

UNITED STATES BANKRUPTCY COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 90-4863-6C7
Resolution No.: ATL-92-34
Dated: April 17, 1992

IN RE:

JOHN R. HENNESSEY,

Debtor.

THE RESOLUTION TRUST
CORPORATION as conservator
for American Pioneer Federal
Savings Bank,

Plaintiff,

vs.

ADVERSARY NO. 91-78

JOHN R. HENNESSEY,

Defendant.

SETTLEMENT STIPULATION
AND CONSENT TO ISSUANCE OF A
CEASE AND DESIST ORDER, ORDER OF PROHIBITION
AND ORDER FOR RESTITUTION

The Resolution Trust Corporation, as receiver for American Pioneer Savings Bank, and John R. Hennessey ("Hennessey"), hereby mutually agree and stipulate as follows:

WHEREAS, on March 22, 1991, the Resolution Trust Corporation, as conservator for American Pioneer Federal Savings Bank, ("RTC") filed the above-captioned adversary proceeding in the Chapter 7 case of Hennessey seeking to except

its debt from discharge pursuant to Section 523 of the Bankruptcy Code; and

WHEREAS, on or about March 4, 1988, Hennessey executed and delivered to American Pioneer Savings Bank a promissory note in the original principal amount of \$60,000. In addition, on March 31, 1988, Hennessey executed and delivered to American Pioneer Savings Bank a promissory note in the original principal amount of \$20,000. On or about March 4, 1989, Hennessey executed and delivered to American Pioneer a promissory note in the original principal amount of \$80,000, which consolidated and extended the debts represented by the two promissory notes described above; and

WHEREAS, Hennessey presented to American Pioneer a personal financial statement dated February 29, 1988, for the purpose of obtaining the above-described extensions of credit; and

WHEREAS, RTC asserts that the financial statement was materially false and was published and provided to American Pioneer by Hennessey with the intent to deceive American Pioneer; and

WHEREAS, Hennessey defaulted under the terms of the above-described promissory notes by failing to make payments due thereunder; and

WHEREAS, RTC alleges Hennessey is liable to RTC for damages arising out of fraud and defalcation while acting in a fiduciary capacity to American Pioneer Savings Bank by

initiating and approving certain loans which violate applicable state and federal law; and

WHEREAS, RTC alleges that said loans have caused loss to American Pioneer Savings Bank; and

WHEREAS, RTC alleges that all of the above items should be excepted from discharge pursuant to Section 523 of the Bankruptcy Code; and

WHEREAS, the parties desire to avoid additional litigation; and

WHEREAS, after advice of counsel, John R. Hennessey and RTC mutually agree and stipulate as follows:

1. Hennessey agrees to the immediate entry of a non-dischargeable judgment in the amount of \$95,000, the form of which is attached hereto as Exhibit A (the "Judgment").

2. RTC agrees to forbear all efforts to collect the Judgment; provided however, that in the event Hennessey fails to make any payment when due as described in paragraph 3 below, RTC shall be entitled to enforce the Judgment by all means, judicial or non-judicial.

3. Hennessey agrees to make payments in the amount of \$444.89 monthly due and payable beginning on ^{APRIL 15 1992} January 15, 1992 and on the 15th of each month thereafter through ^{MARCH 15 1997} December 15, 1996.

4. If Hennessey makes all payments as described in paragraph 3 above, the Judgment shall be satisfied.

5. Consideration. The Office of Thrift Supervision, based upon information reported to it, is of the opinion that the grounds exist to initiate an administrative proceeding against Respondent pursuant to the Federal Deposit Insurance Act Sections 8(b) and (e). Hennessey desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, without either admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from pursuing such administrative litigation against Hennessey with respect to the matters covered in the accompanying Cease & Desist Order, Order of Prohibition and Order for Restitution (the "Order") which is incorporated herein by reference and made a part hereof.

6. Jurisdiction.

(a) American Pioneer Federal Savings Bank is a "savings association" and an "insured depository institution" as defined by 12 U.S.C.A. Sections 1462 and 1813 (West 1989).

(b) Hennessey is an institution-affiliated party as defined by 12 U.S.C.A. Section 1813(u) West 1989).

(c) The Director of the OTS is the "appropriate Federal Banking agency" to maintain administrative proceedings against Hennessey pursuant to 12 U.S.C.A. Sections 1818(b)(e) (West 1989).

7. Consent. Hennessey consents to the issuance by the OTS of the Order. He further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

8. Finality. The Order is issued under 12 U.S.C.A. Sections 1818(b) and (e) (West 1989). Upon its issuance, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C.A. Section 1818(i) (West 1989).

9. Waivers. Hennessey waives an administrative hearing provided by 12 U.S.C.A. Section 1818(b) (West 1989), and further waives his right to seek judicial review of the Order, including any such right provided by 12 U.S.C.A. Section 1818(h) (West 1989) or otherwise to challenge the validity of the Order.

10. This Settlement Stipulation and Consent to Issuance of a Cease and Desist Order, Order of Prohibition and Order for Restitution ("Settlement Stipulation"), the Order and the payment by Hennessey of any monies or providing any other financial relief as contemplated by the Order, does not compromise, settle, dismiss, resolve, or in any way affect any civil actions, criminal charges against, or liability of Hennessey that arise pursuant to this action or otherwise and that may be or has been brought by any governmental entity other than the OTS.

WHEREFORE, in consideration of the foregoing, the OTS, RTC
and Hennessey execute this Settlement Stipulation and Order.

/S/

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/S/

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/S/

John E. Ryan
Director
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/S/

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1. Hennessey is hereby permanently prohibited from holding any office in, or any further participation, in any manner, in the conduct of the affairs of any insured depository institution pursuant to 12 U.S.C. §1818(e).

2. Hennessey acknowledges and agrees that the assessment or any payment of a penalty contemplated as part of the resolution thereof, and the consent of Hennessey to the entry of this Order are for the purposes of resolving these OTS enforcement matters only and do not resolve, affect or preclude any other civil or criminal proceeding which may be brought against Hennessey by the OTS or another governmental entity. By signing this document, Hennessey agrees that he will not assert the assessment or any payment of a penalty as the basis for a claim of double jeopardy in any future proceeding brought by the United States Department of Justice or any other governmental entity.

3. This Order shall be effective from the date of its execution.

/S/

John E. Ryan
Regional Director