

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
LIBERTY SAVINGS BANK)
Warrenton, Virginia)
_____)

Resolution No. ATL-92-17

Dated: March 4, 1992

STIPULATION AND CONSENT TO THE ENTRY
OF A CEASE AND DESIST ORDER

The Office of Thrift Supervision ("the OTS"), by and through its Regional Director for the Southeast Region ("Regional Director") and Liberty Savings Bank, Warrenton, Virginia, OTS Docket Number 7615 ("Liberty" or "Institution"), 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 cease and desist proceeding against Liberty pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b) (1988 & Supp. I 1989). The grounds include numerous regulatory violations and unsafe and unsound practices, as follows:

(a) The Institution granted at least six loans to affiliated persons that were not in accordance with 12 C.F.R. § 563.43, and Regulation O, 12 C.F.R. Part 215, in that the loans were not approved by the Board of Directors, the approvals for the loans did not indicate the Institution's cost of funds, its method of calculation or whether the loans were made on substantially the same terms as those available to the general public.

(b) The Institution made loans to President Burleson, excluding the first mortgage on his residence, exceeding \$100,000, contrary to Regulation O, 12 C.F.R. § 215.5(d)(4).

(c) The Board of Directors allowed Director Holloran to abuse his checking accounts, creating at least 86 overdrafts for 79 days totaling \$72,461, in violation of Regulation O. Director Holloran's account was overdrawn by amounts up to \$11,578 for up to 14 days per incident. This

significant pattern of violations was previously disclosed to the Board of Directors by an external auditing firm. These overdrafts were in excess of the overdraft protection lines of credit on Director Holloran's personal and business accounts. Further, advances on one overdraft line of credit were used to make payments on the other overdraft line or on Director Holloran's other outstanding credit with the Institution.

(d) The Institution categorized Director Holloran's overdraft line of credit for the business account as a commercial credit extension that was not reported to the OTS, in violation of 12 C.F.R. § 563.43(b)(5).

(e) The Institution renewed a working capital loan to Director Holloran at least twice without reporting the renewals to the OTS, in violation of 12 C.F.R. § 563.43(b)(5).

(f) The Institution utilized the services of, and paid the following fees to members of the Board of Directors for construction loan inspections, real estate owned projects, insurance, and legal advice, without the benefit of competitive bids and without analysis to determine cost effectiveness.

(i) Liberty paid Director Holloran approximately \$221,121 in 1991 for performing REO construction services, and \$38,650 and \$31,400 for property inspections in 1990 and 1991, respectively.

(ii) Liberty paid Director Moffett approximately \$44,000 and \$19,750 in inspection fees during 1990 and 1991, respectively.

(iii) Liberty paid Director Hyde's insurance firm, Carr and Hyde, fees totaling \$102,640 and \$71,370 in 1990 and 1991, respectively.

(iv) Liberty paid Director O'Connell's law firm, O'Connell & Hayhugh, P.C., legal fees totaling \$119,035 and \$170,557 in 1990 and 1991, respectively.

The Institution failed to ensure that the Directors' services and fees were comparable to others available in the market place, creating, at a minimum, the appearance of a conflict of interest, contrary to OTS policy as set forth at 12 C.F.R. § 571.7.

(g) The Institution paid President Burleson a \$42,500 bonus, an amount equal to 50% of his 1990 salary, at a time when the Institution was suffering declining earnings, deteriorating asset quality, and it was clear that it was not going to meet its minimum regulatory capital requirements.

(h) The Institution employed Michael Holloran, Director Holloran's son, for various construction services on real estate owned, while he had delinquent and classified loans outstanding to the Institution.

(i) The Institution made at least six loans in excess of the loans to one borrower limit established by 12 C.F.R. § 563.93. The Institution also failed to document in the individual loan files its efforts to bring any renewals, extensions, or modifications of loans to borrowers in excess of the limitation into compliance with the lending limits.

(j) The Institution engaged in unsafe and unsound lending practices including, using proceeds of one loan to bring or keep other loans current; repeatedly extending loans, often after the maturity date, without a reduction in principal, using loans in process funds to pay the interest costs of the loan; continuing to accept payments, usually interest only, on matured loans rather than requiring full repayment, renewing, extending or otherwise collecting the loan principal.

(k) The Institution and its service corporation, Liberty Financial Corporation ("LFC") failed to maintain separate corporate existences, in violation of 12 C.F.R. §§ 563.37(a) and 571.21(a).

(l) The Institution failed to establish adequate general valuation allowances ("GVAs") as required by 12 C.F.R. § 563.160(c).

(m) The Institution failed to properly perform asset value calculations. For example, several assets were restructured without net realizable value calculations, and the Institution failed to discount the values at an appropriate discount rate.

