OF AMERICA  
Before the  
OFFICE OF THRIFT SUPERVISION

In the Matter of  
CHRISTOPHER M. LEAVY,  
Former Assistant Vice President of  
American Federal Savings Bank,  
Rockville, Maryland.

Order No. ATL-96-7

Date: September 9, 1996

STIPULATION AND CONSENT TO THE ENTRY OF AN ORDER TO  
CEASE AND DESIST FOR AFFIRMATIVE RELIEF  
AND ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Christopher M. Leavy ("Leavy"), former Assistant Vice President of American Federal Savings Bank, Rockville, Maryland ("American Federal"), that the OTS is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Leavy pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.

§ 1818(b)<sup>1</sup>, and to assess civil money penalties against him pursuant to Section 8(i) of the FDIA, 12 U.S.C. § 1818(i) and

WHEREAS, Leavy desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and,

<sup>1</sup> All references to the U.S.C. are as amended.

without admitting or denying that such grounds exist or the Findings of Fact or conclusions of the OTS, except as to Jurisdiction, which is admitted, hereby stipulates and agrees to the following terms:

1. Jurisdiction. (a) American Federal 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)(2) of the FDIA, 12 U.S.C. § 1813(c)(2).

(b) Leavy, having served as an Assistant Vice President of American Federal within six (6) years of the date hereof (see 12 U.S.C. §1818(i)(3)), was an employee of American Federal and, therefore, an "institution-affiliated party" 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 a cease and desist proceeding and assess civil money penalties against a savings association or its institution-affiliated parties. Therefore, Leavy is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against him pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and to assess civil money penalties against him pursuant to Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

2. Findings of Fact. The OTS finds as follows:

(a) American Federal has made loans of approximately \$4 million for the acquisition and rehabilitation of a low-income housing project in Washington, D.C. As of August 1, 1996, American Federal had recognized a substantial loss on the loans for the project.

(b) From February to August of 1993, Leavy was responsible for making weekly inspections of the project in order to confirm the progress in construction reported by the borrower in its requests to American Federal for draws on the loan proceeds. During this time period, the borrower submitted draw requests asking American Federal to disburse approximately \$1 million in loan proceeds. Leavy (i) represented that he made an inspection of the property in connection with each of borrower's draw requests, and (ii) agreed in every case with the statement of construction progress attached to each request. Based on Leavy's reports of inspection, American Federal disbursed the entire \$966,892 requested by the borrower. Leavy received \$3,375 for inspections of this Project, which compensation was in addition to his annual salary and other remuneration from American Federal.

(c) Leavy failed to conduct adequate weekly inspections of construction progress on the project prior to authorizing the disbursement of construction loan funds to the borrower. Leavy failed to properly review documentation of the project costs, or to undertake complete physical inspections of the construction

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site. Thus, Leavy failed to determine whether construction work actually had been completed prior to his certifying its completion and authorizing the payment of construction draws.

(d) Leavy engaged in an unsafe and unsound practice which resulted in unjust enrichment to him in the form of \$3,375 in inspection fees, and also contributed to the losses that American Federal has suffered on the project loans.

3. Consent. Leavy consents to the issuance by the OTS of the accompanying Order to Cease and Desist for Affirmative Relief and Order of Assessment of Civil Money Penalties ("Order"). Leavy further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under Sections 8(b) and (i) of the FDIA, 12 U.S.C. §§ 1818(b) and 1818(i). Upon its issuance by the Regional Director for the Southeast Region of the 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).

5. Waivers. (a) Leavy waives his right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and further waives his right to seek judicial review of the Order, including any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.

(b) Leavy waives 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, the Equal Access to Justice Act, 5 U.S.C. § 504 (1980), or 28 U.S.C. § 2412 (1980).

6. Other Actions, Proceedings and Parties. This Stipulation and the accompanying Order are issued solely to settle this enforcement matter. By entering into this Stipulation, Leavy acknowledges and agrees explicitly to the following provisions:

(a) Leavy acknowledges that this Stipulation, the Order, his compliance with the Order and the forbearance of the OTS to maintain administrative proceedings against him resolve all claims, presently known to the OTS, that the OTS could bring against Leavy based upon, or arising from, his employment by American Federal, except for a failure to comply with the Stipulation and Consent, and do not resolve, affect, or preclude any other administrative, civil or criminal proceeding which may be or has been brought by any other governmental agency.

(b) By signing this Stipulation, Leavy agrees that he will not assert this proceeding, his consent to entry of the Order and/or entry of the Order, his payment of any monies or the provision of 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 federal or state governmental entity.

7. Indemnification. Leavy represents that he has not received, directly or indirectly, any sums from American Federal for the purpose of indemnifying or reimbursing him for any expenses incurred by him in connection with the OTS investigation or the payment of restitution or civil money penalties under the Order. Leavy shall neither cause nor permit American Federal (or any successor institution, holding company, subsidiary or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional services rendered to Leavy relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from American Federal (or any successor institution, holding company, subsidiary or service corporation thereof) with respect to such expenses or for the restitution of civil money penalties to be paid by Leavy under the Order. In the event that any such payments are received by or on behalf of Leavy in connection with this action, Leavy agrees to promptly notify the OTS of the receipt of such payments and to return such payments without delay to American Federal (or the successor institution, holding company, subsidiary or service corporation thereof).

