

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
BAYSIDE FEDERAL SAVINGS AND)
LOAN ASSOCIATION)
PORT CHARLOTTE, FLORIDA)

OTS Order No.: ATL-93-26

Dated: July 16 , 1993

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST**

Whereas, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its supervisory and regulatory powers, is of the opinion that grounds exist to initiate administrative cease and desist proceedings against Bayside Federal Savings and Loan Association, Port Charlotte, Florida, OTS No. 8074, ("Bayside" or "Institution"), pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b)¹.

Whereas, Bayside desires to cooperate with the OTS and to avoid the time and expense of such administrative cease and desist proceedings and, without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms:

JURISDICTION AND FACTS

1. Bayside is a "savings association" within the meaning of Section 3(b)(1) of the FDIA, 12 U.S.C. § 1813(b)(1). The Institution is an "insured depository institution" as that term is defined in Section 3(c)(2) of the FDIA, 12 U.S.C. § 1813(c)(2).

2. Pursuant to Section 8(b)(1) of the FDIA, 12 U.S.C. § 1818(b)(1), the appropriate Federal banking agency may issue a cease and desist order against any insured depository institution that engages in unsafe and unsound practices in conducting its business and/or violates a rule or regulation.

3. Pursuant to Section 3(q)(4) of the FDIA, 12 U.S.C. § 1813(q)(4), the Director of the OTS is the "appropriate

1. All references to the U.S.C. are as amended.

*Committed by
Bayside board members
James R. (Bill) Fisher and
John H. Carney*

Federal banking agency" in the case of any savings association. Therefore, Bayside is subject to the authority of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to Section 8(b) of the FDIA.

4. The facts in support of the accompanying Order to Cease and Desist ("Order") include unsafe and unsound practices in conducting the business of the Institution, and violations of laws, rules, and regulations, specifically:

(a) 12 C.F.R. Part 215 generally regarding loans to executive officers, directors and principal shareholders;

(b) 12 C.F.R. § 563.180(b) generally regarding false representations or misleading statements to the regulators; and

(c) 12 C.F.R. § 571.7, generally regarding conflicts of interest.

CONSENT

5. Bayside consents to the issuance by the OTS of the accompanying Order. The Institution further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

FINALITY

6. The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director for the Southeast Region of the 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).

WAIVERS

7. Bayside waives its 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.

8. Bayside acknowledges and agrees that the consent to the issuance of the Order is for the purpose of resolving this OTS enforcement matter only, and does not resolve, affect or preclude any other civil or criminal proceeding that may be or has been brought by the OTS or another governmental entity.

SIGNATURE OF DIRECTORS

9. Each Director signing this Stipulation attests that s/he voted in favor of a resolution authorizing the execution of this Stipulation.

WHEREFORE, in consideration of the foregoing, Bayside, by a majority of its directors, executes this Stipulation.

**BAYSIDE FEDERAL SAVINGS AND
LOAN ASSOCIATION,**
By a majority of its
directors:

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/S/

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ORDER TO CEASE AND DESIST

WHEREAS, Bayside Federal Savings and Loan Association, Port Charlotte, Florida, OTS Docket Number 8074 ("Bayside" or "Institution"), for itself and its wholly owned service corporations and subsidiaries, has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist ("Stipulation"), which is incorporated herein by reference; and

WHEREAS, Bayside, in the Stipulation, has 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, 12 U.S.C. § 1818(b)¹.

NOW THEREFORE, IT IS ORDERED that Bayside and its directors, officers, employees, agents, service corporations and subsidiaries shall cease and desist from any unsafe or unsound practices in conducting the business of the Institution and further, shall cease and desist from any violation of, or the aiding and abetting of any violation of, and from any noncompliance with, or the aiding and abetting of any noncompliance with:

1. 12 C.F.R. Part 215 (Regulation O) (generally regarding loans to executive officers, directors and principal shareholders);

2. 12 C.F.R. § 563.180(b) (generally regarding false representations or misleading statements to the regulators); and

3. 12 C.F.R. § 571.7 (generally regarding conflicts of interest).

1. All references to the U.S.C. are as amended.

IT IS FURTHER ORDERED that:

4. Bayside shall immediately cease and desist from engaging or participating in any ^{financial} transaction, directly or indirectly, with, on behalf of, or for the benefit of, the following: (a) James R. (Bill) Fisher; (b) John H. Carney; (c) Equisource Capital Corporation; (d) U. S. Savings Associates, Ltd.; (e) Litigare Equity Corporation; (f) Integral Capital Corporation; (g) Fisher Family Trust; (h) John H. and Rena S. Carney Children's Trust; (i) James R. (Bill) Fisher Financial and Business Consulting, Inc.; (j) John H. Carney & Associates, P.C.; (k) Carney & Jackson; and/or (l) any subsidiary or affiliate of the foregoing, or any company owned or controlled by any of the foregoing, other than the Institution itself, without the prior written approval of the OTS Regional Director for the Southeast Region ("Regional Director"). Prohibited transactions shall include, but are not limited to, the payment of fees of any type, or the payment of legal, professional or any other type of business expenses on behalf of or for the benefit of any of the individuals or entities listed herein. Prohibited transactions shall not include usual and customary expenses incurred by Bill Fisher and John Carney for the purpose of attending ^{or earned} Bayside board meetings. [**Continued below*]. ^{or board fees}

