

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
W. JACK SMITH, III)
A Former Managing Officer,)
Vice President and Director of)
Guaranty Federal Savings Bank)
Warner Robins, Georgia)

Resolution No.: ATL-93-5
Dated: January 15, 1993

STIPULATION AND CONSENT TO THE ENTRY
OF A PROHIBITION ORDER

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Southeast Region, and W. Jack Smith, III ("Smith"), former Managing Officer, Vice President and Director of Guaranty Federal Savings Bank, Warner Robins, Georgia, OTS Docket No. 9229 (formerly 7852) ("Guaranty Federal" or "Institution"), hereby stipulate and agree as follows:

1. Consideration. The OTS, based upon its investigative findings, is of the opinion that grounds exist to initiate an administrative proceeding against Smith, pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.A. § 1818(e) (West 1989 & Supp. 1992). The facts in support of the OTS' belief include the following:

(a) Citizens Bank, Dallas, Georgia ("Citizens Bank") was an affiliated person of Guaranty Federal and transactions between the two institutions, without prior written supervisory approval, were specifically prohibited by the terms of Guaranty Federal's voluntary supervisory conversion.

(b) Smith, as the Vice President, Managing Officer, and a Director of Guaranty Federal, presented loans for approval and/or ratification to the Executive Committee and/or Board of Directors. Numerous of these loans involved the disbursement of loan proceeds to Citizens Bank, in violation of the conditions for the voluntary supervisory conversion of Guaranty Federal and of 12 C.F.R. § 563.43(c)(2).

(c) The underwriting for these loans was extremely poor and the borrowers had little equity in the collateral and no means to repay the loans other than the sale of the collateral.

(d) The estimated losses on these Guaranty Federal loans involving the disbursement of loan proceeds to Citizens Bank, are at least \$1,210,000.

(e) Smith also was responsible, in part, for the formation and operation of Guaranty Lending Services, Inc. ("Guaranty Lending"), a privately owned mortgage loan origination company doing business with Guaranty Federal. Guaranty Lending received acquisition fees on loans made by

Guaranty Federal, in violation of 12 C.F.R. § 563.40.

(f) Smith's financial interest (through a company owned by his father and then by his wife) in Guaranty Lending, was not disclosed to Guaranty Federal's Board of Directors nor to the Federal Home Loan Bank Board. Smith placed himself in a position that created a conflict of interest, contrary to the provisions of 12 C.F.R. § 571.7.

(g) Smith also was actively involved as an officer and investor (through his wife) in an entity known as Georgia Right of Way, Inc. ("GROW").

(h) Smith approved financing to GROW, through a series of single payment unsecured personal loans to his partners in GROW, knowing that the proceeds would be used to operate the business. The now consolidated loan that matured on December 12, 1990 remains unpaid, with an outstanding balance of at least \$87,419 including accrued interest.

(i) Smith allowed GROW to maintain its checking account at Guaranty Federal in an overdraft condition for an extended period of time.

(j) As a result of these actions, Smith engaged or participated in unsafe or unsound practices, violations of regulations and of a condition imposed in writing. By reason of the foregoing unsafe or unsound practices and violations, Guaranty Federal has suffered substantial financial loss or other damage and Smith received some benefit. Smith's wife also received a benefit as a

result of Smith's actions, in that she was a shareholder in the corporation that had beneficial use of all proceeds that were derived from the violations and/or unsafe or unsound practices. Further, such unsafe or unsound practices and violations demonstrate a willful and continuing disregard by Smith for the safety and soundness of Guaranty Federal.

Smith desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance of the OTS from initiating such administrative proceeding against Smith.

2. Jurisdiction.

(a) Guaranty Federal was a "savings association" within the meaning of Section 3(b)(1) of the FDIA, 12 U.S.C.A. § 1813(b)(1). The Institution was an "insured depository institution" as that term is defined in Section 3(c)(2) of the FDIA, 12 U.S.C.A. § 1813(c)(2).

(b) Smith, as Managing Officer, Vice President and a Director of Guaranty Federal, was an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C.A. § 1813(u).

(c) The Director of OTS is the "appropriate Federal banking agency" to maintain an administrative proceeding against such a savings association or its institution-affiliated parties, pursuant to Section 3(q)(4)

of the FDIA, 12 U.S.C.A. § 1813(q)(4). Therefore, Smith is subject to the authority of the OTS to initiate and maintain an administrative proceeding against him pursuant to Section 8(e) of the FDIA, 12 U.S.C.A. § 1818(e).

3. Consent. Smith 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 under Section 8(e) of the FDIA, 12 U.S.C.A. § 1818(e). Upon its issuance by the Regional Director 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.A. § 1818(i).

5. Waivers. Smith waives his right to a notice charges, a notice of intention to prohibit, and the administrative hearing provided by Section 8(e) of the FDIA, 12 U.S.C.A. § 1818(e), and further waives his right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C.A. § 1818(h), or otherwise to challenge the validity of the Order.

Further, Smith acknowledges and agrees that his consent to the entry of the Order is for the purpose of resolving this OTS enforcement proceeding only and does not compromise, settle, dismiss, resolve, or in any way affect any civil or criminal actions, charges against, or liability

of Smith that arise pursuant to this action or otherwise, and that may be or have been brought by the Resolution Trust Corporation, the United States Department of Justice or any other governmental entity other than the OTS.

The OTS' decision to enter into this Stipulation has been predicated in part upon representations made by Smith concerning the amount, nature and quality of cash, property and other assets owned by Smith ("Assets"). It is understood that Smith has made a good faith estimate of the current value of his Assets, and Smith understands that should the OTS discover or learn from any source that the representations made by him about his Assets were intentionally or materially false, including but not limited to the failure to identify and/or value any Asset, the OTS reserves the right to void the settlement reached between the OTS and Smith, including this Stipulation and the Order, and initiate an administrative proceeding against Smith or take any other legal action that the OTS in its sole discretion deems appropriate.

In the event that the United States Court of Claims awards damages to the shareholders of Guaranty Federal or Guaranty Financial Services subsequent to the effective date of the Order, nothing in this Stipulation or the Order shall operate to preclude Smith, as a shareholder, from participating in any such award.

WHEREFORE, in consideration of the foregoing and intending to be legally bound hereby, the Regional Director for the Southeast Region, on behalf of the OTS, and Smith execute this Stipulation and Consent to the Entry of A Prohibition Order and Restitution Order.

OFFICE OF THRIFT SUPERVISION

By:

/S/

~~John E. Ryan~~
Regional Director
Southeast Region

/S/

~~W. Jack Smith, III~~

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ORDER OF PROHIBITION

WHEREAS, W. Jack Smith, III ("Smith") has executed a Stipulation and Consent to the Entry of A Prohibition Order ("Stipulation"), which is accepted and approved by the Office of Thrift Supervision ("OTS") acting through its Regional Director for the Southeast Region; and

WHEREAS, Smith in the Stipulation has consented and agreed to the issuance of this Order of Prohibition ("Order"), pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.A. § 1818(e) (West 1989 & Supp. 1992).

NOW THEREFORE, IT IS ORDERED that:

1. Smith is prohibited from further participation, in any manner, in the conduct of the affairs of Guaranty Federal

