

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

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IN THE MATTER OF

James M. Haggard  
former Counsel for  
TexasBanc Savings, F.S.B.,  
Conroe, Texas

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Re: DAL-93-09

Dated: April 5, 1993

STIPULATION AND CONSENT TO  
ENTRY OF ORDER OF PROHIBITION

The Office of Thrift Supervision ("OTS") and James M. Haggard ("Haggard") hereby stipulate and agree as follows:

1. The OTS is of the opinion that grounds exist to initiate an administrative prohibition proceeding against Haggard pursuant to Section 8(e) 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(e) (1988 & Supp. I 1989). Haggard, without admitting or denying that such grounds exist, except those relating to jurisdiction as set forth in paragraph 2 below, hereby stipulates and agrees to the following terms in consideration of the forbearance by OTS from initiating such administrative prohibition litigation against him with respect to the following matters:

(a) Haggard was counsel for TexasBanc Savings, F.S.B., Conroe, Texas ("TexasBanc") at all times relevant hereto.

Haggard also received certain funds from TexasBanc which were deposited into an account styled "James Haggard, Trustee," and disbursed said funds upon his own authority and signature from this trust account.

(b) Brad Mothersbaugh was Vice President of TexasBanc from February 1988 to December 27, 1989. Mothersbaugh's primary responsibility at TexasBanc was the administration of approximately \$29.5 million in acquisition, construction, and development loans for four recreational subdivisions: Port Adventure ("PA"), Lake Livingston Village ("LLV"), Lake Conroe Village ("LCV"), and Bay Oaks Harbour ("BOH"). The subdivisions maintained checking accounts at TexasBanc that served as their operating accounts. Loan proceeds were disbursed to these accounts, and the subdivisions used the proceeds to cover operating expenses. Mothersbaugh had signatory authority with regard to these checking accounts. In November 1989 the owners of the subdivisions avoided foreclosure by deeding back their interests to TexasBanc. TexasBanc ultimately reported a loss of approximately \$22.1 million from the subdivision loans.

In June 1988 Mothersbaugh signed eight checks drawn on the checking or operating accounts of LLV, BOH, and PA for a total of \$12.7 million. He made these checks payable to four individuals: Portis, Branham, Akin, and McFall. Mothersbaugh's issuance of these checks reflected the application of development loan proceeds from TexasBanc, pursuant to his signatory authority. However, these disbursements did not contribute to the development of the subdivisions. No business

justification for the disbursements appeared in the books and records of TexasBanc. In addition, these monies were not restored to the subdivisions or repaid to TexasBanc. The loss to TexasBanc of these monies represented approximately one half of its loss (\$22.1 million) on the subdivision loans. In issuing the aforementioned checks, Mothersbaugh violated 12 C.F.R. § 563.17-1(c) (1988), committed an unsafe and unsound practice, and breached his fiduciary duty to TexasBanc.

(c) In December 1988 Mothersbaugh wrote a \$90,000 check drawn on the operating account of LCV to Haggard, then counsel of TexasBanc. Mothersbaugh's disbursement represented an application of the development loan proceeds from TexasBanc. The records of TexasBanc reflected no business purpose for this disbursement. Haggard then deposited this check into his trust account at TexasBanc. In January 1989, Mothersbaugh signed \$22,500 checks from each of the operating accounts of LLV, PA, and BOH; each check was payable to the operating account of LCV. TexasBanc records failed to record any business purpose for this transaction. In May 1989 Haggard wrote four checks from his trust account at TexasBanc payable to LLV, PA, LCV, and BOH. These checks were not deposited into the subdivisions' operating accounts. A day later, Mothersbaugh deposited the checks signed by Haggard into a newly opened account at TexasBanc styled "Land Acquisition." Mothersbaugh was the only signatory for this account. The records of TexasBanc failed to reflect a business justification for this deposit.

(d) In June 1990 Mothersbaugh withdrew \$20,000 from the

"Land Acquisition" account and deposited it in a newly opened account at Citadel Bank in Willis, Texas. This account bore the name "Scoreline News, Inc.," and Mothersbaugh was the only signatory for it. Neither Mothersbaugh nor Haggard has reimbursed TexasBanc for this withdrawal.

(e) Haggard's transfer of these funds in the absence of any recorded business justification violated 12 C.F.R. § 563.17-1(c) (1988). These actions, constitute unsafe and unsound practices as well as breaches of fiduciary duty.

