

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
FREDERICK HARVEY HOWALT, JR.)
)
A former Director of)
)
Fidelity Federal Savings Bank)
Dalton, Georgia)
)

Resolution No.: ATL-92-52

Dated: May 18, 1992

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

The Office of Thrift Supervision ("OTS"), by and through its Director for the Southeast Regional Office, and Frederick Harvey Howalt, Jr. ("Howalt"), hereby stipulate and agree as follows:

1. Consideration. The OTS, based upon information reported to it, is of the opinion that grounds exist to initiate an administrative civil money penalty assessment proceeding against Howalt pursuant to Section 8(i)(2) of the Federal Deposit Insurance Act ("FDIA"), as amended by Section 907(a)(2)(A) of the Financial Institution Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1818(i)(2) (1988 and Supp I. 1989).

Howalt desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Without admitting or denying the statements, conclusions or terms herein, Howalt hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such administrative civil money penalty assessment litigation. Howalt, without trial, presentation of any evidence, or findings of fact pursuant to an administrative judicial hearing, has consented to the terms of the Stipulation for the sole purpose of resolving the issues in the proceeding without significant legal cost and expense. The OTS has determined that it is appropriate, and in the best interest of the public to execute the Stipulation and the attached Order of Civil Money Penalty Assessment ("Order"). This Stipulation and the attached Order are issued solely to settle this proceeding, and are not the result of factual findings. Howalt acknowledges that the imposition of the Civil Money Penalty in this administrative proceeding by the OTS, and the payment of

such Civil Money Penalty, are for the purpose of resolving this administrative proceeding only and does not compromise, settle, dismiss, resolve, or in any other way affect any civil actions, charges against, or liability of Howalt 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, at all times relevant to the allegations set forth herein, was 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 of 1933, as amended, 12 U.S.C. § 1462(4) (1989). Accordingly, it was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended, 12 U.S.C. § 1813(c).

(b) Until August 9, 1989, the accounts of the Institution were insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") pursuant to Section 403(b) of the National Housing Act of 1934 ("NHA"), 12 U.S.C. § 1726(b), by reason of which it was an "insured institution" within the meaning of the NHA.

(c) As of August 9, 1989, pursuant to the provisions of FIRREA, the insurance of the accounts of the Institution was transferred to the Federal Deposit Insurance Corporation.

(d) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB"), as operating head of the FSLIC, was the regulatory agency with jurisdiction over the Institution and persons participating in the conduct of its affairs, including Howalt, pursuant to Sections 403 and 407 of the NHA, 12 U.S.C. §§ 1726 and 1730.

(e) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended, 12 U.S.C. § 1813(q), the OTS succeeded to the interests of the FHLBB with respect to the supervision and regulation of all savings associations, and thus became the "appropriate Federal banking agency" with jurisdiction over the Institution and persons participating in the conduct of the affairs thereof.

(f) The Director of the OTS has the authority to bring administrative proceedings to assess civil money penalties against institution-affiliated parties pursuant to Section 8(i)(2) of the FDIA, as amended, 12 U.S.C. § 1818(i)(2).

(g) Howalt was at all times relevant hereto a director of Fidelity. Accordingly, Howalt is an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, as amended, 12 U.S.C. § 1813(u), and as such, is subject to the authority of the OTS to initiate and maintain the assessment of a civil money penalty pursuant to Section 8(i)(2) of the FDIA, as amended, 12 U.S.C. § 1818(i)(2).

