

**UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION**

In the Matter of)
)
DONALD C. STROUP,)
)
A Former Officer and Director of)
)
First Federal of the South,)
Sylacauga, Alabama)
(OTS No. 05329))

Re: Order No. ATL-2004- 33
and
Order No. ATL-2004- 34

Dated: November 15, 2004

**STIPULATION AND CONSENT TO ISSUANCE
OF AN ORDER TO CEASE AND DESIST
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, has informed Donald C. Stroup ("STROUP"), formerly the President and Chief Executive Officer of First Federal of the South, Sylacauga, Alabama ("First Federal"), that the OTS is of the opinion that grounds exist to initiate administrative enforcement proceedings against STROUP pursuant to 12 U.S.C. § 1818,¹ and

WHEREAS, STROUP, desiring to cooperate with the OTS and to avoid the time and expense of such administrative proceedings and, without admitting or denying that such grounds exist or the OTS Findings of Fact (in Paragraph 2 below), but admitting that the OTS has Jurisdiction to issue this Order (as addressed in Paragraph 1 below), hereby stipulates and agrees to the following:

1. Jurisdiction.

(a) First Federal is, and at all times relevant hereto has been, a "savings association" within the meaning of 12 U.S.C. §§ 1462(4) and 1813(b). Accordingly, First Federal is and has been an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c).

(b) STROUP, having been an officer of First Federal at all times relevant hereto, is an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u).

(c) Pursuant to 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking

¹ All references in this Stipulation and Consent to Issuance of an Order to Cease and Desist and an Order of Assessment of Civil Money Penalties ("Stipulation") and the related Orders are to the United States Code as amended.

agency" with jurisdiction to initiate and maintain administrative enforcement proceedings against institution-affiliated parties of savings associations pursuant to 12 U.S.C. § 1818.

(d) STROUP, having been a First Federal officer and director within six years of the date hereof, is subject to the authority of the OTS to initiate and maintain administrative cease-and-desist and civil money penalty proceedings against him pursuant to 12 U.S.C. §§ 1818(b) and 1818(i). See 12 U.S.C. § 1818(i)(3).

2. OTS Findings of Fact.

The OTS, prior to conducting a trial or other adjudicatory proceeding relative to this matter, finds as follows:

During all relevant times, STROUP served as First Federal's President and Chairman of the Board. From 1992 through late 2001, STROUP and Charles R. Vawter, Jr. ("Vawter") both were insiders at First Federal, as Vawter served on First Federal's board of directors as Vice Chairman. In addition, during much of this time, STROUP and Vawter were directors, officers and shareholders of First Federal's holding company. At all relevant times, First Federal, its executive officers, directors and principal shareholders were subject to section 563.43 of the OTS's regulations (12 C.F.R. § 563.43), incorporating the regulatory restrictions of Regulation O (12 C.F.R. Part 215), which imposes restrictions on bank extensions of credit to executive officers, directors and principal shareholders.

During 1999 through the summer of 2001, First Federal honored numerous overdraft checks drawn by Vawter against Vawter-controlled checking accounts at First Federal, notwithstanding the regulatory restrictions of 12 C.F.R. § 563.43 (and of Regulation O). STROUP failed to communicate to First Federal staff that the honoring of overdraft checks submitted by institution directors and executive officers was impermissible. On at least one occasion during July 2001, STROUP specifically authorized First Federal staff to honor a Vawter-presented check, in the amount of \$3,040,000, which caused the checking account to become overdrawn by a substantial amount, thereby providing an extension of credit to Vawter. The foregoing involves violations of 12 C.F.R. § 563.43.² See 12 U.S.C. § 1813(v).

3. Consent.

STROUP consents to the issuance by the OTS of the accompanying two orders (referenced in the caption hereof): (i) the Order to Cease and Desist (the "C&D Order") and (ii) the Order of Assessment of Civil Money Penalties (the "CMP Order", both orders collectively referred to as "the Orders"). STROUP further agrees to comply with the terms of the Orders upon their issuance and stipulates that the Orders comply with all requirements of law.

² On June 2, 2003, OTS issued against Vawter a Consent Order of Prohibition and a Consent Order of Assessment of Civil Money Penalties. See OTS Order numbered ATL-2003-05.

4. Finality.

The C&D Order and the CMP Order are issued by the OTS under the authority of 12 U.S.C. §§ 1818(b) and 1818(i), respectively. Upon their issuance by the OTS (acting through its Regional Director for the Southeast Region), each of the Orders shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. Waivers.

STROUP waives the following:

- (i) The right to be served with a written notice of the OTS's charges against him;
- (ii) The right to an administrative hearing of the OTS's charges against him;
- (iii) The right to seek judicial review of either the C&D Order or the CMP Order or both, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Orders; and
- (iv) 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 federal statutes (*e.g.*, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412), under common law, or otherwise; and
- (v) The right to assert as the basis for a claim of double jeopardy (in any pending or future proceeding brought against Stroup by any governmental entity including but not limited to the United States Department of Justice) the following: the OTS's issuance of the CMP Order, administrative proceedings (if any) relative to the issuance of the CMP Order, Stroup's consent to issuance of the CMP Order, and/or Stroup's payment of any monies or the provision of any other financial relief contemplated by the CMP Order.