2. Jurisdiction.

(a) Haggard was at all relevant times Counsel for TexasBanc.

(b) Haggard "participated in the conduct of the affairs" of TexasBanc as that phrase is utilized in 12 U.S.C. § 1730(g) (1982), and was an "institution-affiliated party" with respect to TexasBanc as that term is defined in Section 3(u) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(u) (1988 & Supp. I 1989).

(c) TexasBanc was a "savings association" within the meaning of Section 2(4) of the Home Owners' Loan Act of 1933, as amended by FIRREA, 12 U.S.C. § 1813(b) (1988 & Supp. I 1989). Accordingly, it 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) (1988 & Supp. I 1989).

(d) Pursuant to Section 3(q) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(q) (1988 & Supp. I 1989), the Director of OTS is the "appropriate Federal banking agency" to

maintain an enforcement proceeding against such a person participating in the conduct of the affairs of a savings association or against its institution-affiliated parties. Therefore, Haggard is subject to the jurisdiction and authority of the Director of the OTS (or his designated representative) to initiate and maintain a prohibition proceeding against Haggard pursuant to Section 8(e) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(e) (1988 & Supp. I 1989).

3. Consent. Haggard consents to the issuance by the Director of OTS (or his designated representative) of the Order of Prohibition ("Order"), agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all applicable requirements of law. Haggard acknowledges and states that he enters into this Stipulation and Consent willingly and without any coercion or promise of any kind from the OTS or any officer, attorney, agent or employee thereof.

4. Finality. The Order is issued under Section 8(e) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(e) (1988 & Supp. I 1989). Upon its issuance by the OTS Regional Director, it shall be a final order, effective, outstanding and fully enforceable.

5. Waivers. Haggard waives his right to a notice of charges and the administrative hearing provided by Section 8(e) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(e) (1988 & Supp. I 1989), and waives his right to all post-hearing

proceedings, and the entry of findings of fact or conclusions of law under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 554-557, 12 U.S.C. § 1818(b), and the OTS Rules of Practice and Procedure in Adjudicatory Proceedings, 12 C.F.R. Part 509 (1992), or any other applicable provision of law. Haggard waives his right to appeal the Order pursuant to Section 8(h) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(h) (1988 & Supp. I 1989), or any other applicable provision of law.

6. (a) Haggard agrees that his stipulation to the entry of the Order is for the purpose of resolving this OTS prohibition action only, and does not resolve, affect or preclude any other civil or criminal proceeding which may be or has been brought against him by the OTS or another governmental agency.

(b) Haggard understands that the OTS has not relinquished the right to take additional action of a regulatory or other nature.

(c) The stipulation and the Order do not compromise, settle, dismiss, resolve, or in any way affect any civil actions, charges against, or liability of Haggard that arise pursuant to this action or otherwise, and that may be brought or have been brought by the Resolution Trust Corporation or any governmental entity other than the OTS.



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Re: DAL-93-09

Dated: April 5, 1993

ORDER OF PROHIBITION

WHEREAS, the Office of Thrift Supervision ("OTS") has conducted a formal examination proceeding pursuant to Section 5(d)(1)(B) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. § 1464(d)(1)(B); and

WHEREAS, James M. Haggard ("Haggard") has executed a Stipulation and Consent to Entry of Order of Prohibition ("Consent"), which is accepted and approved by the OTS.

NOW THEREFORE, It is Ordered that:

1. Haggard is prohibited from further participation, in any manner, in the conduct of the affairs of TexasBanc Savings, F.S.B., Conroe, Texas.

2. Without the prior written approval of the Regional Director for the Midwest Region and, if appropriate, another Federal financial institutions regulatory agency, Haggard may not hold any office in, perform any legal services for, nor participate in any manner in, the conduct of the affairs of any institution(s) or other entity as set forth in Section 8(e)(7)(A) 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, 450-464 ("FIRREA") (12 U.S.C. § 1818(e)(7)(A)) (1988 & Supp. 1989). Pursuant to Section 8(e)(6) of the FDIA, as amended by FIRREA (12 U.S.C. § 1818(e)(6)) (1988 & Supp. I 1989), conduct prohibited by this Order includes, inter alia, the solicitation, transfer or exercise of any voting rights with respect to any securities issued by any insured depository institution.

