

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of )  
 )  
Colonial Central Savings Bank, FSB )  
Mount Clemens, Michigan )  
 )  
 )

Re: Resolution No. IND-92-1

Dated: February 28, 1992

ORDER TO CEASE AND DESIST

WHEREAS, Colonial Central Savings Bank, FSB, Mt. Clemens, Michigan ("Colonial"), through its directors, has executed a Stipulation and Consent to Issuance of Order to Cease and Desist, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Central Region; and

WHEREAS, Colonial, in the Stipulation, without admitting or denying any violation of any statute, regulation, or agreement with any federal banking agency, 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, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") (to be codified at 12 U.S.C. 1818(b)).

NOW, THEREFORE, IT IS ORDERED that Colonial and its directors, officers, employees, agents, and service corporations shall cease and desist from any violation of, or the aiding and abetting of any violation of:

1. 12 U.S.C. 1464(v)(1) (reports of condition);

2. 12 C.F.R. Section 563.170(c) (establishment and maintenance of records);
3. Section 3 of the July 28, 1989 Operating Agreement (books and records);
4. Section 23B of the Federal Reserve Act as made applicable to savings associations by Section 10(d) and 11 of the Home Owners' Loan Act ("HOLA") as added by FIRREA (transactions with affiliates);
5. Part I(A)4A(3) and (5) of the January 17, 1991 Capital Plan Agreement;
6. 12 C.F.R. 563.160(a) (classification of certain assets);
7. Section 7 of the July 28, 1989 Operating Agreement (asset classifications);
8. 12 C.F.R. 563.160(d)(1) and (3) (effect of asset classifications); or
9. 12 C.F.R. 563.93 (loans to one borrower).

IT IS FURTHER ORDERED that:

BOOKS AND RECORDS

1. (a) Colonial shall prepare its capital calculations for Section CCR of the Thrift Financial Report ("TFR") in compliance with the instructions to the TFR and all regulatory requirements and written supervisory directives. Colonial shall amend Section CCR of its June 30, 1991 Thrift Financial Report to reflect the proper calculation of Colonial's capital positions as noted in the Report of Examination dated as of March 25, 1991. Colonial shall not be required to reverse

the purchase of land contracts by Colonial from its wholly-owned subsidiary, Central Venture Corporation. All subsequently filed Thrift Financial Reports also shall reflect these required corrections.

(b) Within forty-five (45) days of the date of this Order, Colonial, acting through its Board of Directors of Colonial ("Board"), shall submit to the Deputy Regional Director a policy to ensure that all general ledger accounts are reconciled on a monthly basis. At a minimum, the policy should:

- (i) Assign responsibility for performing and reviewing the reconciliations;
- (ii) Require adequate supporting documentation;
- (iii) Require the Chief Financial Officer or Controller to review a quarterly report identifying stale reconciling items; and
- (iv) Require the Internal Audit Department to review compliance with the policy on a periodic basis and report the results of its review to the Audit Committee.

#### TRANSACTIONS WITH AFFILIATES

2. (a) Colonial shall not engage in any transactions which do not comply with applicable statutes and regulations governing transactions with affiliates, including Sections 10(d) and 11 of the Home Owners Loan Act and 12 C.F.R. 563.41.
- (b) Within forty-five (45) days of the date of this Order, Colonial, acting through the Board, shall submit to the Deputy Regional Director, for written approval, a policy which incorporates the necessary standards, guidelines, and procedures to prevent violations of the statutory and regulatory restrictions on transactions with affiliates.

- (c) Upon approval by the Deputy Regional Director, Colonial shall implement and comply with such policy. Amendments to such policy shall be submitted to the Deputy Regional Director for written approval prior to implementation.
3. (a) Colonial shall not permit any payments to be made by Earl Keim Realty Licensing Company (d/b/a Red Carpet Keim) to Red Carpet Real Estate Services, Inc. pursuant to the Master Franchise Agreement dated July 13, 1988 as long as Earl Keim Realty Licensing Company is a subsidiary of Colonial.
- (b) Furthermore, Red Carpet Real Estate Services shall refund to Red Carpet Keim any payments made under the Master Franchise Agreement prior to the effective date of this Order.

