

UNITED STATES OF AMERICA  
 Before the  
 OFFICE OF THRIFT SUPERVISION

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 In the Matter of: )  
 )  
 RICHARD KAYNE )  
 Former Director of )  
 Topa Savings Bank, )  
 Los Angeles, California )  
 \_\_\_\_\_ )

RE: OTS ORDER NO. SF-95-012  
 DATED: April 26, 1995

STIPULATION AND CONSENT TO ISSUANCE OF  
 AN ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the West Region ("Regional Director"), and Richard Kayne ("Kayne"), former director and institution-affiliated party of Topa Savings Bank, Los Angeles, California ("Topa"), hereby stipulate and agree as follows:

The OTS, based on information reported to it, is of the opinion that grounds exist to initiate administrative proceedings against Kayne pursuant to Section 8(i) of the Federal Deposit Insurance Act ("FDIA"), as amended, 12 U.S.C. 1818((i)).<sup>1</sup> Kayne desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Without admitting or denying that such grounds exist, except those contained in Paragraph 1

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

below, which are admitted, Kayne hereby stipulates and agrees to the terms of this Stipulation and Consent ("Stipulation") and to the issuance of the attached Order of Assessment of Civil Money Penalty ("Order").

The OTS, based on available evidence and testimony, has determined that it is appropriate and in the best interest of the public to execute this Stipulation and the attached Order.

This Stipulation and the Order do not compromise, settle, dismiss, resolve, or in any way affect any civil actions, charges against, or liability of Kayne that may be brought by any governmental entity other than the OTS.

1. Jurisdiction.

(a) Topa 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(u).

(b) At all times relevant hereto, Kayne has been a director of Topa and an institution-affiliated party of Topa, as defined at 12 U.S.C. 1813(u), having served in such capacities within six (6) years prior to the date of this Stipulation.

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. 1813(q), OTS is the "appropriate Federal banking agency" to maintain civil money penalty proceedings against institution-affiliated parties of Topa. Kayne is subject to the authority of the OTS to initiate and maintain such proceedings against him, pursuant to Section 8(i) of the FDIA, 12 U.S.C. 1818(i).

2. Consent. Kayne consents to the issuance by the OTS of the Order, a copy of which is attached hereto. Kayne further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all the requirements of law.

3. Finality. The Order is issued under Section 8(i)(2) of the FDIA, 12 U.S.C. 1818(i)(2). Upon issuance, it shall be a final order, effective and fully enforceable by the OTS or its successor under the provisions of Section 8(i) of the FDIA, 12 U.S.C. 1818(i), and subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. 1818(j).

4. Waivers.

(a) Kayne waives his right to a Notice of Assessment of Civil Money Penalty and right to an administrative hearing, as set forth in 12 U.S.C. 1818(i). Kayne further waives 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) Kayne waives any claim for attorney's fees or expenses under the Equal Access to Justice Act, 5 U.S.C. 504.

5. Indemnification. Kayne shall neither cause nor permit Topa, nor any subsidiary nor parent corporation thereof, to incur, directly or indirectly, any expense for the amount of the civil money penalty assessed under the Order of Assessment of Civil Money Penalty, or any legal or other professional expenses incurred relative to the negotiation and issuance of the Order. Kayne shall not obtain any indemnification or other reimbursement from Topa, or any subsidiary or parent corporation thereof, with respect to such amounts. Any payments received by or on behalf of Kayne in connection with his actions shall be returned to Topa.

6. Other Actions, Proceedings and Parties. This Stipulation and the accompanying Order are issued solely to settle this proceeding. By entering into this Stipulation, Kayne acknowledges

and agrees that:

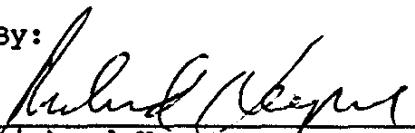
(a) The assessment or payment of the penalty contemplated as part of the resolution thereof, and Kayne's consent to the entry of the Order, is for the purpose of resolving this enforcement matter only.

(b) Kayne will not assert the assessment or payment of the penalty 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) Kayne's obligation to pay the civil money penalty shall not be dischargeable in bankruptcy under any circumstances.

WHEREFORE, Kayne executes this Stipulation, intending to be legally bound hereby.

