

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)	Order No.: ATL-2004-27
)	ATL-2004-28
RIVER VALLEY FINANCIAL BANK)	Date: September 27, 2004
Madison, Indiana)	
)	
OTS Docket No.: 01856)	

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF
AND AN 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, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding for affirmative relief and the assessment of a civil money penalty against River Valley Financial Bank, Madison, Indiana, OTS Docket No. 01856 (River Valley or Bank) pursuant to Sections 8(b) and (i) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(b) and (i),¹ and Section 102 of the Flood Disaster Protection Act of 1973 (FDPA), 42 U.S.C. § 4012a(f); and

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

WHEREAS, River Valley enters into this Stipulation and Consent to Issuance of an Order to Cease and Desist For Affirmative Relief and an Order of Assessment of Civil Money Penalties (Stipulation) (i) without any adjudication on the merits, (ii) without

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

admitting or denying that grounds exist to initiate an administrative cease and desist proceeding, (iii) without admitting or denying the Findings of Fact, except as to Jurisdiction (Paragraph 1 below), which jurisdiction is admitted, and (iv) solely for the purpose of settling this matter in accordance with Rule 408 of the Federal Rules of Evidence and equivalent state provisions.

NOW, THEREFORE, on these premises, River Valley hereby stipulates and agrees as follows:

1. Jurisdiction.

a. River Valley 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 (HOLA), 12 U.S.C. § 1462(4). Accordingly, River Valley is an “insured depository institution” as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

b. 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” with jurisdiction to maintain an administrative cease and desist proceeding and to assess civil money penalties against such a savings association. Therefore, the Bank is subject to the jurisdiction of the OTS to initiate and maintain cease and desist and civil money penalty assessment proceedings against it pursuant to Sections 8(b) and (i) of the FDIA, 12 U.S.C. §§ 1818(b) and (i). The Director of the OTS has delegated to the Regional Director of the Southeast Region of the OTS or his/her designee (Regional Director) the authority to issue cease and desist orders and civil money penalty assessment orders where the association has consented to the issuance of the orders.

c. River Valley is a “regulated lending institution” within the meaning of Section 3(a)(10) of the FDPA, 42 U.S.C. § 4003(a)(10).

d. The OTS is the “appropriate Federal entity for lending regulation” within the meaning of Section 3(a)(5) of the FDPA, 42 U.S.C. § 4003(a)(5). For purposes of enforcing Section 102 of the FDPA, 42 U.S.C. § 4012a, against such an institution, the OTS has jurisdiction over River Valley and the subject matter of this administrative enforcement proceeding.

2. OTS Findings of Fact.

a. The OTS finds that River Valley, in cooperation with the OTS, has proposed to make and has already made substantial corrective actions and changes to improve its compliance program and systems (Compliance Program) following the issuance of the OTS February 9, 2004 Report of Examination (2004 Examination), which cited the Bank for statutory and regulatory violations, as well as deficiencies in the Bank’s Compliance Program.

b. The OTS finds that the Bank has engaged in certain unsafe and unsound practices and violated various laws and regulations to which the Bank is subject, as outlined in detail in the 2004 Examination. Such violations and Compliance Program deficiencies include those related to the Bank Secrecy Act (BSA),² the FDPA,³ the Homeowners Protection Act (HOEPA),⁴ and the Truth in Lending Act (TILA).⁵ Notwithstanding the Bank’s cooperation and corrective actions, the OTS has determined

² 31 U.S.C. § 5301 et seq.

³ 42 U.S.C. § 4001 et seq.

⁴ 12 U.S.C. § 4903 et seq.