5. A majority of Bayside's board of directors shall at all times be composed of members who are not affiliated with Bayside's holding company. For purposes of this provision, general partners or stockholders controlling 10% or more of the holding company's stock, Bill Fisher, John Carney or any other person proposed or nominated by, and/or under the control of, Bill Fisher or John Carney shall be considered to be affiliated with the holding company. In the event the composition of the board fails to comply with this provision due to the voluntary resignation, death or other incapacitation of a non-affiliated board member, Bayside shall have sixty (60) days from the date on which such incapacitation occurs to effect compliance with this provision. Until such time as Bayside returns to compliance with this provision, any matter outside the normal course of business shall require the prior approval of the Regional Director. The names and appropriate background information regarding any proposed directors shall be submitted to the Regional Director for his approval prior to the appointment of the proposed directors to the board. Such approval shall be at the sole discretion of the Regional Director. Prior to the submission of the proposed directors to the Regional Director for approval, the proposed directors must be approved by a majority of the non-affiliated board members. The board of directors of Bayside shall take any corporate action necessary to achieve and/or maintain compliance with this Paragraph.

* In addition, prohibited transactions shall not include (i) discussions, negotiations, dealings, or agreements (subject to the approval of OTS as may otherwise be prescribed by law or regulation) by and among Bayside, its holding company, and any third party or parties, respecting capital infusion, change in control of Bayside, or merger or acquisition or other combination affecting Bayside; or → see reverse

SUCCESSOR STATUTES, REGULATIONS, GUIDANCE, AMENDMENTS

6. Reference in this Order to provisions of statutes, regulations, OTS Bulletins, Memoranda and publications shall be deemed to include references to all amendments to such provisions as have been made as of the effective date of this Order and references to successor provisions as they become applicable.

NOTICES

7. (a) Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Order to be made upon, given or furnished to, delivered to, or filed with:

(i) The OTS by the Institution, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Regional Director, Office of Thrift Supervision, Department of the Treasury, 1475 Peachtree Street, Atlanta, Georgia 30309 or telecopied to (404) 888-5634 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.

(ii) The Institution by the OTS, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, or sent via overnight delivery service or physically delivered, in each case to the Institution at: 3280 Tamiami Trail, Port Charlotte, Florida 33952; or telecopied to (813) 627-8611 and confirmed by first class mail, postage prepaid, overnight service or physically delivered, in each case to the above address.

(b) Notices hereunder shall be effective upon receipt, if by mail, overnight delivery service or telecopy, and upon delivery, if by physical delivery. If there is a dispute about the date on which a written notice has been received by a party to this Order, there shall be a presumption that the notice was received two business days after the date of the postmark on the envelope in which the notice was enclosed.

DURATION, TERMINATION OR SUSPENSION OF ORDER

8. (a) The provisions of this Order shall become effective on the date it is issued as shown in the caption above, and shall remain in effect until terminated, modified or suspended in writing by the OTS, acting through the Regional Director.

(b) The Regional Director in his sole discretion, may, by written notice, suspend any or all provisions of this Order. (c) *The Supervisory Agreement between Bayside and OTS, dated July 2, 1990, is terminated upon the effective date of this Order.*
EFFECT OF HEADINGS

9. The section headings used in this Order are for convenience of reference only and are not to affect the construction of or be taken into consideration in the interpretation of this Order.

SEPARABILITY CLAUSE

10. In the event any provision of this Order is ruled to be invalid, illegal or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his sole discretion determines otherwise.

NO VIOLATIONS OF LAW, RULE, REGULATION OR POLICY STATEMENT AUTHORIZED; OTS NOT RESTRICTED

11. Nothing in this Order shall be construed as: (i) allowing the Institution to violate any law, rule, regulation, or policy statement to which it is subject or (ii) restricting, in any way, the OTS from taking any action that it believes is appropriate in fulfilling the responsibilities placed upon it by law.

SUCCESSORS IN INTEREST/BENEFIT

12. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Order, express or implied, shall give to any person or entity, other than the parties hereto, the Resolution Trust Corporation, and the Federal Deposit Insurance Corporation and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Order.

DIRECTOR RESPONSIBILITY

13. Although the Board is by this Order required to submit certain proposed actions for the review or approval of the OTS Regional Director or his designee, the Board has the ultimate responsibility for safe and sound management of Bayside.

TIME LIMITS

14. Any time limitations imposed by this Order shall

