

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

IN THE MATTER OF)
)
RICHARD F. DOWNS)
Former Director of)
First Newport Bank, F.S.B.)
(formerly, University)
Savings Bank))
Newport Beach, California)
)
DONALD D. DAUER)
Former Director of)
First Newport Bank, F.S.B.)
(formerly, University)
Savings Bank))
Newport Beach, California)
)
BRYSON S. RANDOLPH)
Former Director of)
First Newport Bank, F.S.B.)
(formerly, University)
Savings Bank))
Newport Beach, California)
)

Resolution No.: SE-93-009

Dated: March 8, 1993

STIPULATION AND CONSENT TO THE ENTRY OF
A CEASE AND DESIST ORDER

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the West Regional Office, San Francisco, California, of OTS, and RICHARD F. DOWNS, DONALD D. DAUER and BRYSON S. RANDOLPH (collectively referred to as "Respondents"), Former DIRECTORS of First Newport Bank, F.S.B. (formerly, University Savings Bank) Newport Beach, California, ("First Newport"), stipulate and agree as follows:

1. CONSIDERATION

The OTS, based upon information gathered in the supervisory process, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Respondents, pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA") 12 U.S.C. § 1818(b), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA"). Respondents desire to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, without admitting or denying that such grounds exist, hereby stipulate and agree to the following terms in consideration of the forbearance by the OTS from initiating such administrative cease and desist litigation against Respondents with respect to the consulting fees and expenses paid by the Institution in 1991, in violation of the Capital Plan Conditions of Approval dated July 23, 1990, acknowledged and accepted by the First Newport Board on July 25, 1990, which is discussed in more detail in the accompanying Order to Cease and Desist ("Order").

2. JURISDICTION

(a) First Newport, at all times relevant to the allegations set forth herein, was a "savings association" within the meaning of Section 3(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(b) and Section 2(4) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. 1462(4) (Supp. I

1989). Accordingly, First Newport is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(c).

(b) Each of the Respondents were at all times relevant to the allegations set forth herein, Directors of First Newport and as such were "institution-affiliated parties" as that term is defined in Section 3(u) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(u).

(c) Pursuant to Section 3(q) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such institution-affiliated parties. Therefore, Respondents are subject to the authority of the OTS to initiate and maintain a cease and desist proceeding against them pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

3. CONSENT

(a) Respondents consent to the issuance by the OTS of the Order. Respondents further agree to comply with the terms of the Order upon issuance and stipulate that the Order complies with all requirements of law.

(b) Respondents acknowledge that the debt owed pursuant to the Order is not dischargeable under the Bankruptcy Code, in accordance with 11 U.S.C. § 523(a)(11) and (12), as amended by Section 2522 of the Comprehensive Thrift and Bank Fraud Protection and Taxpayer Recovery Act of 1990, Pub. L. No. 101-647, November 29, 1990.

4. FINALITY

The Order is issued under Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director for the West Regional Office, San Francisco, California, 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

(a) Respondents waive the right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and further waive any right to seek judicial review of the Order, including 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.

(b) Respondents acknowledge and agree that this Stipulation and Consent, the Order and the payment by the Respondents of any monies or providing any other

financial relief as contemplated by the Order does not compromise, settle, dismiss, resolve, or in any way affect any civil actions, charges against, or liability of the Respondents that arise pursuant to this action or otherwise, and that may be or have been brought by the Resolution Trust Corporation or any other governmental entity other than the OTS.

- (c) Respondents acknowledge and agree that the preceding, the assessment or payment of restitution contemplated as part of the resolution thereof, and Respondent's consent to the entry of the Order is for the purpose of resolving all OTS claims against Respondents with respect to their service in any and all capacities at First Newport, and does not resolve, affect or preclude any other civil or criminal proceeding which may be or have been brought against Respondents by the OTS for their service or affiliation with an institution other than First Newport or by another governmental entity.
- (d) By signing this document Respondents agree that they will not assert the assessment or payment of this penalty as the basis for the claim of double jeopardy in any pending or future proceeding brought by the U.S. Department of Justice or another governmental entity.

WHEREFORE, in consideration of the foregoing, the OTS, by and through its Regional Director for the West Regional Office, San Francisco, California, OTS, and Respondents execute this Stipulation and Consent to the Entry of a Cease and Desist Order.

OFFICE OF THRIFT SUPERVISION

By: _____ /s/
Eric D. Shand
Regional Director
West Region
San Francisco, California

By: _____ /s/
RICHARD F. DOWNS

_____/s/
~~DONALD D. DAUER~~

_____/s/
BRYSON S. RANDOLPH

(newport2.c4d)

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ORDER TO CEASE AND DESIST

WHEREAS, RICHARD F. DOWNS, DONALD D. DAUER and BRYSON S. RANDOLPH (collectively referred to as "Respondents") have executed a Stipulation and Consent to the Entry of a Cease and Desist Order, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the West Regional Office, San Francisco, California; and

WHEREAS, Respondents, in the Stipulation, have consented and agreed to the issuance of this Order to Cease and Desist ("Order") pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA"), 12 U.S.C. § 1818(b).

NOW THEREFORE, IT IS ORDERED that:

1. Respondents jointly and severally, shall make restitution to First Newport, in the amount of \$22,500, for consulting fees and expense payments, made to Mr. David Serxner during 1991. It is the position of the OTS that such payments were made by First Newport in violation of the "Failure to Comply with the Conditions" of the Capital Plan Conditions of Approval dated July 23, 1990, and acknowledged and accepted by First Newport's Board by letter dated July 25, 1990, which established a consulting fee cap of \$25,000, without prior OTS approval.
2. Respondents shall comply with Paragraph 1 by sending a certified check(s) in the total amount of \$22,500, to the Regional Director of the West Regional Office, P.O. Box 7165, San Francisco, California, 94120, made payable to First Newport Bank, F.S.B., Newport Beach, California on or before March 2, 1993. Respondents shall send curtesy copies of any correspondence and the check(s) sent pursuant to this

