

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
Robert W. Benner,) Resolution No.: ATL-93-41
) Dated: October 29, 1993
)
Former ~~Director~~ Chief)
Financial Officer of AmeriFirst)
Bank, a Federal Savings Bank)
Miami, Florida)
_____)

STIPULATION AND CONSENT TO
ISSUANCE OF ORDER OF PROHIBITION

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Southeast Region, and Robert W. Benner, former Director and Chief Financial Officer of AmeriFirst Bank, a Federal Savings Bank, Miami, Florida, OTS Docket No. 2143 ("AmeriFirst" or "Institution"), hereby stipulate and agree as follows:

1. Consideration. The OTS, based upon information derived from the exercise of its supervisory and regulatory powers, is of the opinion that grounds exist to initiate an administrative prohibition proceeding against Robert W. Benner ("Benner") pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e). Benner, while denying that any grounds exist to initiate an administrative prohibition proceeding, desires to cooperate with the OTS to

avoid the time and expense of an administrative proceeding. Accordingly, Benner consents to the issuance of the Order of Prohibition by OTS and hereby stipulates and agrees to the terms therein in consideration of the OTS: a) forbearing from initiating such administrative prohibition proceeding against him; b) concluding its formal investigation pursuant to OTS Resolution No. ATL-90-14, dated November 16, 1990, into activities engaged in by Benner while employed by AmeriFirst; and c) not pursuing Benner for any other enforcement action: Provided, the information submitted to OTS by Benner pursuant to the Order is accurate.

2. Jurisdiction.

(a) AmeriFirst is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) and Section 2 of the Home Owners' Loan Act of 1933 ("HOLA"). 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) Benner as a former Chief Financial Officer ~~of~~ ~~AmeriFirst~~ of AmeriFirst was an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).

(c) Pursuant to Section 3 of the FDIA, the OTS is the "appropriate Federal banking agency" to maintain an administrative proceeding against such a savings association or

its institution-affiliated parties. Therefore, Benner is subject to the authority of the OTS to initiate and maintain a prohibition proceeding against him pursuant to Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

3. Consent. Benner consents to the issuance by the OTS of the accompanying Order of Prohibition ("Order"). He 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(e) of the FDIA, 12 U.S.C. § 1818(e). 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. Benner waives his right to a notice of intention to prohibit and the administrative hearing provided by Section 8(e) of the FDIA, 12 U.S.C. § 1818(e), and further waives his 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.

Further, this Stipulation, the Order, or compliance with any provisions of the Order, does not compromise, settle, dismiss, resolve, or in any way affect any civil actions, charges against, or liability of Benner 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.

Benner acknowledges and agrees that this proceeding, and Benner's consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and do not resolve, affect or preclude any other civil or criminal proceeding which may be or has been brought against Benner by another governmental entity.

By signing this document Benner agrees that he will not assert compliance with the Order 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, other than OTS.

WHEREFORE, in consideration of the foregoing and intending to be legally bound hereby, the Regional Director for the Southeast Region, on behalf of the OTS, and Benner execute this Stipulation and Consent to Issuance of Order of Prohibition.

OFFICE OF THRIFT SUPERVISION

By:

/S/

~~John E. Ryan~~
Regional Director
Southeast Region

/S/

10/14/93
Robert W. Benner

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In the Matter of:)

Robert W. Benner,)

Former Director and Chief)
Financial Officer of AmeriFirst)
Bank, a Federal Savings Bank)

Miami, Florida)
_____)

Order No.: ATL-93-41
Dated: October 29, 1993

ORDER OF PROHIBITION

WHEREAS, Robert W. Benner ("Benner") has executed a Stipulation and Consent to the Entry of An Order of Prohibition ("Stipulation"); and

WHEREAS, Benner, by his execution of the Stipulation, has consented and agreed to the issuance of this Order of Prohibition ("Order"), pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e)¹;

NOW THEREFORE, IT IS ORDERED THAT:

1. Benner is prohibited from further participation, in any manner, in the conduct of the affairs of AmeriFirst Bank, a Federal Savings Bank, Miami, Florida, OTS Docket No. 2143, and any holding company, subsidiary or service corporation thereof ("AmeriFirst" or "Institution").

2. Benner may not hold any office in, or participate in any manner in the conduct of the affairs of any Federally regulated depository institution or other entity as set forth

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

in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A), hereafter referred to as a "Covered Institution", without the prior written approval of the Regional Director and, if appropriate, another Federal financial institutions regulatory agency. Pursuant to Section 8(e)(6) of the FDIA, 12 U.S.C. § 1818(e)(6), conduct prohibited by this Order without such prior written approval of the OTS and of the "appropriate Federal banking agency includes, without limitation: (a) the solicitation, procurement, transfer, attempt to transfer, vote, or the attempt to vote, any proxy consent, or authorization with respect to any voting rights in any insured depository institution described in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A); and (2) voting for a director, or serving or acting as an institution-affiliated party.

3. Upon or before the effective date of this Order, Benner shall provide OTS with an affidavit stating that he did not receive any monies from AmeriFirst upon leaving the Institution or prior to his departure other than the compensation paid to him by AmeriFirst under existing employment contracts. Attached to the affidavit and incorporated therein by reference shall be a copy of Benner's current financial statement setting forth all of his individual assets and liabilities, including, but not limited to, all of his interests in any jointly owned asset, corporation, trust, or other entity.

4. The Stipulation is made a part hereof and is incorporated herein by this reference.