TAX ALLOCATION AGREEMENT

4. (a) Within forty-five (45) days of the date of this Order, Colonial shall submit to the Deputy Regional Director, for written approval, a revised written tax allocation agreement with Central Holding Company, Mount Clemens, Michigan ("Company" or "Holding Company").
- (b) The revised tax allocation agreement shall, at a minimum:
- (i) Be consistent with the guidance contained in Section 600 of the OTS Regulatory Handbook for Holding Companies;
  - (ii) Specify the format of the quarterly tax payment calculation;
  - (iii) Describe the documentation required to support the calculation;
  - (iv) Provide that tax benefits arising from Colonial and its subsidiaries filing as part of a consolidated group shall accrue to Colonial and its subsidiaries.

- (c) Upon approval by the Deputy Regional Director, Colonial shall implement and comply with such agreement. Amendments to such agreement shall be submitted to the Deputy Regional Director for written approval prior to implementation.

#### SERVICE CORPORATIONS

5. Within thirty (30) days of the date of this Order, Colonial shall make application to the OTS to divest all of its subsidiaries which do not meet the definition of "includable subsidiary" contained in 12 C.F.R. Section 567.1(1). Provided, however, that this requirement shall not apply to Central Venture Corporation ("CVC") if CVC becomes an includable subsidiary by divestiture of CVC's subsidiaries pursuant to the requirements of this section.

6. Colonial shall not establish any additional subsidiaries or service corporations and shall not create any additional d/b/a names for existing subsidiaries or service corporations.

7. (a) Within forty-five (45) days of the date of this Order, Colonial, acting through the Board, shall submit to the Deputy Regional Director, for written approval, a policy to ensure that Colonial and its subsidiaries and its service corporations are operated in a manner which demonstrates their separate corporate existence as required by 12 C.F.R. Section 563.37(a) and 571.21(a).

(b) Specifically, but not by way of limitation, the policy shall require that:

- (i) Separate books and records be maintained for each service corporation of Colonial;
- (ii) Each active service corporation hold separate Board meetings on at least a quarterly basis;

- (iii) All transactions between Colonial and its service corporations, as well as transactions between service corporations, be properly accounted for and fully documented and explained; and
- (iv) Colonial and each affiliate or service corporation shall establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts in accordance with 12 C.F.R. 563.170(c).

(c) Upon approval by the Deputy Regional Director, Colonial shall implement and comply with such policy. Amendments to such policy shall be submitted to the Deputy Regional Director for written approval prior to implementation.

#### EXPENSE ALLOCATION

8. (a) Within forty-five (45) days of the date of this Order, Colonial, acting through the Board, shall submit to the Deputy Regional Director, for written approval, a policy for allocating expenditures to be paid by the Holding Company and its non-thrift affiliates instead of by Colonial.
- (b) Specifically, but not by way of limitation, expense allocations should be addressed for the following:
- (i) Travel and entertainment expenses;
  - (ii) Accounting and audit expenses;
  - (iii) Legal expenses;
  - (iv) Director fees; and
  - (v) Office premises expenses.
- (c) Upon approval by the Deputy Regional Director, Colonial shall implement and comply with such policy. Amendments to such policy shall be submitted to the Deputy Regional Director for written approval prior to implementation.

