

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

Michael Leighty, Former Officer)
and Director of)
First Savings Bank, A Federal)
Savings Bank)
Arlington, Texas)

Re: No.: DAL-93-12

Dated: June 7, 1993

**STIPULATION AND CONSENT TO ENTRY 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 Michael Leighty ("Leighty") former Officer and Director of First Savings Bank, A Federal Savings Bank, (OTS No. 08287), Arlington, Texas ("Association" or "First Savings Bank"), that the OTS is of the opinion that grounds exist to initiate an administrative civil money penalty assessment proceeding against Leighty, pursuant to Section 8(i)(2) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(i)(2).¹

WHEREAS, Leighty desires to cooperate with the OTS to avoid the time and expense of such administrative litigation, and without admitting or denying that such grounds exists, hereby stipulates and agrees to the following terms:

1. **JURISDICTION AND FACTS**

- (a) First Savings Bank is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C.S. § 1813(b), and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C.S. § 1462(4). Accordingly, it is an

1. All references in this Stipulation and Consent to Entry of an Order of Assessment of Civil Money Penalty and the Order of Assessment of Civil Money Penalty to the United States Code are references to the United States Code as amended.

"insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C.S. § 1813(c).

- (b) Leighty, at all times relevant to the allegations set forth herein, served as an officer and director of First Savings Bank and as such is deemed to be an "institution-affiliated party" of First Savings Bank as defined in Section 3(u) of the FDIA, 12 U.S.C.S. § 1813(u), having served in such capacity within 6 years of the date hereof (See 12 U.S.C.S. § 1818(1)(3)).
- (c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C.S. § 1813(q), the OTS is the "appropriate Federal banking agency" to maintain civil money penalty assessment proceedings against such a savings association and/or its institution-affiliated parties. Therefore, Leighty is subject to the authority of the OTS to initiate and maintain the assessment of a civil money penalty against him pursuant to Section 8(1)(2) of the FDIA, 12 U.S.C.S. § 1818(1)(2).
- (d) The OTS is of the opinion that the following are grounds for this civil money penalty, after having received and considered the May 29, 1991 response from Leighty to these allegations:
 - (i) During Leighty's tenure as an officer and director, First Savings Bank was caused to

service his personal debt and the debt of other affiliated persons of First Savings Bank. Such debt was secured by the stock of Arlington Savings Bankshares, Inc., holding company of First Savings Bank. These transactions were in violation of 12 C.F.R. §§ 215.4 and 563.170(c), 12 U.S.C. § 1468, contrary to safe and sound practices, and in breach of Leighty's fiduciary duty to First Savings Bank.

- (ii) During Leighty's tenure as an officer and director, First Savings Bank was caused to make an inappropriate severance payment of \$145,000 to former president Rick Powell from which proceeds Leighty received \$1,729.00. This transaction was in violation of 12 C.F.R. §§ 563.161(a) and 571.7, contrary to safe and sound practices, and in breach of Leighty's fiduciary duty to First Savings Bank.
- (iii) During Leighty's tenure as an officer and director, First Savings Bank was caused make a bonus payment of \$29,900 to an officer of First Savings Bank based primarily on the volume of loan production generated by that officer. This transaction was in violation

of 12 C.F.R. §§ 563.40(a) and 563.161(a), contrary to safe and sound practices, and in breach of Leighty's fiduciary duty to First Savings Bank.

- (iv) On or about September 1, 1989, during Leighty's tenure as an officer and director, First Savings Bank was caused to transfer a loan (originated at \$1,000,000) to another borrower (SMP, Inc.), release the original borrower (Oakview, Ltd., a related interest of institution-affiliated parties John Harvison and Billy Delp), and advance additional funds of \$275,000 to SMP, Inc. without adequate underwriting procedures. Four months later, on or about January 19, 1990, SMP, Inc. deeded the subject collateral on the loan to First Savings Bank in lieu of foreclosure, causing First Savings Bank to sustain a loss of \$483,801. These transactions were in violation of 12 C.F.R. §§ 563.170 and 563.43, contrary to safe and sound practices, and in breach of fiduciary duty to First Savings Bank.
- (v) During Leighty's tenure as an officer and director, First Savings Bank was caused to renew a lease without prior regulatory

approval, with Arlington Savings Bank Joint Venture, in which affiliated persons of First Savings Bank owned an interest as joint venture partners. The renewal of the lease was for the personal benefit of the joint venture partners, and to the detriment of First Savings Bank. This transaction was in violation of 12 C.F.R. § 563.41(b) (1990), contrary to safe and sound practices, and in breach of Leighty's fiduciary duty to First Savings Bank.

2. CONSENT

- (a) Leighty consents to the issuance by OTS of the accompanying Order of Assessment of Civil Money Penalties ("Order"). He further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law, including Section 8(i) of the FDIA, 12 U.S.C.S. § 1818(i).
- (b) Leighty acknowledges that the civil money penalty owed pursuant to the Order is not dischargeable under the Bankruptcy Code, in accordance with 11 U.S.C.S. § 523(a)(7).
- (c) Leighty acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated

as part of the resolution thereof, and Leighty's consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and do not compromise, settle, dismiss, resolve, affect or preclude any other civil or criminal proceeding which may be or has been brought against Leighty by the OTS or another governmental entity.

- (d) By signing this document Leighty agrees that he will not assert the assessment or payment of this penalty as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

3. **FINALITY**

The Order is issued under Section 8(i)(2) of the FDIA, 12 U.S.C.S. § 1818(i)(2). Upon issuance of the Order, it shall be a final order, that is effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C.S. § 1818(i).

4. **WAIVERS**

Leighty waives the following rights:

- (a) the right to be served with a written notice of the OTS's charges against him (See Section 8(i) of the FDIA, 12 U.S.C.S. § 1818(i));

