

OTS DOCKET # 3146

ORIGINAL

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of
WILLIAM S. MARTIN,
A Former Officer and Director
of
UNION FEDERAL SAVINGS BANK
Brea, California.

OTS Order No. SF-95-021

Date: October 31, 1995

STIPULATION AND CONSENT TO ORDER OF PROHIBITION
AND ORDER TO CEASE AND DESIST
DIRECTING RESTITUTION AND OTHER APPROPRIATE RELIEF

Respondent, William S. Martin ("MARTIN"), former President and Chairman of the Board of Union Federal Savings Bank, Brea, California ("Union Federal"), former Chairman of the Board of Uni-Cal Financial Corporation, and current director of Union Federal, hereby submits this Stipulation and Consent to Order of Prohibition and Order to Cease and Desist ("Consent") to the Office of Thrift Supervision of the United States Department of the Treasury ("OTS") in consideration of the OTS' forbearance from commencing an administrative proceeding against Martin on the matters set forth in the accompanying Order of Prohibition and Order to Cease and Desist ("Order").

The OTS is of the opinion that grounds exist to initiate an administrative proceeding requesting an Order of Prohibition and an Order to Cease and Desist Directing Restitution and Other Appropriate Relief ("Order") against MARTIN in accordance with Section 5(d)(1)(A) of the Home Owners' Loan Act of 1933 ("HOLA"), as amended by Title III of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA"), 12 U.S.C. § 1464(d)(1)(A)) (1994), Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), as amended by Title IX of FIRREA, 12 U.S.C. §§ 1818(b) and (e) (1994), and Sections 5(d)(2) and (4) of the HOLA, 12 U.S.C. §§ 1464(d)(2) and (4) (1988).¹

WHEREAS, MARTIN desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying the findings or conclusions of the OTS, except those as to the jurisdiction of the OTS as set forth in Paragraph 1 below which are admitted, and in accordance with Rule 408 of the Federal Rules of Evidence and without trial, hearing or any adjudication on the merits, hereby stipulates and agrees to the following terms:

1. All references in this Stipulation and Consent and in the accompanying Order are to the United States Code as amended.

1. Jurisdiction.

(a) The Association is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) (1994), and Section 2(4) of the HOLA, 12 U.S.C. § 1462(4) (1994). 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) (1994).

(b) MARTIN, as a former President and Chairman of the Board of Union Federal Savings Bank and former Chairman of the Board of its service corporation subsidiary, Uni-Cal Financial Corporation, and current Director of Union Federal is a "person participating in the affairs" and an "institution-affiliated party" of the Association as those terms are defined in 12 U.S.C. §§ 1464(d)(2)(A), (d)(2)(C) and (d)(4) (1988) and 12 U.S.C. § 1813(u) (1994).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q) (1994), the OTS is the "appropriate Federal banking agency" to maintain an administrative enforcement proceeding against MARTIN. MARTIN admits that he is subject to the authority of the OTS to initiate and maintain an administrative proceeding requesting an Order against him pursuant to Sections 8(b) and (e) of the FDIA, 12 U.S.C. §§ 1818(b) and (e) (1994).

2. Consent. MARTIN consents to the issuance by the OTS of the accompanying Order. He further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.

3. OTS Findings of Fact. The OTS, based upon information discovered during the course of its formal examination, finds as follows:

(a) that from approximately March 1987 through December 1990 MARTIN violated OTS regulations, engaged in unsafe and unsound conduct, and breached duties owed to Union Federal while serving in a fiduciary capacity, in connection with transactions between Uni-Cal and/or Union Federal and a borrower/developer (or one of his affiliated entities) who served as a Uni-Cal joint venture partner during the period 1985-1990 relating to certain development projects in Key West, Florida, including but not limited to:

(b) approving and participating in a series of improper loan transactions in Key West, Florida; authorizing and/or approving major loans, extensions of credit, forbearances, loan modifications, loan guarantees, and/or releases of collateral that had the effect of masking millions of dollars of losses or covering up the failing financial condition of the borrower and the status of development projects for which the loans were made; entering into transactions with the borrower and/or his affiliated entities without obtaining required loan committee or Board of Directors' approval; engaging in acts that enabled the borrower to use millions of dollars of disbursed construction loan funds for purposes not intended and failing to adhere to and enforce internal controls, policies, practices and procedures that would have avoided losses incurred by Union Federal and/or Uni-Cal in connection with these and related transactions.

4. Acknowledgment. MARTIN acknowledges and agrees that he enters into this Consent willingly and without coercion or promises of any kind from the OTS or any officer, attorney, agent, or employee thereof.

