

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

In the Matter of)
FREDERICK L. PESCE,)
a former officer of)
Flushing Savings Bank, F.S.B.,)
Flushing, New York (No. 11990))

Re: OTS Order No. NE95-1

Dated: February 22, 1995

STIPULATION AND CONSENT TO ISSUANCE OF CONSENT ORDER

This Stipulation and Consent to Issuance of Consent Order ("Stipulation"), concerning the accompanying CONSENT ORDER OF PROHIBITION (the "Order"), is made by FREDERICK L. PESCE, a resident of Poughkeepsie, New York, and is accepted by the OFFICE OF THRIFT SUPERVISION ("OTS"), an office within the United States Department of the Treasury, acting by and through its Regional Director for the Northeast Region.

R E C I T A L S

WHEREAS, the OTS, based upon information derived from the exercise of its regulatory responsibilities, has informed FREDERICK L. PESCE, a former Senior Vice President of FLUSHING SAVINGS BANK, F.S.B. ("Flushing Savings") of Flushing, Queens, New York, that the OTS is of the opinion that the grounds exist to initiate an administrative proceeding against FREDERICK L. PESCE for the issuance of administrative orders, pursuant to provisions of Section 8 of the Federal Deposit Insurance Act ("FDIA"),

including those codified at 12 U.S.C. § 1818(e);¹ and

WHEREAS, FREDERICK L. PESCE desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation with the OTS.

NOW, THEREFORE, FREDERICK L. PESCE, without either admitting or denying either that the aforesaid grounds exist or the OTS' factual findings, conclusions and opinions summarized in the preamble of the attached Order (except to the extent otherwise specifically provided in this Stipulation, including but not limited to the admission of jurisdiction set forth in paragraph 2 below), hereby stipulates and agrees as follows:

1. Consideration. FREDERICK L. PESCE, in view of the foregoing premises and for the purposes of this settlement only, hereby voluntarily enters into this Stipulation and consents to issuance of the Order in consideration for OTS forever releasing and discharging him from all potential administrative claims and charges that have been or might have been asserted by the OTS against him based on his actions in 1994 relative to the proxy solicitation by Flushing Savings during 1994;² the aforesaid release by the OTS is subject to the conditions and qualifications set forth at paragraph 9 of this Stipulation.

2. Jurisdiction.

(a) Flushing Savings is and at all material times has been a "savings association" within the meaning of Section 3(b) of

1. All references to the United States Code ("U.S.C.") in this Stipulation and the Order are to the U.S.C. as amended.

2. The OTS' findings about such proxy-related actions are summarized in the preamble of the Order.

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

(b) FREDERICK L. PESCE, due to his service as an officer of Flushing Savings, is and has been 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 OTS is the "appropriate Federal banking agency" to maintain administrative enforcement proceedings against institution-affiliated parties relative to savings associations, and therefore, FREDERICK L. PESCE is subject to the authority of the OTS to initiate and maintain administrative proceedings against him pursuant to Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

(d) Due to the operation of Section 8(i)(3) of the FDIA, 12 U.S.C. § 1818(i)(3), the jurisdiction and authority of the OTS to take administrative action against FREDERICK L. PESCE, pursuant to 12 U.S.C. § 1818(e), has not been affected by his termination of employment by Flushing Savings, which termination occurred within six years of the date hereof.

3. Consent. FREDERICK L. PESCE consents to the issuance by the OTS of the Order, and agrees to comply with the terms of the Order. FREDERICK L. PESCE further stipulates that the Order (including the OTS' issuance thereof) complies with all requirements of law.

4. Finality. The Order is issued by the OTS under the authority of Section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Upon

its issuance by the OTS (by and through its Regional Director for the Northeast Region), the Order shall be a final order that is effective and fully enforceable by the OTS under provisions of federal law, including Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. Waivers. FREDERICK L. PESCE, following consultation with his counsel, voluntarily and knowingly waives:

(a) the right to be served with a written notice of the OTS' charges against him (including but not limited to a Notice of Intention to Prohibit), which notice would be issued and served pursuant to 12 U.S.C. § 1818(e) and other applicable law;

(b) the right to an administrative adjudicatory hearing of the OTS' charges against him, which hearing is provided by 12 U.S.C. §§ 1818(e) and 1818(h)(1); and

(c) the right to seek judicial review of the Order, including (but not limited to) any such right provided by Section 8(h)(2) of the FDIA, 12 U.S.C. § 1818(h)(2), or otherwise to challenge the validity of the Order.