6. Indemnification.

STROUP shall neither cause nor permit First Federal (or any successor institution, holding company, subsidiary, or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional expenses incurred relative to the negotiation and issuance of the Orders. STROUP also shall not obtain any indemnification (or other reimbursement) from First Federal (or any successor institution, holding company, subsidiary, or service corporation thereof) with respect to such amounts. Any such payments received by or on behalf of STROUP in connection with this action shall be returned to First Federal (or the successor institution, holding company, subsidiary, or service corporation thereof).

7. Other Government Actions Not Affected.

STROUP acknowledges and agrees that his consent to the issuance of the Orders is for the purpose of resolving any and all administrative actions or other causes of action that the OTS has or may have against STROUP relating to the matters described in the OTS Findings of Fact (at Paragraph 2 hereof), and neither this Stipulation nor the Orders release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of STROUP that arise relative to the aforesaid Findings of Fact or otherwise, and that may be or have been brought by any other government entity other than the OTS.

8. 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) All references to the OTS in this Stipulation and the Orders shall also mean any of the OTS's predecessors, successors, and assigns.

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

(d) The terms of this Stipulation and of the Orders represent the final written 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.

(e) The Stipulation and the Orders shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

WHEREFORE, on this 3rd day of November 2004, DONALD C. STROUP executes this Stipulation, intending to be legally bound hereby.

Accepted by:
OFFICE OF THRIFT SUPERVISION
By:



DONALD C. STROUP



JOHN E. RYAN
Southeast Regional Director

ACKNOWLEDGMENT

STATE OF ALABAMA)
COUNTY OF Shelby)

On this 3rd day of November, 2004, before me, the undersigned notary public, personally appeared Donald C. Stroup, who acknowledged his execution of the foregoing Stipulation and Consent to Issuance of an Order to Cease and Desist and an Order of Assessment of Civil Money Penalties.

WHEREFORE, I hereby set my hand and seal.


Vanessa Gayle Todd
Name: Vanessa Gayle Todd
Notary Public

My commission expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Nov. 02, 2005
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
DONALD C. STROUP,)
)
A Former Officer and Director of)
)
FIRST FEDERAL OF THE SOUTH,)
Sylacauga, Alabama)
(OTS No. 05329))

Order No. ATL-2004-33

Dated: November 15, 2004

ORDER TO CEASE AND DESIST

WHEREAS, DONALD C. STROUP (“STROUP”) has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist and Order of Assessment of Civil Money Penalties (“Stipulation”); and

WHEREAS, STROUP, by his execution of the Stipulation has consented and agreed to the issuance of this Order to Cease and Desist Order (“Order”) by the Office of Thrift Supervision (“OTS”), pursuant to 12 U.S.C. § 1818(b).

NOW THEREFORE, IT IS ORDERED that:

1. **STROUP** shall cease and desist from any action (either alone or with others) that has the effect of causing, bringing about, participating in, counseling or aiding and abetting any unsafe or unsound banking practice, breach of fiduciary duty owed to a federally insured depository institution, or violation of any federal banking laws or regulations, including but not limited to:

- (i) Section 563.43 of the OTS Regulations, 12 C.F.R. § 563.43, regarding loans by savings associations to their executive officers, directors and principal shareholders; and
- (ii) Part 215 of the Regulations of the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 215 (Regulation O), regarding loans by banks to their executive officers, directors and principal shareholders.

2. Whenever an officer, director or employee of a bank, savings and loan association or any other insured depository institution (within the meaning of 12 U.S.C. § 1813(c)), **STROUP** shall not, directly or indirectly, participate in the underwriting or approval of any loans (including payments on overdrafts) to executive officers, directors or principal shareholders of the institution unless, in connection with the underwriting and prior to the approval of each such extension of credit, **STROUP** prepares and signs a document, which shall be maintained in the institution's loan records, demonstrating that **STROUP** has determined that the extension of credit complies with the requirements of Regulation O and other applicable regulations.

3. Prior to accepting a position as an officer, director or employee of a bank, savings and loan association or any other insured depository institution (within the meaning of 12 U.S.C. § 1813(c)), **STROUP** shall:

- (i) Disclose the existence of this Order (including the Stipulation) to the person at the insured depository institution who offers the position to him; and
- (ii) Provide written notice of the intended relationship to the OTS's Regional Director (Southeast Region), which notice shall contain the following information: (A) a representation that he has provided the insured depository institution with the disclosure required by the preceding subparagraph of this Order; (B) the name and mailing address of the insured depository institution that seeks to establish the relationship with **STROUP**, and (C) his intended title and position description at the institution (including, if applicable, name of department, office, or branch where he will be assigned).

4. The Stipulation is made a part hereof and is incorporated herein by this reference.

5. This Order is and shall become effective on the date it is issued, which date is 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, Regional Director, or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: _____


John E. Ryan
Regional Director, Southeast Region