5. Financial Disclosure. The OTS has determined that it is appropriate, and in the best interest of the public, to execute this Consent and the attached Order. The OTS determination is based upon available evidence and testimony and, in part, is in reliance upon the financial statements submitted by MARTIN in response to an OTS formal examination subpoena duces tecum. The OTS determination is also based, in part, on Martin's representations hereby that his current financial condition is materially unchanged from that reflected in his September 25, 1994 financial statement. MARTIN acknowledges and agrees that should the OTS discover or learn that Martin has failed to comply with the terms of this Consent and accompanying order, or that the financial representations made by him to the OTS were materially false or misleading (including but not limited to the failure to identify and/or properly value any material asset or liability), the OTS reserves the right to take any action authorized by law, including but not limited to voiding this settlement and seeking imposition of civil money penalties pursuant to 12 U.S.C. § 1818(i) (1994).

6. Finality. MARTIN stipulates that the Order is issued by the OTS under the authority of Sections 8(b) and (e) of the FDIA, 12 U.S.C. §§ 1818(b) and (e) (1994), and that upon its issuance, the Order shall become effective and fully enforceable

by the OTS (or by its successor(s) or an appropriate Federal Banking Agency) under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i) (1994).

7. Waivers. MARTIN hereby waives the following:

(a) the right to be served with a written notice of the OTS's charges against him (see Sections 8(b) and (e) of the FDIA);

(b) the right to an administrative hearing of the OTS's charges against him (see Sections 8(b) and (e) of the FDIA);

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h) (1994), or otherwise to challenge the validity of the Order; and

(d) 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.

8. Indemnification. MARTIN shall neither cause nor permit the Association or its affiliated service corporations to incur, directly or indirectly, any expense for any legal or other (professional) expenses incurred relative to the negotiation and issuance of the Order and obtain any indemnification (or other reimbursement) from the Association or its affiliated service corporations with respect to such amounts. Any such payments received by or on behalf of the Respondent in connection with this action shall be returned to the Association.

9. Cooperation. MARTIN agrees to cooperate with the OTS, to the extent consistent with his rights under the Constitution of the United States, by providing truthful and complete information, upon request, concerning matters relating to this investigation.

10. Bankruptcy. In any bankruptcy proceeding in which MARTIN's obligation to pay restitution pursuant to this Consent and Order is subject to discharge, MARTIN will in no manner contest the OTS' assertions that the obligation for reimbursement in the Order arise out of the facts that have resulted in claims not dischargeable in bankruptcy under 11 U.S.C. §§ 523(a)(4) and (11) or otherwise.

11. Other Government Actions Not Affected. This Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist Directing Restitution and Other Appropriate Relief, the accompanying Order, and MARTIN's compliance with the Order, do not compromise, settle, dismiss, resolve, or in any way affect:

(a) any charges or potential actions arising from the Association as they might pertain to any entity or person other than MARTIN. The OTS expressly reserves its rights to initiate and maintain administrative proceedings against any such other entity or person;

(b) any civil or criminal claims, actions, or charges against or liability of MARTIN or any other individual or entity asserted by any governmental entity other than the OTS;

(c) any claims or action that may be brought against MARTIN by any individual or entity other than the OTS.

12. Acknowledgment of Criminal Sanctions.

MARTIN acknowledges that Section 8(j) of the FDIA, 12 U.S.C. 1818(j), sets forth criminal penalties for knowing violations of this Order.

WHEREFORE, MARTIN executes this Stipulation and Consent to Order of Prohibition and Order to Cease and Desist Directing Restitution and Other Appropriate Relief, intending to be legally bound hereby.

By:


 WILLIAM S. MARTIN

Date:

10-31-95

Accepted by:

Office of Thrift Supervision


 JOHN F. ROBINSON
 Regional Director
 West Region

Date: _____

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By:

WILLIAM S. MARTIN

Date: _____

Accepted by:

Office of Thrift Supervision



JOHN F. ROBINSON
Regional Director
West Region

Date:

*November 14, 1995, effective
as of October 31, 1995*

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
WILLIAM S. MARTIN,)
A Former Officer and Director of)
UNION FEDERAL SAVINGS BANK)
Brea, California.)