8. Agreement for Continuing Cooperation. Leavy agrees that, at the OTS's written request, on reasonable notice and without service of a subpoena, he will provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to any investigation, litigation, or other proceeding maintained by the OTS relating to

American Federal, its subsidiaries and its institution-affiliated parties, except that Leavy does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution or any attorney-client privilege. If Leavy invokes his privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the OTS inquires or the production of any document requested by the OTS and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., Leavy agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial, administrative, or investigative proceeding on the matter for which immunity is given.

9. Miscellaneous. (a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America.

(b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS' predecessors, successors, and assigns.

(c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order.

(d) The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.

(e) This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through the Regional Director. The Regional Director may suspend, in his sole discretion, any or all provisions of this Stipulation or of the Order.

WHEREFORE, Christopher M. Leavy executes this Stipulation and Consent to the Entry of an Order to Cease and Desist for Affirmative Relief and Order of Assessment of Civil Money Penalty, intending to be legally bound hereby.

Accepted By:  
OFFICE OF THRIFT SUPERVISION

  
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Christopher M. Leavy

  
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John E. Ryan  
Regional Director  
Southeast Region

Dated: 8/29/96

Dated: September 9, 1996

UNITED STATES OF AMERICA  
Before the  
OFFICE OF THRIFT SUPERVISION

In the Matter of  
CHRISTOPHER M. LEAVY,  
Former Assistant Vice President of  
American Federal Savings Bank,  
Rockville, Maryland.

OTS Order No. ATL-96-7

Date: September 9, 1996

CONSENT ORDER TO  
CEASE AND DESIST FOR AFFIRMATIVE RELIEF  
AND ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES

WHEREAS, Christopher M. Leavy ("Leavy") has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief and Order of Assessment of Civil Money Penalties ("Stipulation"); and

WHEREAS, Leavy, by his execution of the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist for Affirmative Relief and Order of Assessment of Civil Money Penalties ("Order") pursuant to Sections 8(b) and 8(i) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §§ 1818(b) and 1818(i)<sup>1</sup> and;

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Directors of the OTS the

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<sup>1</sup> All references to the U.S.C. are as amended.

authority to issue Orders to Cease and Desist on behalf of the OTS where a party has consented to the issuance of the Order.

**NOW THEREFORE, IT IS ORDERED THAT:**

1. Leavy shall cease and desist from any action (alone or with another or orders) for or toward causing, bringing about, participating in, counseling or the aiding or abetting of any unsafe or unsound practice in conducting the business of any "insured depository institution," as that term is defined in Section 3 (c) (2) of the FDIA, 12 U.S.C. § 1813(c) (2), or any "insured credit union", as that term is defined in Section 101(7) of the Federal Credit Union Act, 12 U.S.C. § 1752(7).

2. Leavy shall cease and desist from performing any inspections of commercial and/or multifamily properties for any insured depository institution and/or any insured credit union.

3. Pursuant to the provisions of 12 U.S.C. § 1818(b) (6) (A), and within ten (10) calendar days of the date of this Order, Leavy shall pay restitution to American Federal Savings Bank, Rockville, Maryland ("American Federal"), in the amount of \$3,375. Said restitution shall be paid by certified check or bank draft delivered via courier to Phillip Bowman, Chief Executive Officer, American Federal Savings Bank, 1700 Rockville Pike, Rockville, Maryland, 20852. The check or bank draft shall be tendered together with a cover letter stating that the check or bank draft is submitted in accordance with paragraph 3 of this Order. A copy of the check or bank draft and the cover letter shall be provided by facsimile to Beth Mizuno, Senior Enforcement

Attorney, Office of Thrift Supervision, facsimile number (202) 906-7005.

4. Pursuant to the provisions of 12 U.S.C. § 1818(i)(2)(A), and within ten (10) calendar days of the date of this Order, Leavy shall pay civil money penalties in the amount of \$3,000 to the Office of Thrift Supervision. Said civil money penalties shall be paid by certified check or bank draft made payable to the order of the Treasurer of the United States. The check or bank draft and a copy of this Consent Order shall be delivered by courier to the following address: Controller's Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552. The check or bank draft and the copy of this Consent Order shall be accompanied by a cover letter stating that the check or bank draft is submitted in accordance with paragraph 4 of this Order. A copy of the check or bank draft and the cover letter shall be provided by facsimile to Beth Mizuno, Senior Enforcement Attorney, Office of Thrift Supervision, facsimile number (202) 906-7005.

5. This Order is and shall become effective on the date it is issued, as shown in the caption on the first page hereof. This Order shall remain in effect until it is terminated, modified or suspended, which may occur only by formal written action of the OTS, acting by and through its Director, Regional Director, or other authorized representative.

6. All technical words or terms used in this Order and in the Stipulation, for which meanings are not specified or

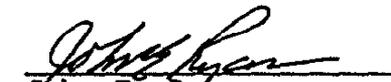
otherwise provided for by the provisions of this Order or the Stipulation shall, insofar as applicable, have meanings as defined in the rules and regulations adopted by the OTS (including, without limitation, 12 C.F.R. §§ 500.1 et seq., 541.1 et seq., and 561.1 et seq. (1996)). Any such technical words or terms used in this Order and undefined in said rules and regulations shall have meanings that accord with the best custom and usage in the thrift industry.

7. In the event that any provisions of this Order shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

8. The Stipulation is made a part hereof and is incorporated herein by this reference.

OFFICE OF THRIFT SUPERVISION

By:

  
John E. Ryan  
Regional Director  
Southeast Region