

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

A. W. SMITH,)
Director of)

Fidelity Federal Savings Bank)

Dalton, Georgia)

Resolution No.: ATL-92-50

Dated: May 12, 1992

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER OF CIVIL MONEY PENALTY ASSESSMENT**

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Southeast Region ("Regional Director"), and A. W. Smith, ("Smith") Director of Fidelity Federal Savings Bank, Dalton, Georgia, OTS No. 7112 ("Fidelity or "Institution"), stipulate and agree as follows:

1. Consideration

Fidelity and its directors have violated the notice provisions of 12 C.F.R. Sc 563.134 on five consecutive occasions. On one occasion, Fidelity paid dividends in excess of that permitted by the regulation.

Based upon these violations, the OTS is of the opinion that grounds exist to initiate an administrative civil money penalty assessment proceeding against Smith pursuant to Section 8(i)(2) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. Sc 1818(i)(2) (1988 & Supp. I 1989) and pursuant to Section 18(j)(4) of the FDIA, 12 U.S.C. Sc 1828(j)(4). The grounds include repeated violations of the notice provisions of 12 C.F.R. Sc 563.134, and one dividend payment that exceeded the limits of the regulation.

Smith desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding. Without admitting or denying the statements, conclusions or terms herein,

Smith hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such proceeding against him for so long as he is in compliance with the provisions of the accompanying Order of Civil Money Penalty Assessment ("Order").

This Stipulation and the attached Order are issued solely to settle this proceeding. Smith acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated as part of the resolution thereof, and Smith's consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and does not resolve, affect or preclude any other civil or criminal proceeding which may be brought against Smith by the OTS or another government entity.

By signing this document Smith agrees that he will not assert the assessment or payment of this penalty as the basis for a claim of double jeopardy in any future proceeding brought by another government entity, not the OTS. Further, this Stipulation and Consent, the Order and the payment by the Respondent 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, charges against, or liability of the Respondent 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.

2. Jurisdiction

(a) Fidelity is a "savings association" within the meaning of Section 3(b)(1) of the FDIA, 12 U.S.C. Sc 1813(b)(1), and Section 2(4) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. Sc 1462(4). The Institution is an "insured depository institution" as that term is defined in Section 3(c)(2) of the FDIA, 12 U.S.C. Sc 1813(c)(2).

(b) Smith is an "institution-affiliated party" of an insured depository institution within the meaning of Section 3(u)(1) of the FDIA, 12 U.S.C. Sc1813(u)(1).

(c) Pursuant to Section 3(q)(4) of the FDIA, 12 U.S.C. Sc 1813(q)(4), the Director of the OTS is the "appropriate Federal banking agency" in the case of any savings association. Therefore, Smith is subject to the authority of the OTS to initiate and enforce an Order of Civil Money Penalty Assessment pursuant to Section 8(i) of the FDIA, 12 U.S.C. Sc 1818(i) and Section 18(j) of the FDIA, 12 U.S.C. Sc 1828(j).