(n) The Institution did not classify accrued but uncollected interest on loans classified (less than 90 days delinquent). The Institution also failed to charge off consumer loans more than 120 days delinquent, in violation of 12 C.F.R. §§ 563.46 and 561.13.

(o) The Institution failed to ensure that its appraisal policies and procedures were in compliance with the requirements of 12 C.F.R. Part 564.

(p) The Institution did not classify credit card accounts 180 days delinquent as Loss, in violation of 12 C.F.R. §§ 561.13 and 563.46, and failed to report individual delinquent borrowers to the Board of Directors.

(q) The Institution's credit card program's underwriting policies and procedures were inadequate.

(r) The Institution's investment policies were inadequate and failed to address the requirements of 12 C.F.R. § 571.19.

(s) The Institution's earnings deteriorated significantly due to asset quality and high operating expenses.

Liberty desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such administrative cease and desist proceeding against Liberty with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction

(a) Liberty is a "savings association" within the meaning of Section 3(b), 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) (Supp. I 1989). 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) Pursuant to Section 3(q)(4) of the FDIA, 12 U.S.C. § 1813(q)(4), the Director of the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, Liberty 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, 12 U.S.C. § 1818(b).

3. Consent Liberty consents to the issuance by the OTS of the accompanying Order. It 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 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).

5. Waivers Liberty 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.

WHEREFORE, in consideration of the foregoing, the OTS, by and through its Regional Director for the Southeast Region and Liberty, by a majority of its directors, execute this Stipulation and Consent to the Entry of A Cease and Desist Order.

OFFICE OF THRIFT SUPERVISION

LIBERTY SAVINGS BANK,
by a majority of its
directors:

By: _____	_____
John E. Ryan	_____
Regional Director	_____
Southeast Region	_____

ORDER TO CEASE AND DESIST

WHEREAS, Liberty Savings Bank, Warrenton, Virginia, OTS Docket Number 7615, ("Liberty" or "Institution"), through its directors, has executed a Stipulation and Consent to the Entry of A Cease and Desist Order ("Stipulation"), which is incorporated herein by reference, and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Southeast Regional Office ("Regional Director"); and

WHEREAS, Liberty, in the Stipulation, without admitting or denying that the grounds exist, 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 ("FDIA"), 12 U.S.C. § 1818(b) (1988 & Supp. I 1989).

NOW THEREFORE, it is ordered that Liberty 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 C.F.R. § 563.43
2. 12 C.F.R. § 563.37
3. 12 C.F.R. § 563.93
4. 12 C.F.R. § 571.21
5. 12 C.F.R. § 561.13
6. 12 C.F.R. § 563.46
7. 12 C.F.R. Part 564
8. 12 C.F.R. § 571.19
9. 12 C.F.R. Part 215

IT IS FURTHER ORDERED THAT:

AFFILIATED PERSONS TRANSACTIONS

10. The Board of Directors shall ensure that all loans and extensions of credit to affiliated persons, including, but not limited to, all loans to President Burleson and Director Holloran, comply with the requirements of 12 C.F.R. § 563.43, and all applicable provisions of Regulation O, 12 C.F.R. Part 215. Further, the Board of Directors shall ensure that all loans to affiliated persons, excluding loans secured by personal residences, are submitted to, and approved in advance by, the Regional Director.

11. The Board of Directors shall not permit overdrafts or loans to Director Holloran or any other affiliated person that result in violations of Regulation O, 12 C.F.R. Part 215. Further, within 30 days of the effective date of this Order, the Board of Directors shall require that Director Holloran close all depository relationships, including his personal checking accounts, at Liberty and that he pay off any balance due on all overdraft protection lines of credit established for his accounts.

12. Within 30 days of the effective date of this Order, the Institution shall amend, implement, and thereafter adhere to, affiliated person loan policies and procedures that, at a minimum, address the OTS' concerns in the October 28, 1991 Report of Examination ("1991 Exam Report"), and all regulatory requirements. The revised policies shall require, at a minimum, that all loans to affiliated persons be approved by the Board of Directors, and shall disclose the Institution's cost of funds, its method of computation and whether the loans were made on substantially the same terms as those available to the general public.

13. The Institution shall immediately cease all payments directly or indirectly to members of the Board of Directors for any services rendered. Furthermore, within 30 days of the effective date of this Order, the Institution shall provide to the Regional Director written information necessary to support that all fees, premium arrangements or other remuneration (excluding director and committee fees) paid to any Director during the preceding two years, including, but not limited to, the following amounts, as indicated in the October 29, 1990 Report of Examination and 1991 Exam Report, respectively, were bona fide and commensurate with the value of services rendered or products furnished to the Institution:

(a) Payments made to Director Moffet for property inspections totaling \$44,400 and \$19,750 in 1990 and 1991, respectively.