OTS Order No. SF-95-021
Date: October 31, 1995

ORDER OF PROHIBITION AND ORDER
TO CEASE AND DESIST DIRECTING
RESTITUTION AND OTHER APPROPRIATE RELIEF

WHEREAS, WILLIAM S. MARTIN ("MARTIN") has executed a Stipulation and Consent to an Order of Prohibition and Order to Cease and Desist with Restitution and Other Appropriate Relief ("Consent") that is accepted and approved by the OTS;

WHEREAS, MARTIN, by his execution of the Consent, has agreed to the issuance of this Order of Prohibition and Order to Cease and Desist Directing Restitution and Other Appropriate Relief ("Order") by the Office of Thrift Supervision ("OTS"), in accordance with Section 5(d)(1)(A) of the Home Owners' Loan Act of 1933 ("HOLA"), as amended by Title III of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA"), 12 U.S.C. §

1464(d)(1)(A)) (1994), Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), as amended by Title IX of FIRREA, 12 U.S.C. §§ 1818(b) and (e) (1994), and Sections 5(d)(2) and (4) of the HOLA, 12 U.S.C. §§ 1464(d)(2) and (4) (1988);

WHEREAS, the OTS is of the opinion that, as a result of the aforementioned actions or omissions, MARTIN violated applicable laws and regulations, engaged in unsafe and unsound conduct, and has committed or engaged in breaches of fiduciary duty; and that the OTS further has grounds to demonstrate that MARTIN's conduct resulted in financial losses and damages to Union Federal, and that said conduct demonstrated willful and continuing disregard for Union Federal's safety and soundness, and that by virtue of this conduct he has acted in reckless disregard for the law;

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Director of the OTS the authority to issue Orders on behalf of the OTS where the Respondent has consented to the issuance of the Order.

NOW THEREFORE, IT IS ORDERED that:

PROHIBITION ORDER

1. MARTIN is prohibited from further participation, in any manner, in the conduct of the affairs of Union Federal Savings Bank, Brea, California, and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. MARTIN 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 Sections 8(e)(6) and 8(e)(7) of the FDIA, 12 U.S.C. §§ 1818(e)(6) and 1818(e)(7), MARTIN, 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 Section 8(e)(7)(B)(ii) of the FDIA, 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 any agency specified in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A) ("Covered Institution"), including:

(i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, state banks, trust companies, and other banking institutions;

(ii) any institution treated as an insured bank under Section 8(b)(3) and 8(b)(4) of the FDIA, 12 U.S.C. §§ 1818(b)(9) of the FDIA, 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 197, 12 U.S.C. §§ 2001 et seq.;

(v) any appropriate Federal depository institution regulatory agency, within the meaning of Section 8(e)(7)(A)(v) of the FDIA, 12 U.S.C. §§ 1818(e)(7)(A)(v);

(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 Covered Institution;

(C) violate any voting agreement previously approved by the "appropriate Federal bank agency" within the meaning of Section 3(q) of the FDIA, 12 U.S.C. § 1813(q); or

(D) vote for a director, or serve or act as an "institution-affiliated party", as that term is defined at Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), e.g., a director, officer, employee, controlling stockholder of, or agent for, an insured depository institution.

ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

4. (a) MARTIN, in order to remedy conditions resulting from the aforementioned regulatory violations and unsafe or unsound practices, and based upon his sworn statement of financial condition and other relevant factors, shall pay restitution to UNION FEDERAL SAVINGS BANK in the amount of \$750,000 in the form of a cashier's check payable to the order of Union Federal Savings Bank by no later than November 6, 1995.

The above-described restitution payment shall be mailed or delivered to the Controller or Treasurer of Union Federal Savings Bank, 330 East Lambert, Brea, California 92622, or in the event the institution no longer exists, to the Controller or Treasurer of its successor(s), or to an appropriate Federal Banking Agency. Copies of the respective payment checks and any accompanying transmittal correspondence shall be sent contemporaneously to Eliot Goldstein, Esq., c/o OTS Enforcement Division, 1700 G Street, N.W. Washington, D.C. 20552.

(b) The restitution obligations of this paragraph are imposed on MARTIN pursuant to 12 U.S.C. § 1818(b) (1994).

5. The Consent is accepted and approved by the OTS, acting through its Regional Director for the West Region and is made a part hereof and incorporated herein by this reference.

6. Notice is hereby provided that this Order is subject to the provisions of Section 8(i) and 8 (j) of the FDIA, 12 U.S.C. §§ 1818(i) and (j) (1994) and that a violation of this Order could subject MARTIN to the penalties specified therein.

7. MARTIN shall promptly respond to any reasonable request from the OTS or its successor(s) or other appropriate Federal Banking Agency for documents to demonstrate compliance with this Order.

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

THE OFFICE OF THRIFT SUPERVISION

By:



JOHN F. ROBINSON
Regional Director
West Region