

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

Resolution No.: DAL-92-50

Don Henderson, Former Director)
and Current Advisory Director)
First Savings Bank, A Federal)
Savings Bank)
Arlington, Texas)
_____)

Dated: June 17, 1992

STIPULATION AND CONSENT TO ENTRY OF
ASSESSMENT OF CIVIL MONEY PENALTIES

The Office of Thrift Supervision ("OTS"), by and through the Regional Director for the Midwest Regional Office, and Don Henderson, ("Henderson") 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 Henderson pursuant to Section 8(i)(2) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(i)(2) (1988 & Supp. I 1989). Henderson desires to cooperate with OTS and to avoid the time and expense of such administrative litigation 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 civil money penalty assessment proceeding against Henderson with respect to violations of 12 C.F.R. §§ 563.40, 563.41, 563.43, 563.161(a), 563.170, 571.7, engaging in unsafe and unsound practices and breach of fiduciary

duty to First Savings Bank, a Federal Savings Bank ("First Savings Bank"), Arlington, Texas.

2. JURISDICTION

- (a) First Savings Bank, is a "savings association" within the meaning of Section 3 of the Federal Deposit Insurance Act ("FDIA") and Section 2 of the Home Owners' Loan Act of 1933, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183. Accordingly it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1813 (c)).
- (b) Henderson is an institution-affiliated party within the meaning of Section 3(u) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1813(u), in that he served as a director of First Savings Bank at all times relevant to the allegations set forth herein.
- (c) Pursuant to Section 3 of the FDIA, as amended by FIRREA, OTS is the "appropriate Federal banking agency" to maintain civil money penalty assessment proceedings against such institution-affiliated party. Therefore, Henderson is subject to the authority of OTS to initiate and maintain the assessment of a civil money penalty pursuant to Section 8(i)(2) of the FDIA, 12 U.S.C. § 1818(i)(2) (1988 & Supp. I 1989).

3. CONSENT

- (a) Henderson consents to the issuance by OTS of the accompanying Order of Assessment of Civil Money Penalties ("Order") and further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.
- (b) Henderson acknowledges that the debt owed pursuant to the Order is not dischargeable under the Bankruptcy Code, in accordance with 11 U.S.C. § 523(a)(11) and (12), as amended by Section 2522 of the Comprehensive Thrift and Bank Fraud Protection and Taxpayer Recovery Act of 1990, Pub. L. No. 101-647, November 29, 1990.

4. FINALITY

The Order is issued under Section 8(i)(2) of the FDIA, 12 U.S.C. § 1818(i)(2) (1988 & Supp. I 1989). Upon its issuance by the Regional Director for the Midwest Region, 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) (1988 & Supp. I 1989).

5. WAIVERS

- (a) Henderson waives the right to a Notice of Assessment of Civil Money Penalty provided by Section 8(i) of the FDIA, 12 U.S.C. § 1818(i) (1988 & Supp. I 1989) and the administrative hearing provided by Section 8(i)(2)(H) of the FDIA, 12 U.S.C. § 1818(i)(2)(H) (1988 & Supp. I 1989), and further waives his 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) (1988 & Supp. I 1989) or to otherwise challenge the validity of the Order.

- (b) Henderson acknowledges and agrees that this proceeding, the payment of the civil money penalty contemplated as part of the resolution thereof, and Henderson's consent to the entry of the Order are for the purposes of resolving this OTS civil money penalty proceeding only, and do not compromise, settle, dismiss, resolve, or in any way affect, or preclude any other civil or criminal proceeding, charges against, or liability of Henderson that arise pursuant to this action or otherwise, and that may be brought by the Resolution Trust Corporation or any other governmental entity other than the OTS.
- (c) By signing this document, Henderson agrees that he will not assert the payment of this civil money 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.

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ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES

WHEREAS, Don Henderson ("Henderson") has executed a Stipulation and Consent to Issuance of Order of Civil Money Penalty Assessment, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS") acting through the Regional Director for the Midwest Region; and,

WHEREAS, Henderson, in the Stipulation, has consented to the issuance of this Order of Civil Money Penalty Assessment pursuant to Section 8(1)(2) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(1)(2) (1988 & Supp. I 1989), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA");

NOW THEREFORE, IT IS ORDERED that:

- (1) Don Henderson shall pay to the OTS the sum of Two Thousand Five Hundred (\$2,500.00) Dollars; and
- (2) Don Henderson shall comply with Paragraph (1) of this Order by making a One Thousand Two Hundred Fifty (\$1,250.00) Dollar payment on or before September 10, 1992, and a second One Thousand Two Hundred Fifty (\$1,250.00) Dollar payment on or before October 10, 1992.