(b) Payments made to Director Holloran for property inspections totaling \$38,650 and \$31,400 in 1990 and 1991 respectively, and payments made to Director Holloran for renovating and completing construction on four REO parcels totaling \$221,121 in 1991.

(c) Insurance fees paid to Director Hyde's insurance firm, Carr & Hyde, totaling \$102,640 in 1990. Corporate insurance fees paid to Director Hyde's insurance firm totaling \$55,678 in 1991, and fees for insurance on REO properties paid to Director Hyde's firm totaling \$15,692 in 1991.

(d) Legal fees paid to Director O'Connell's law firm, O'Connell & Mayhugh, P.C., totaling \$119,035 \$170,557 in 1990 and 1991, respectively.

Any future fee, premium or other remuneration to any Director must be preapproved in writing by the Regional Director. The Institution also shall perform, and submit with its request for approval, an analysis indicating whether the services provided by members of the Board of Directors are provided at a cost that is comparable to, or less than, that available in the market place.

14. Within 30 days of the effective date of this Order, the Institution shall submit to the Regional Director its rationale and written support for the financial data that was used to calculate the \$42,500 bonus paid to President Burleson, an amount equal to 50% of his 1990 salary, at a time when the Institution was suffering declining earnings, deteriorating asset quality and when it was clear that was not going to meet its minimum regulatory capital requirements.

LENDING

15. With the exception of legally binding commitments as of the date of this Order, the Institution shall not make, renew, modify, or otherwise increase its outstanding balance of loans to one borrower above the level permitted by 12 C.F.R. § 563.93. The Institution also shall develop and implement a plan to reduce the outstanding balance of all loans that are currently in violation of the loan to one borrower limitations of 12 C.F.R. § 563.93, specifically the six loans criticized in the 1991 Exam Report.

The Institution shall document its efforts to bring these lending relationships into compliance with the applicable regulations. Such documentation shall be submitted to the Regional Director on a quarterly basis.

16. The Board of Directors shall ensure that the Institution's lending and workout policies and procedures are safe and sound. The Board of Directors shall not continue its past unsafe and unsound practices of:

- (a) extending additional credit to bring or keep problem loans current;
- (b) extending additional credit to fund interest costs;
- (c) paying the interest costs of a loan from loans in process funds;
- (d) repeatedly extending loans with no reduction of the loan balance; or
- (e) accepting interest payments on matured loans, rather than requiring full repayment, renewal or otherwise collecting the loan principal.

17. The Institution shall, at least quarterly, properly perform its asset value calculations using appropriate discount rates and holding periods and shall account for real estate owned ("REO"), insubstance foreclosures, and troubled debt restructurings in accordance with generally accepted accounting principles ("GAAP").

18. The Institution shall properly classify accrued but uncollected interest on loans classified (less than 90 days delinquent) and also shall charge off consumer loans that are more than 120 days delinquent, in accordance with 12 C.F.R. §§ 563.13 and 563.46.

19. The Institution shall comply with all of the requirements of 12 C.F.R. §§ 561.13 and 563.46 and shall classify all credit card accounts that are more than 180 days delinquent as Loss and report individual delinquent borrowers to the Board of Directors. The Board of Directors also shall, within 30 days of the effective date of this Order, amend, implement and thereafter adhere to policies and procedures for its credit card lending program.

20. Within 30 days of the effective date of this Order, the Institution shall amend, adopt, implement and thereafter adhere to appraisal policies and procedures that address the 1991 Exam Report concerns and that comply with the requirements of 12 C.F.R. Part 564.

21. Within 30 days of the effective date of this Order, the Institution shall revise, implement and thereafter adhere to investment policies and procedures that address the concerns of the 1991 Exam Report.

BOARD OF DIRECTORS AND MANAGEMENT

22. The Board of Directors shall ensure that all Board meeting minutes are accurate and complete and that they reflect the Directors' discussion and approval of all significant events, including all significant policies, procedures and operating strategies.

23. The Board of Directors shall ensure that the Institution and its service corporations maintain a separate corporate identity, in accordance with all applicable regulations, including 12 C.F.R. §§ 563.37 and 571.21. Each entity shall, at a minimum, hold separate board of directors meetings, and shall maintain separate policies, procedures and records.

24. On a quarterly basis, the Board shall determine the Institution's compliance with this Order, and shall include its findings in the minutes of the Board of Directors' meetings.

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, and any such technical words or terms used in this Order and undefined in said Code of Federal Regulations shall have meanings that accord with the best custom and usage in the savings and loan industry. For purposes of this Order, references to regulations, bulletins, memoranda and publications shall include any successor regulations, bulletins, memoranda and publications.