⁵ 15 U.S.C. § 1601 et seq.

that additional action is required to fully address and correct the regulatory violations and deficiencies noted in the Bank's Compliance Program.

c. River Valley has failed to comply with the FDPA⁶ and the OTS implementing regulations, 12 C.F.R. Part 572. Specifically, the OTS finds that the Bank (i) failed to obtain or maintain adequate flood insurance coverage as required by Section 102(e) of the FDPA, 42 U.S.C. § 4012a(e) and 12 C.F.R. § 572.3(a); (ii) failed to timely complete and retain copies of standard flood hazard determination forms as required by 12 C.F.R. § 572.6(b); and (iii) failed to provide flood notices to borrowers and loan servicers as required by Section 102(e)(1) of the FDPA, 42 U.S.C. § 4012a(e)(1) and 12 C.F.R. § 572.9(a). One or more of the above violations were present in each of four (4) loans. The OTS finds that the above-described actions constitute a pattern or practice of violations under Section 102(f)(1) of the FDPA, 42 U.S.C. § 4012a(f)(1). Accordingly, the OTS believes that a civil money penalty of One Thousand Four Hundred Dollars (\$1,400.00) should be assessed under the FDPA.

3. Consent.

River Valley consents to the issuance by the OTS of the accompanying Consent Order to Cease and Desist for Affirmative Relief (C&D Order) and the accompanying Order of Assessment of Civil Money Penalties (CMP Order) (both Orders sometimes collectively referred to as "the Orders"). The Bank further agrees to comply with the terms of the Orders upon issuance and stipulates that the Orders comply with all requirements of law.

⁶ 42 U.S.C. § 4001 – 4128.

4. Finality.

The Orders are issued pursuant to Sections 8(b) and (i) of the FDIA, 12 U.S.C. §§ 1818(b) and (i), and Sections 102(f)(1) and 102(f)(5) of the FDPA, 42 U.S.C. §§ 4012a(f)(1) and (f)(5). Upon their issuance by the Regional Director, each 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) and Section 102(f) of the FDPA, 42 U.S.C. §4012a(f).

5. Waivers.

River Valley waives the following:

- a. the right to be served with a written notice of the OTS's charges against it as provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and the right to be served with any written notice of the OTS's assessment of civil money penalties against it as provided by Section 8(i) of the FDIA, 12 U.S.C. § 1818(i); Section 102(f)(4) of the FDPA, 42 U.S.C. § 4012a(f)(4); and 12 C.F.R. Part 509;
- b. the right to an administrative hearing of the OTS's charges against it as provided by Sections 8(b) and (i) of the FDIA, 12 U.S.C. § 1818(b) and (i);
- c. the right to seek judicial review of the C&D Order or the CMP Order or both, including, without limitation, any such right provided by Section 8(h) or (i) of the FDIA, 12 U.S.C. §§ 1818(h) and (i), or otherwise to challenge the validity of the Orders;
- d. any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Orders, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and

e. the right to assert this proceeding, its consent to the issuance of the Orders or the issuance of the Orders, 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.

6. Other Governmental Actions Not Affected.

a. Upon the OTS's issuance of the accompanying Orders, following the OTS's acceptance of this Stipulation executed by River Valley, the OTS does release and discharge River Valley from all potential claims and charges that have been or might have been asserted by the OTS, based upon the alleged violations described in the Findings of Fact set forth in Paragraph 2 of this Stipulation, to the extent known to the OTS as of the effective date of the accompanying Orders. However, the violations alleged above in Paragraph 2 of this Stipulation may be utilized by the OTS in future enforcement actions to establish a pattern or practice of violations or the continuation of a pattern or practice of violations. This release shall not preclude or affect any right of the OTS to determine and ensure compliance with the terms and provisions of this Stipulation and the accompanying Orders.

b. River Valley acknowledges and agrees that its consent to the issuance of the accompanying Orders is solely for the purpose of resolving certain potential OTS administrative charges as provided by Paragraph 6(a) above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, liability, or other administrative, civil, or criminal proceeding that may arise pursuant to this action or otherwise, and that may be or have been brought by the OTS or another governmental entity.

7. Reservation of Rights.

River Valley acknowledges that the OTS reserves the right to bring such additional action(s), charge(s), or proceeding(s) arising from or related in any way to the Findings of Fact or any other matter, as the OTS deems appropriate, in its sole discretion.

8. Agreement for Continuing Cooperation.

River Valley agrees that, on reasonable notice and without service of a subpoena, it will promptly respond to any written request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with the Orders. River Valley agrees to cooperate with the OTS or any other federal agency in any review requested by the OTS or any other federal government agency, or in any investigation, litigation, or other proceeding relating to River Valley, its holding company, subsidiaries, service corporations, or institution-affiliated parties.

