

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of:

MICHAEL E. CASEY,

President, Director, and  
Institution-Affiliated  
Party of:

FirstBanc Savings  
Association of Texas,  
Missouri City, Texas.

Re: Order No. DAL-93-14

Dated: June 21, 1993

STIPULATION AND CONSENT TO ISSUANCE  
OF ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office, and Michael E. Casey ("CASEY"), president, managing officer, and director of FirstBanc Savings Association of Texas, Missouri City, Texas ("FIRSTBANC") stipulate and agree as follows:

1. Consideration. The OTS is of the opinion that grounds exist to initiate administrative cease and desist proceedings against CASEY pursuant to Sections 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b). The OTS is of the opinion that CASEY's actions and inactions concerning the creation, funding, and operation of the FirstBanc Savings Association Employee Stock Ownership Plan and Trust ("ESOP") were a breach of his fiduciary duties to FIRSTBANC, involved unsafe and unsound practices, and were a violation of 12 C.F.R. § 571.7.

Without admitting or denying that such grounds exist, CASEY hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating any administrative litigation against CASEY with respect to matters concerning FIRSTBANC and the ESOP.

2. Jurisdiction.

(a) FIRSTBANC is a "savings association" within the meaning of Section 3 of the FDIA, 12 U.S.C. § 1813(b) and Section 2(4) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB") was the regulatory agency with jurisdiction over FIRSTBANC and persons participating in the conduct of the affairs thereof, including CASEY, pursuant to Section 5 of HOLA, 12 U.S.C. § 1464.

(c) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended by Section 204 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1813(q), OTS succeeded to the interests of the FHLBB with respect to the supervision and regulation of all savings associations, and thus became the "appropriate Federal banking agency" with jurisdiction over FIRSTBANC and persons participating in the affairs thereof.

(d) CASEY, as president, managing officer, and director of FIRSTBANC, is an "institution-affiliated party" of FIRSTBANC as

that term is defined by Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).

(e) Pursuant to Section 3 of the FDIA, as amended, the OTS is the "appropriate Federal banking agency" to maintain cease and desist proceedings against institution-affiliated parties of FIRSTBANC. CASEY is subject to the authority of the OTS to initiate and maintain cease and desist proceedings against him, pursuant to Section 8(b) of the FDIC, 12 U.S.C. § 1818(b).

3. Consent. CASEY consents to the issuance by the OTS of the Order to Cease and Desist ("Order"), a copy of which Order is attached hereto as Exhibit A. He further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). 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. § 1818(i).

5. Waivers. CASEY waives his 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 waives 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.

WHEREFORE, in consideration of the foregoing, the OTS, by and through its Regional Director for the Midwest Regional Office, and



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ORDER TO CEASE AND DESIST

WHEREAS, Michael E. Casey ("CASEY") has executed a Stipulation and Consent to Issuance of Order to Cease and Desist ("Consent"), which is incorporated herein by reference, and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Midwest Regional Director ("Regional Director"); and

WHEREAS, CASEY has consented and agreed in the Consent to the issuance of this Order to Cease and Desist ("Order");

NOW, THEREFORE, THE OTS ORDERS AS FOLLOWS:

1. CASEY shall not be or serve as an officer, director, or employee of FirstBanc Savings Association of Texas, Missouri City, Texas ("FIRSTBANC") without the prior written approval of OTS.

2. CASEY shall be permitted to serve as a consultant for FIRSTBANC. Provided, any such service as a consultant shall be only upon the following terms:

- a. Such service shall be pursuant to a written consultant's agreement with FIRSTBANC;
- b. The term of the written consultant's agreement shall not exceed one year and shall not be renewable or extended without the prior written approval of OTS;
- c. CASEY shall be an independent contractor;
- d. Any and all consulting services provided by CASEY during the duration of the consultant's agreement shall be only those as are requested or sought by FIRSTBANC's chief executive officer;
- e. The compensation to be paid CASEY shall be fixed by the written consulting agreement;
- f. CASEY shall not seek or accept any other form of compensation from FIRSTBANC other than that which is specified in the consulting agreement;
- g. The written consulting agreement shall be subject to the prior written approval of OTS.

3. CASEY shall not be or serve as a Voting Representative of the FIRSTBANC Stockholders' Voting Agreement.

4. CASEY shall not be or serve as the Trustee of the FirstBanc Savings Association Employee Stock Ownership Plan and Trust ("ESOP").

5. CASEY shall not directly or indirectly seek or accept indemnification from FIRSTBANC or from the ESOP for any legal fees, costs, or expenses incurred in connection with the OTS investigation of the ESOP.

6. CASEY shall indemnify FIRSTBANC and the ESOP for any and all costs, damages, causes of action, claims, fines or penalties brought by or assessed against FIRSTBANC and/or the ESOP by the United States Department of Labor or the Internal Revenue Service

which were caused by CASEY's actions or inactions in the operation of the ESOP prior to the date of this Order. CASEY shall additionally indemnify the ESOP and FIRSTBANC for any future legal or professional fees and all costs and expenses incurred by the ESOP or FIRSTBANC that arise out of any such claims, causes of action, fines or penalties.

The amounts covered by this indemnification shall be net of any insurance proceeds or other recoveries received by FIRSTBANC or the ESOP from any insurance company or through judgment upon or settlement of any claims and causes of action, if any, against any persons other than CASEY concerning such other persons' actions or inactions in the operation of the ESOP prior to the date of this Order.

Nothing in this Order shall be construed to prevent or limit the right or ability of FIRSTBANC, the ESOP or CASEY to pursue any cause of action or claim against any persons to recover damages, fines, penalties, fees and related costs incurred by reasons of the actions or inactions of any such persons in the operation of the ESOP. CASEY, however, shall be expressly precluded from pursuing such a claim against FIRSTBANC or the ESOP.

Nothing in this Order shall be construed to limit or absolve CASEY of any liability arising from his actions or inactions as a director, officer and/or controlling person of FIRSTBANC or as Trustee of the ESOP.

CASEY shall execute a written indemnification to FIRSTBANC and the ESOP obligating him to indemnify FIRSTBANC and the ESOP in accordance with this paragraph of the Order.

7. The stock transaction by which CASEY, on October 1, 1989, sold the ESOP 2,500 shares of his personal stock for the principal sum of \$26,875 shall be rescinded. Within sixty (60) days from the effective date of this Order, CASEY shall reimburse to the ESOP the sum of \$7,294.63 (representing the amount of funds paid to CASEY from the stock sale) and further cancel and return to the ESOP that certain promissory note dated November 1, 1989, which is payable to CASEY in the principal amount of \$26,875. Upon CASEY's compliance with the foregoing within the time stated, he shall be entitled to receive back the 2,500 shares of FIRSTBANC stock that he previously sold to the ESOP on October 1, 1989.

8. CASEY shall forfeit, waive, and release any ESOP benefits, interests, distribution or claims for ESOP benefits, interests, and distributions ("ESOP Benefits"). CASEY shall not exercise any rights he otherwise may have to the ESOP "Put Option" as described in paragraph 8.9 of the ESOP written plan. CASEY shall execute any and all waivers or documentation which may be requested or needed to waive the ESOP Benefits and/or the "Put Option". Additionally, CASEY shall not, directly or indirectly, take any action which would require either the ESOP or FIRSTBANC to purchase any of CASEY's rights or interest or member account in the ESOP.

9. This Order is subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), providing for criminal penalties for violation of this Order.

10. CASEY shall promptly respond to any request from OTS for information or documentary disclosure that OTS requests to