6. Indemnification. FREDERICK L. PESCE shall neither (i) cause or permit Flushing Savings (or any subsidiary thereof) to incur, directly or indirectly, any expense for any legal (or other professional expenses) incurred relative to the negotiation and issuance of the Order, nor (ii) apply to or obtain any indemnification (or other reimbursement) from Flushing Savings (or any subsidiary thereof) with respect to any such expenses directly or indirectly incurred by him. Any such payments received by or on behalf of FREDERICK L. PESCE in connection with this action shall be returned to Flushing Savings.

7. Other Government Actions Not Affected; No Discharge.

(a) FREDERICK L. PESCE's consent to the issuance by the OTS of the Order is intended solely for purposes of settling and resolving the OTS' claims against him, as provided by Paragraph 1 hereof, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, claims, charges against, or liability of FREDERICK L. PESCE that arise in connection with his former relationship with Flushing Savings, and that may be or have been brought by any government agency or entity other than the OTS.

(b) By signing this Stipulation, FREDERICK L. PESCE agrees he will not assert any of the OTS' actions concerning him 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.

(c) The OTS is of the view that the prohibition provisions of the Order, pursuant to 12 U.S.C. § 1818(e), are remedial and not punitive in nature, and FREDERICK L. PESCE does not and will not contest this.

8. Availability of Criminal Sanctions. FREDERICK L. PESCE acknowledges that Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), sets forth criminal penalties for knowing violations of the prohibition provisions of Order, which provisions are included in the Order pursuant to subsection (e) of Section 8 of the FDIA.

9. Understanding about Hardship Application and Release.

FREDERICK L. PESCE acknowledges that he has requested the OTS to give up any claims it may have to seek an assessment against him of civil money penalties pursuant to 12 U.S.C. § 1818(i)(2), and in support of such request has submitted to the OTS a sworn Financial Hardship Application, comprised of a signed and completed financial statement as of December 31, 1994 (OTS Form 1571) and related income tax returns and other supporting documents. It is understood that the OTS, in the exercise of its discretion pursuant to 12 U.S.C. § 1818(i)(2)(F), has agreed to remit its contemplated civil money penalty based on the OTS' reliance on the information in the aforesaid Financial Hardship Application. In the event that any information included in the Financial Hardship Application is found to be false or misleading with respect to any material fact or, in connection with the Financial Hardship Application, FREDERICK L. PESCE shall have omitted to state a material fact concerning any matter addressed in the Financial Hardship Application, then, without limitation on other available remedies and notwithstanding the release at paragraph 1 hereof, the OTS shall have full power and authority to seek an assessment of civil money penalties against FREDERICK L. PESCE, pursuant to 12 U.S.C. § 1818(i)(2), by issuing a notice of civil money penalty assessment setting forth charges relating to the OTS' investigative findings, which are summarized in the preamble of the Order, and any other charges that the OTS in its sole discretion shall deem appropriate.

10. Communications.

(a) The OTS may send written notices to FREDERICK L.

PESCE care of his counsel:

Richard F. Guay, Esq.
Montclare & Guay
110 Wall Street
New York, New York 10005

(b) All communications required or permitted to be sent by FREDERICK L. PESCE to the OTS shall be sent to:

Angelo A. Vigna, Regional Director
Office of Thrift Supervision
Northeast Regional Office
10 Exchange Place, 18th Floor
Jersey City, New Jersey 07302

with a copy also sent to the OTS' enforcement counsel, Steven A. Rosenberg, at the aforesaid address of the Northeast Regional Office, or such other addresses as may be the subject of written notice to FREDERICK L. PESCE by the OTS.

11. 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.

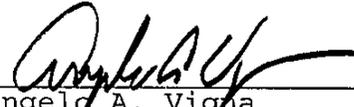
(e) The terms of this Stipulation and of the Order may not be amended or modified except by formal written action of the OTS.