9. Miscellaneous.

- a. The construction and validity of this Stipulation and the Orders shall be governed by the laws of the United States of America.
- b. If any provision of this Stipulation and the Orders is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.
- c. All references to the OTS in this Stipulation and the Orders shall also mean any of the OTS's predecessors, successors, and assigns.

d. The section and paragraph headings in this Stipulation and the Orders are for convenience only, and such headings shall not affect the construction or interpretation of this Stipulation or the Orders.

e. The terms of this Stipulation and the Orders represent the final 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.

f. This Stipulation and the Orders shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Deputy Director, Regional Director, or other authorized representative.

9. Signature of Directors.

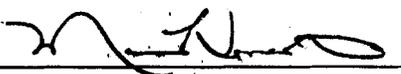
Each Director signing this Stipulation attests that he/she voted in favor of a resolution authorizing the execution of the Stipulation.

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WHEREFORE, River Valley, by a majority of its directors, executes this Stipulation intending to be legally bound hereby.

RIVER VALLEY FINANCIAL BANK
Accepted by a majority of its directors:

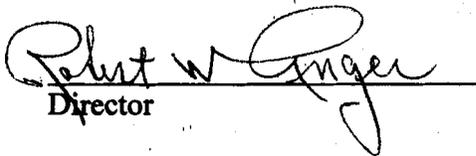
OFFICE OF THRIFT SUPERVISION

By: 
Director

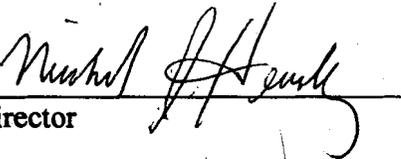

John E. Ryan
Regional Director


Director

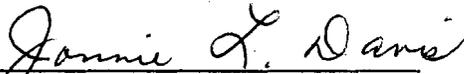
Dated: 9/27/04


Director


Director


Director


Director


Director

the subject of the Order has consented to the issuance of the Order.

NOW THEREFORE, IT IS ORDERED that:

1. Within ten (10) calendar days after the date of this CMP Order, River Valley shall pay the sum of One Thousand Four Hundred Dollars (\$1,400.00) by tendering a certified check or bank draft made payable to the order of the National Flood Insurance Program - Mitigation Fund, together with a copy of the executed CMP Order and a cover letter referencing River Valley Financial Bank, Madison, Indiana, OTS Docket No. 01856, to the following address: 7700 Hubble Drive, Lanham, Maryland 20706. A copy of the certified check or bank draft and the cover letter shall be provided by U.S. Mail or overnight courier to Karen Bruton, Regional Counsel, Office of Thrift Supervision, 1475 Peachtree St., N.E., Atlanta, GA 30309.

MISCELLANEOUS PROVISIONS

2. Definitions.

All technical words or terms used in this CMP Order and the Stipulation for which meanings are not specified or otherwise provided by the provisions of this CMP Order shall, insofar as applicable, have meanings as defined in the FDIA or FDPA. Any such technical words or terms used in this CMP Order and the Stipulation and undefined in said FDIA or FDPA shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

3. Successor Statutes, Regulations, Guidance, and Amendments.

Reference in this CMP Order and the Stipulation to provisions of statutes, regulations, and OTS Publications shall be deemed to include references to all amendments to such provisions as have been made as of the effective date of this CMP

via overnight delivery service or physically delivered, in each case addressed to River Valley's Board at 430 Clifty Dr., Madison, Indiana 47250 or telecopied to 812.265.3958 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.

- b. Notices hereunder shall be effective upon receipt, if by mail, overnight delivery service, or telecopy, and upon delivery, if by physical delivery. If there

is a dispute about the date on which a written notice has been received by a party to this CMP Order, then, in the event such notice was sent by the United States mail, there shall be a presumption that the notice was received two business days after the date of the postmark on the envelope in which the notice was enclosed.

5. Duration, Termination or Suspension of Order.

This CMP Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the CMP Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Deputy Director, Regional Director, or other authorized representative.

THE OFFICE OF THRIFT SUPERVISION

By:


John E. Ryan
Regional Director