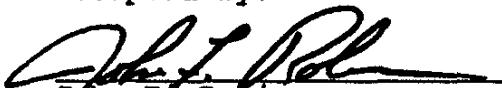
By:

  
Richard Kayne

Date:

2/24/95

Accepted by:

  
John F. Robinson  
West Regional Director  
Office of Thrift Supervision

Date:

April 6, 1995

**RICHARD KAYNE, STIPULATION AND  
CONSENT TO ISSUANCE OF AN ORDER  
OF ASSESSMENT OF CIVIL MONEY  
PENALTY**



(b) During June 1990 Topa negotiated an oral agreement with the securities firm of Bear Stearns, by which Bear Stearns would purchase the S-4 Certificate from Topa. The sale was to be for cash, and was to take place before June 30, 1990.

(c) Sometime between June 26 and 29, 1990, however, Bear Stearns informed Topa that it would not purchase the S-4 Certificate from Topa.

(d) On June 29, 1990, Topa's Chief Executive Officer ("CEO"), arranged for the sale of the S-4 Certificate to the Kayne Trust ("Trust"), a living trust of which Kayne's minor children were direct beneficiaries and of which Kayne was a contingent beneficiary with an interest of at least twenty-five percent.

(e) Between June 27, 1990 through June 29, 1990, the terms of the sale and financing of the S-4 Certificate were negotiated by Topa and the Trust.<sup>3</sup> Kayne was aware of and participated in these negotiations. Topa's CEO and the Trust agreed that the S-4 Certificate would be sold to the Trust in exchange for a promissory note in the amount of \$3,282,680 and a down payment of \$364,742.

(f) Kayne attended the June 27, 1990 Topa Board of

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<sup>3</sup> The terms to be provided to the Trust were preferential and included the following: a nonrecourse loan, no collateral except for the S-4 certificate, a non-market interest rate, and no fees assessed in creating the loan.

Directors ("Topa Board") meeting. At the meeting, the Topa Board unanimously adopted a resolution authorizing management to provide financing in conjunction with the sale of the S-4 Certificate. Kayne did not abstain from voting.

(g) Kayne violated Section 22(h) of the Federal Reserve Act, 12 U.S.C. § 375(b)(2)-(3) and 12 C.F.R. § 215.4 of its implementing regulations by failing to abstain from voting at the June 27, 1990 board meeting and by participating in negotiating preferential terms for the loan, which went to the Kayne Trust.

WHEREAS, Kayne has executed a Stipulation and Consent to Issuance of an Order for Assessment of Civil Money Penalty ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the OTS, acting by and through its West Regional Director; and

WHEREAS, without admitting or denying the statements, conclusions and opinions of the OTS contained herein, Kayne has consented and agreed in the Stipulation to the issuance of this Order of Assessment of Civil Money Penalty ("Order"); and

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue an order assessing a civil money penalty where the respondent has consented to the issuance of the order;

NOW, THEREFORE, THE OTS ORDERS AS FOLLOWS:

**ORDER OF ASSESSMENT OF  
CIVIL MONEY PENALTY**

1. Within ten (10) days of the date of this Order, Kayne shall pay a civil money penalty in the amount of Five Thousand Dollars (\$5,000). The amount shall be paid by tendering a certified or cashier's check, payable to the Treasurer of the United States, and sending the check, together with a cover letter stating the name of the savings association, the resolution number and a copy of this Order, to the following address:

Controller's Division  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, D.C. 20552

A copy of the cover letter and a copy of the check shall also be sent to Stephen E. Hart, Office of Thrift Supervision, 1700 G Street, N.W., Fifth Floor, Washington, D.C. 20552.

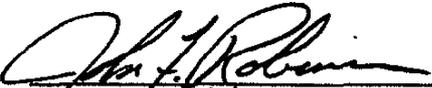
**GENERAL PROVISIONS**

2. All words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of

this Order, shall have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, the Home Owners' Loan Act and the FDIA, as amended.

3. This Order shall become effective on the date of issuance by the West Regional Director of the OTS, and shall remain in effect until the civil money penalty assessed hereby has been received by the OTS.

OFFICE OF THRIFT SUPERVISION

By:   
John F. Robinson  
West Regional Director  
Office of Thrift Supervision

Date: April 26, 1995