WHEREFORE, on this 16th day of February 1995, FREDERICK L. PESCE executes this Stipulation, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION


FREDERICK L. PESCE

By: 
Angelo A. Vigna
Regional Director, Northeast Region

Date: 2/22, 1995

damaged by, among other things, the necessary postponement of its efforts to raise capital through the stock conversion process; and

WHEREAS, based on the above investigative findings and opinions, the OTS is of the opinion that FREDERICK L. PESCE engaged in regulatory violations, unsafe or unsound practices and breaches of fiduciary duty that -- (i) demonstrate, among other things, willful or continuing disregard for the safety or soundness of FLUSHING SAVINGS, and (ii) caused FLUSHING SAVINGS to suffer significant damage and has (or could have) prejudiced the interests of FLUSHING SAVINGS' depositors; and

WHEREAS, based on the aforesaid findings, the OTS concludes that the grounds exist for it to seek administrative relief against FREDERICK L. PESCE, pursuant to provisions of Section 8 of the FDIA, 12 U.S.C. § 1818;¹ and

WHEREAS, FREDERICK L. PESCE, while neither admitting nor denying the above findings, conclusions and opinions of the OTS, for purposes of settling with the OTS has consented and agreed to the OTS' issuance of this CONSENT ORDER OF PROHIBITION ("Order"), pursuant to 12 U.S.C. § 1818(e), by executing on February 16, 1995, the accompanying Stipulation and Consent to Issuance of Consent Order ("Stipulation"); and

WHEREAS, the undersigned OTS Regional Director has been duly delegated the authority to cause the OTS to issue consent orders.

NOW THEREFORE, IT IS ORDERED, pursuant to 12 U.S.C. § 1818(e), that:

1. All references to the United States Code (U.S.C.) are as amended, except as otherwise specified.

1. FREDERICK L. PESCE is prohibited from participating in any manner in the conduct of the affairs of FLUSHING SAVINGS and any subsidiaries, service corporations or other affiliates thereof, and FREDERICK L. PESCE thereby is and shall be subject to the statutory prohibitions provided by Section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Due to and without limitation on the operation of 12 U.S.C. §§ 1818(e)(6) and 1818(e)(7), FREDERICK L. PESCE, except upon the prior written consent of the OTS (acting through its Director or an authorized representative thereof) and any other "appropriate Federal financial institutions regulatory agency," for purposes of 12 U.S.C. § 1818(e)(7)(B)(ii), shall not:

(A) hold any office in, or participate in any manner in the conduct of the affairs of, any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A) (the "Paragraph (7)(A) Institutions"), including, but not limited to:

- (i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, trust companies, and other banking institutions;
- (ii) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings associations;
- (iii) any insured credit union under the Federal Credit Union Act, 12 U.S.C. §§ 1781 et seq.;
- (iv) any institution chartered under the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 et seq.;

(v) any appropriate Federal financial institutions regulatory agency, within the meaning of 12 U.S.C. § 1818(e)(7)(D);

(vi) the Federal Housing Finance Board and any Federal Home Loan Bank; and

(vii) the Resolution Trust Corporation.

(B) solicit, procure, transfer, attempt to transfer, vote or attempt to vote any proxy, consent or authorization with respect to any voting rights in any Paragraph (7)(A) Institution;

(C) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q); or

(D) vote for a director, ^{or} or serve or act as an "institution-affiliated party," as that term is defined at 12 U.S.C. § 1813(u), e.g., a director, officer, employee, controlling stockholder of, or agent for, an insured depository institution.

2. FREDERICK L. PESCE shall promptly and appropriately respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

3. Due to issuance of this Order, FREDERICK L. PESCE is a person "subject to an order in effect under subsection (e)" of FDIA Section 8 for purposes of Section 8(j) of the FDIA, 12 U.S.C. § 1818(j).

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

5. This Order is and shall become effective on the date it is issued, as shown in the caption 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.

OFFICE OF THRIFT SUPERVISION

By: 

Angelo A. Vigna
Regional Director, Northeast Region