

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
ROBERT KEITH,)
)
Former Senior Vice President of)
Fidelity Federal Savings Bank,)
)
Dalton, Georgia)

Resolution No.: ATL-93-16

Dated: May 3, 1993

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER OF CIVIL MONEY PENALTY ASSESSMENT**

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Southeast Region ("Regional Director"), and Robert Keith ("Keith"), former Senior Vice President of Fidelity Federal Savings Bank, Dalton, Georgia, OTS No. 7112 ("Fidelity" or "Institution"), stipulate and agree as follows:

1. Consideration

OTS is of the mind that Keith has committed unsafe and unsound practices in conducting business on behalf of Fidelity in that he allowed a major borrower of Fidelity to create large overdraft balances by accepting checks from him that were written on accounts with insufficient funds. Keith's failure to report such activity resulted in examiner loss classifications at

Fidelity of \$208,000, the extension by Fidelity of additional credit of \$15,000 in 1991 to the borrower, the overstatement by Fidelity of interest income, the failure of Fidelity to recognize losses in a timely manner, and Fidelity's ultimate charge-off of \$21,366.

Based upon these practices, the OTS is of the opinion that grounds exist to initiate an administrative civil money penalty assessment proceeding against Keith pursuant to Section 8(i)(2) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.A. § 1818(i)(2) (West 1989 & Supp. 1992) and pursuant to Section 18(j)(4) of the FDIA, 12 U.S.C.A. § 1828(j)(4). The grounds include repeated actions by Keith constituting unsafe and unsound practices by accepting NSF checks to hide borrower overdrafts from Fidelity's board of directors.

Keith desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding. Without admitting or denying the statements, conclusions or terms herein, Keith hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such proceeding against him for so long as he is in compliance with the provisions of the accompanying Order of Civil Money Penalty Assessment ("Order").

This Stipulation and the attached Order are issued solely to settle this proceeding. Keith acknowledges and agrees that this proceeding, the assessment or payment of the penalty

contemplated as part of the resolution thereof, and Keith's consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and does not resolve, affect or preclude any other civil or criminal proceeding which may be brought against Keith by the OTS or another government entity.

By signing this document Keith agrees that he will not assert the assessment or payment of this penalty as the basis for a claim of double jeopardy in any future proceeding brought by another government entity, not the OTS. Further, this Stipulation and Consent, the Order and the payment by the Respondent 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 Respondent 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.

2. Jurisdiction

(a) Fidelity is a "savings association" within the meaning of Section 3(b)(1) of the FDIA, 12 U.S.C.A. § 1813(b)(1), and Section 2(4) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C.A. § 1462(4). The Institution is 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) Keith is an "institution-affiliated party" of an

insured depository institution within the meaning of Section 3(u)(1) of the FDIA, 12 U.S.C.A. § 1813(u)(1).

(c) Pursuant to Section 3(q)(4) of the FDIA, 12 U.S.C.A. § 1813(q)(4), the Director of the OTS is the "appropriate Federal banking agency" in the case of any savings association.

Therefore, Keith is subject to the authority of the OTS to initiate and enforce an Order of Civil Money Penalty Assessment pursuant to Section 8(i) of the FDIA, 12 U.S.C.A. § 1818(i) and Section 18(j) of the FDIA, 12 U.S.C.A. § 1828(j).

3. Consent

Keith consents to the issuance by OTS of the accompanying Order and 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(i) of the FDIA, 12 U.S.C.A. § 1818(i) and Section 18(j) of the FDIA, 12 U.S.C.A. § 1828(j). Upon its issuance by the Regional Director, it shall be a final order, effective and fully enforceable by OTS.

5. Waivers

Keith waives the right to a Notice of Assessment of Civil Money Penalty provided by Section 8(i) of the FDIA, 12 U.S.C.A. § 1818(i) and Section 18(j) of the FDIA, 12 U.S.C.A. § 1828(j), and the administrative hearing provided by these Sections, and further waives his right to seek judicial review of the Order, including

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ORDER OF CIVIL MONEY PENALTY ASSESSMENT

WHEREAS, Robert Keith, former Senior Vice President of Fidelity Federal Savings Bank, Dalton, Georgia, OTS Docket No. 7112, has executed a Stipulation and Consent to the Issuance of an Order of Civil Money Penalty Assessment ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS") acting through the Regional Director for the Southeast Region; and,

WHEREAS, Mr. Keith, in the Stipulation, has consented to the issuance of this Order of Civil Money Penalty Assessment, pursuant to Section 8(i)(2) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.A. § 1818(i)(2) (West 1989 & Supp. 1992), and Section 18(j)(4) of the FDIA, 12 U.S.C. § 1828(j)(4).

NOW THEREFORE, IT IS ORDERED that Mr. Keith submit to the Comptroller of the OTS a check for the sum of \$5,000, made payable to the Treasurer of the United States, within ten (10) business days of the effective date of this Order. The check should be

