

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
JOHN A. GUIDINGER)
)
Former Vice President and)
Institution Affiliated Party of)
)
METROPOLITAN FEDERAL BANK, fsb)
FARGO, NORTH DAKOTA)

Re: OTS Order No. KC-94-01

Dated: January 27, 1994

ORDER OF PROHIBITION

WHEREAS, JOHN A. GUIDINGER has executed a Stipulation and Consent to Entry of an Order of Prohibition ("Stipulation"); and

WHEREAS, JOHN A. GUIDINGER, by his execution of the Stipulation, has consented and agreed to the issuance of this Order of Prohibition ("Order") by the Office of Thrift Supervision ("OTS"), pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e).

NOW THEREFORE, IT IS ORDERED that:

1. JOHN A. GUIDINGER is prohibited from further participation, in any manner, in the conduct of the affairs of Metropolitan Federal Bank, fsb, 215 North Fifth Street, Fargo, North Dakota, OTS No. 01242 ("the Association"), and any holding company, subsidiary, and/or service corporation thereof.
2. JOHN A. GUIDINGER shall not hold any office in, or participate in any manner in the conduct of the affairs of any Federally regulated depository institution or the other entities that are

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METROPOLITAN FEDERAL BANK, fsb)
FARGO, NORTH DAKOTA)
(DOCKET NO. 01242))

Re: OTS Order No. KC-94- 01

Dated: January 27, 1994

STIPULATION AND CONSENT TO
ENTRY OF AN ORDER OF PROHIBITION

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed JOHN A. GUIDINGER, former Vice President of Metropolitan Federal Bank, fsb, 215 North Fifth Street, Fargo, North Dakota, OTS No. 01242 ("the Association"), that the OTS is of the opinion that the grounds exist to initiate an administrative prohibition proceeding against JOHN A. GUIDINGER pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e)¹; and

WHEREAS, JOHN A. GUIDINGER desires to cooperate with the OTS to avoid the time and expense of such administrative litigation and, hereby stipulates and agrees to the following terms:

1. Jurisdiction & Facts

- (a) The Association is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b),

1. All references in this Stipulation and Consent and the Order of Prohibition to the U.S.C. are as amended.

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) JOHN A. GUIDINGER was a Vice President of the Association and is an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), having served in such capacity within six years of the date hereof (see 12 U.S.C. § 1818(i)(3)).

(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 an enforcement proceeding against such a savings association and/or its institution-affiliated parties. Therefore, JOHN A. GUIDINGER is subject to the authority of the OTS to initiate and maintain a prohibition proceeding against him pursuant to Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

2. OTS Findings of Fact. During 1991 and 1992, JOHN A. GUIDINGER, in his capacity as a vice president and loan officer of the Association, knowingly granted a series of unsecured commercial business loans to two individuals which were, in fact, nominee loans for the benefit of an existing troubled borrower. The majority of the loan proceeds were utilized with JOHN A. GUIDINGER'S knowledge for the direct or indirect benefit of a construction company and its principal shareholders, who had substantial outstanding and past due loans at the Association. The subject loans contravened the Association's stated business

strategy and were made without obtaining loan applications from the borrowers; in violation of 12 C.F.R. Section 563.170(c). Moreover, JOHN A. GUIDINGER purposefully concealed and omitted material information concerning these loan transactions from senior management of the Association for a period in excess of one year, during which time he continued to grant additional disbursements to the borrowers.

JOHN A. GUIDINGER'S actions resulted in numerous violations of regulations relating to loan file documentation, were clearly unsafe and unsound, and constitute a breach of his fiduciary duty to the Association. His conduct in concealing his actions from the Association evidences personal dishonesty. JOHN A. GUIDINGER'S failure to abide by existing institution business strategy and his determination to continue funding the activities of the construction company, even though it was already delinquent and past due on substantial loans to the Association, through unsecured and inadequately documented commercial loans to nominee borrowers demonstrates a willful and continuing disregard for the safety and soundness of the Association. By reason of such breaches, violations, and unsafe and unsound practices, the Association has suffered substantial financial loss.

3. Consent. JOHN A. GUIDINGER consents to the issuance by the OTS of the accompanying Order of Prohibition ("Order"). He further agrees to comply with its terms upon issuance and stipulates that the Order 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 Regional Director or designee for the Midwest 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).
5. Waivers. JOHN A. GUIDINGER waives the following:
 - (a) the right to be served with a written notice of the OTS's charges against him (referred to as a Notice of Intention to Prohibit) (see Section 8(e) of the FDIA);
 - (b) the right to an administrative hearing of the OTS's charges against him (see Section 8(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), 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.
6. Indemnification. JOHN A. GUIDINGER shall neither cause or permit the Association (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 of Prohibition, nor obtain any indemnification (or other reimbursement) from the Association (or any subsidiary thereof) 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.

7. Other Government Actions Not Affected. JOHN A. GUIDINGER acknowledges and agrees that the consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of JOHN A. GUIDINGER that arise pursuant to this action or otherwise, and that may be or have been brought by any other government entity other than the OTS.
8. Acknowledgment of Criminal Sanctions. JOHN A. GUIDINGER 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, JOHN A. GUIDINGER executes this Stipulation and Consent to Entry of an Order of Prohibition, intending to be legally bound hereby.

By:

/s/

JOHN A. GUIDINGER /

Date: January 17, 1994

Accepted by:

OFFICE OF THRIFT SUPERVISION

/s/

Frederick R. Casteel
Regional Director
Midwest Region

Date: 1-27-94