

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)

HORIZON BANK, FSB)
Pembroke Pines, Florida)
OTS Docket No. 15318)
_____)

Order No.: **ATL-2004-29**

Dated: **October 1, 2004**

STIPULATION AND CONSENT TO ISSUANCE OF
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 administrative civil money penalty assessment proceedings against Horizon Bank, FSB, Pembroke Pines, Florida, OTS Docket No. 15318 (Horizon or Bank) pursuant to Section 8(i) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(i)¹, and Section 102 of the Flood Disaster Protection Act of 1973 (FDPA), 42 U.S.C. § 4012a(f); and

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

WHEREAS, Horizon enters into this Stipulation and Consent to Issuance of an Order of Assessment of Civil Money Penalties (Stipulation) (i) without any adjudication on the merits, (ii) without admitting or denying the Findings of Fact, except as to Jurisdiction (Paragraph 1 below), which jurisdiction is admitted, and (iii) solely for the purpose of settling this matter in

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

accordance with Rule 408 of the Federal Rules of Evidence and equivalent state provisions.

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

1. Jurisdiction.

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

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

(d) 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, OTS has jurisdiction over Horizon and the subject matter of this administrative enforcement proceeding.

2. OTS Findings of Fact.

Horizon has failed to comply with the FDPA, 42 U.S.C. §§ 4001-4128, and OTS implementing regulations, 12 C.F.R. Part 572. Specifically, the OTS finds that Horizon failed to obtain and retain documentation adequate to support the replacement value of the security property on eight (8) condominium loans as required by Section 102(e) of the FDPA, 42 U.S.C. § 4012a(e) and 12 C.F.R. § 572.3(a); and failed to provide timely and complete flood notices to borrowers with loans secured by properties located in a flood zone requiring flood insurance on five (5) condominium loans as required by Section 102(e)(1) of the FDPA, 42 U.S.C. § 4012a(e)(1) and 12 C.F.R. § 572.9. Three (3) of the thirteen (13) loans referenced above involved violations of both these statutory and regulatory mandates. 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, OTS believes that a civil money penalty of Three Thousand Five Hundred Dollars (\$3,500.00) should be assessed under the FDPA.

3. Consent.

Horizon consents to the issuance by OTS of the accompanying Order of Assessment of Civil Money Penalties (Order). Horizon further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality.

The Order is issued pursuant to Section 8(i) of the FDIA, 12 U.S.C. § 1818(i), and Sections 102(f)(1) and 102(f)(5) of the FDPA, 42 U.S.C. §§ 4012a(f)(1) and 4012a(f)(5). Upon its issuance by the Regional Director or designee for the Southeast Region, OTS, it shall be a final Order, effective and fully enforceable by 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.

Horizon waives the following:

(a) the right to be served with any written notice of OTS's assessment of civil money penalty against it (see 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 OTS's charges against it (see Sections 8(i) of the FDIA, 12 U.S.C. § 1818(i)).

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

(d) the right to assert this proceeding, this consent to issuance of the Order, and/or the issuance of the Order, the payment of any monies, or the provision of any other financial relief as contemplated by the Order, 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; and

(e) any and all claims against 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 Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412.

6. Scope of Release; Other Governmental Actions Not Affected.

(a) Upon OTS's issuance of the accompanying Order, following OTS's acceptance of this Stipulation executed by Horizon, OTS does release and discharge Horizon from all potential

claims and charges that have been or might have been asserted by OTS, based on the alleged violations described in the Findings of Fact set forth in Paragraph 2 of this Stipulation, to the extent known to OTS as of the effective date of the accompanying Order. However, the violations alleged above in Paragraph 2 of this Stipulation may be utilized by 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 OTS to determine and ensure compliance with the terms and provisions of this Stipulation and the accompanying Order.

(b) Horizon acknowledges and agrees that its consent to the issuance of the accompanying Order is solely for the purpose of resolving certain potential OTS administrative enforcement 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 arise pursuant to this action or otherwise, and that may be or have been brought by another governmental entity.

7. Agreement for Continuing Cooperation.

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

8. 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) If any provision of this Stipulation and the Order 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 OTS in this Stipulation and the Order shall also mean any of OTS's predecessors, successors, and assigns;

(d) 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;

(e) The terms of this Stipulation and the Order 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; and

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

9. Signature of Directors.

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

WHEREFORE, Horizon, by a majority of its directors, executes this Stipulation

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)

HORIZON BANK, FSB)
Pembroke Pines, Florida)
OTS Docket No. 15318)

Order No.: **ATL-2004-29**

Dated: **October 1, 2004**

ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES

WHEREAS, Horizon Bank, FSB, Pembroke Pines, Florida, OTS Docket No. 15318 (Horizon or Bank), by and through its Board of Directors (Board), has executed a Stipulation and Consent to Issuance of an Order of Assessment of Civil Money Penalties (Stipulation); and

WHEREAS, Horizon, by executing the Stipulation, has consented and agreed to the issuance of this Order of Assessment of Civil Money Penalties (Order) by the Office of Thrift Supervision (OTS), pursuant to Section 8(i) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(i),¹ and Section 102(f) of the Flood Disaster Protection Act of 1973 (FDPA), 42 U.S.C. § 4012a(f); and

WHEREAS, the Deputy Director of the OTS, pursuant to delegated authority, has delegated to the Regional Directors of the OTS the authority to issue Orders of Assessment of Civil Money Penalties on behalf of the OTS where the institution that is the subject of the Order has consented to the issuance of the Order.

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

NOW THEREFORE, IT IS ORDERED that:

1. Within ten (10) calendar days of the date of this Order, Horizon shall pay the sum of Three Thousand Five Hundred Dollars (\$3,500.00) 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 Order and a cover letter referencing Horizon Bank, FSB, Pembroke Pines, Florida, OTS Docket No. 15318, 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 Street, N.E., Atlanta, GA 30309.

MISCELLANEOUS PROVISIONS

2. Definitions.

All technical words or terms used in this Order and the Stipulation for which meanings are not specified or otherwise provided by the provisions of this Order shall, insofar as applicable, have meanings as defined in the FDIA. Any such technical words or terms used in this Order and the Stipulation and undefined in said FDIA 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 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 Order, and references to successor provisions as they become applicable.

4. Notices.

(a) Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by the Order to be made upon, given or furnished to, delivered to, or filed with:

(i) OTS by Horizon, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Regional Director, Office of Thrift Supervision, Department of the Treasury, 1475 Peachtree Street, N.E., Atlanta, GA 30309 or telecopied to 404.897.1861 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.

(ii) Horizon by OTS, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, or sent via overnight delivery service or physically delivered, in each case addressed to Horizon Bank's Board at 1851 NW 125th Avenue, Suite 100, Pembroke Pines, Florida 33028 or telecopied to 954.433.5789 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 Order, then, in the event such notice was sent by the United

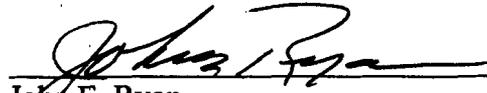
States mail, there shall be a presumption that the notice was received two business days after the date of the postmark on the envelope in which the notice was enclosed.

5. Duration, Termination or Suspension of Order.

This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the 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
Southeast Regional Director