EXCESSIVE EXPENDITURES

9. (a) Within forty-five (45) days of the date of this Order, Colonial, acting through the Board, shall adopt a revised policy to control expenditures related to travel, meals and entertainment and to require adequate documentation of the business purpose of such expenditures.
- (b) The policy shall, at a minimum:
- (i) Provide that expenses not necessary for the achievement of a legitimate business purpose shall not be reimbursed by Colonial or its subsidiaries;
  - (ii) Specifically address expenses which were criticized in the Report of Examination dated March 25, 1991 (i.e. bar bills, in-room movies, gifts, event admissions, etc.);
  - (iii) Identify travel expenses that qualify for reimbursement and specify reasonable limitations for reimbursement of those expenses;
  - (iv) Identify excessive travel expenditures which shall not qualify for reimbursement;
  - (v) Contain specific guidelines for when expenses for meals qualify for reimbursement and indicate reasonable limits for reimbursement;
  - (vi) Address reimbursement for employees who are "away from home" as that term is used in Section 162(a)(2) of the Internal Revenue Code of 1986 and the regulations thereunder and identify situations when employees not "away from home" may claim reimbursement for meals;
  - (vii) Provide that employees who are not "away from home" and who are not entertaining potential or existing revenue-producing customers may not claim reimbursement;
  - (viii) Limit reimbursement of automobile expenses to those costs incurred while conducting business of Colonial;
  - (ix) Provide that total cost to Colonial and its subsidiaries and affiliates, for miles driven on Colonial business shall not exceed the maximum per mile rate specified by the Internal Revenue Service from time to time; and
  - (x) Require that appropriate documentation of mileage driven must be kept.
- (c) Upon approval by the Deputy Regional Director, Colonial shall implement and comply with such policy. Amendments to such policy shall be submitted to the Deputy Regional Director for written approval prior to implementation.

CLASSIFICATION OF ASSETS

10. All assets of Colonial and its subsidiaries shall be classified in accordance with 12 C.F.R. Section 563.160(a), and Board adopted policies and procedures. Within thirty (30) days of the date of this order, Colonial shall implement corrective action for all classification concerns noted in the Report of Examination dated March 25, 1991.

CLASSIFIED ASSET WORKOUT SPECIALIST OR CONSULTING FIRM

11. Within thirty (30) days from the date of this Order, Colonial, acting through the Board, shall submit to the Deputy Regional Director a report detailing Colonial's efforts to hire a qualified individual or consulting firm to assist Colonial in the reduction of its classified assets. Thereafter, Colonial, acting through the Board, shall send a monthly update of this report to the Deputy Regional Director until a suitable candidate has been identified. Upon identifying a qualified individual or firm, the Board shall submit the individual's or firm's name, resume and proposed consulting agreement to the Deputy Regional Director for approval. Upon approval by the Deputy Regional Director, Colonial shall offer to hire the approved individual or firm according to the terms approved by the Deputy Regional Director. The individual or consulting firm shall not participate in the loan origination or credit underwriting function.

REGULATION Z COMPLIANCE

12. This Order shall not be interpreted to prevent the OTS from exercising its enforcement authority with respect to violations of the Truth-in-Lending Act or regulations issued under that Act, which were identified in Colonial's March 25, 1991 Compliance Examination Report.

#### VALUATION ALLOWANCES

13. Within thirty (30) days of the date of this Order Colonial shall submit to the Deputy Regional Director for review and approval its methodology for establishing prudent valuation allowances consistent with 12 C.F.R. Section 563.160(d). After approval by the Deputy Regional Director, Colonial shall follow the methodology. Colonial shall not change the methodology without the prior written approval of the Deputy Regional Director. Specifically, but not by way of limitation, such methodology shall be designed to;

- (a) Properly calculate fair value or net realizable value, whichever is appropriate pursuant to applicable regulations;
- (b) Account for the excess of book value over fair value or net realizable value via a specific valuation allowance or charge-off;
- (c) Establish prudent general valuation allowances on classified assets, in addition to any existing specific valuation allowances or charge-offs; and
- (d) Segregate general from specific valuation allowances and place them in separate and clearly identified ledger accounts.

#### LOANS TO ONE BORROWER

14. (a) Colonial shall comply with the limitations regarding loans to one borrower contained in 12 C.F.R. 563.93.
- (b) Within forty-five (45) days of the date of this Order, the Board shall submit to the Deputy Regional Director, for written approval, a policy to assure that Colonial shall comply with the loans to one borrower rule set forth in 12 C.F.R. 563.93.

- (c) Upon approval by the Deputy Regional Director, Colonial shall implement and comply with such policy. Amendments to such policy shall be submitted to the Deputy Regional Director for written approval prior to implementation.

AMENDMENTS TO POLICIES OR AGREEMENTS

15. Any policy or agreement required by this Order shall be amended in accordance with changes in applicable laws or regulations. Any amendment required by this section shall be made within ninety (90) days of the date of any changes to applicable laws or regulations.

PROGRESS REPORTS

<sup>R 26</sup>  
MARCH 31, 1992  
16. (a) By ~~February 29, 1992~~, and by the end of every month thereafter, Colonial shall provide the OTS with a written progress report for the previous month, in the form and content acceptable to the Deputy Regional Director, discussing in detail progress made toward complying with this Order. The progress report shall contain any information reasonably deemed necessary by the OTS to assist the OTS in evaluating Colonial's actions and progress toward compliance with this Order.

<sup>R 26</sup>  
MARCH 31, 1992  
(b) By ~~February 29, 1992~~, and by the end of every month thereafter, Colonial shall provide OTS with a written status report regarding all classified assets with net book balances in excess of four hundred thousand dollars (\$400,000). The status report shall contain any information deemed necessary by the OTS to assist the OTS in monitoring the progress of said classified assets. At a minimum, the report shall include the following information:

- (i) The name of the asset;
- (ii) A brief description of the asset;
- (iii) The city and state in which the asset is located;

- (iv) Whether the asset is a loan, lease, land contract, real estate in judgment or real estate owned;
- (v) The name of the borrower, lessee or purchaser;
- (vi) The most recent appraised value, fair value or net realizable value, whichever is appropriate pursuant to applicable law or regulation;
- (vii) The most recent classification assigned, including substandard, doubtful, loss, or special mention;
- (viii) The gross book value, any debits and credits which increase or decrease the gross book value, and the resulting net book value;
- (ix) The number of units or square feet planned, the number of units or square feet completed, and the number of units or square feet sold or leased;
- (x) The calendar year to date return on real estate owned;
- (xi) The number of months that a loan, lease or land contract is delinquent;
- (xii) A description of events which had a material effect on the asset during the previous month; and
- (xiii) A description of planned actions which are anticipated to have a material impact on the asset in the future.

17. Each director shall certify to the Deputy Regional Director that, to the best of his or her knowledge and belief, and based upon a prudent review, the progress report referred to in Section 16 is accurate or provide the Deputy Regional Director with a written statement providing in detail the reason(s) for disagreement with the progress report. This certification shall be included in the minutes of each regular meeting of the Board. Within thirty (30) days of the date of this Order, Colonial, acting through its Board, shall submit to the Deputy Regional Director for review and approval its plan to provide a prudent review, including, but not limited to, an identification of sources of information.

18. Although Colonial is required by this Order to submit certain proposed actions, policies, procedures, plans and guidelines for the review or approval of the Deputy Regional Director or his/her designee for the OTS, the Board of Directors retains the ultimate responsibility for the proper and safe and

sound management of Colonial. Moreover, the Board shall carry out its fiduciary duty to ensure that Colonial is safely and soundly managed. To this end, Colonial's official minutes (including committee minutes and any attachments or exhibits to the minutes) shall clearly reflect the level of decision making and supervision exercised over Colonial by the Board.

#### OTHER PROVISIONS

19. As used in this Order, the term "Deputy Regional Director" shall mean the Deputy Regional Director of the Indianapolis Office of the Central Region of OTS or any other official designated to perform the function by the Regional Director of OTS, or by the Director of OTS or its successor.

20. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, HOLA, and Federal Deposit Insurance Corporation Act, as amended ("FDIC Act"). Any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, HOLA, FDIC Act, or OTS memoranda shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

21. Reference in this Order to provisions of statutes, regulations, bulletins and OTS guidance shall be deemed to include references to successor provisions, as applicable.

22. 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.

23. Materials required to be sent to the OTS pursuant to this Order shall be mailed to: Deputy Regional Director, Office of Thrift Supervision, 8250 Woodfield Crossing Boulevard, Suite 305, Indianapolis, Indiana 46240.

24. On the effective date of this Order, the Operating Agreement dated July 28, 1989, between the Federal Home Loan Bank Board, predecessor to the OTS, and Colonial, is terminated.

OFFICE OF THRIFT SUPERVISION

/S/

BY:

~~Stuart M. Brafman~~  
Regional Director  
Central Region