

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:) Re: Resolution No. CHI-92- 38
Henry C. Pociask,)
a Director of) Dated: September 25, 1992
Avondale Federal Savings)
Bank, Chicago, Illinois)

STIPULATION AND CONSENT TO ENTRY OF AN
ORDER OF CIVIL MONEY PENALTY ASSESSMENT

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Central Regional Office ("Regional Director") and Henry C. Pociask ("Pociask"), director and institution-affiliated party of Avondale Federal Savings Bank, Chicago, Illinois ("Avondale"), 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 Pociask pursuant to Section 8(i) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.A. §1818(i) (West 1989 & Supp. 1992). Pociask desires to cooperate with OTS and to avoid the time and expense of such administrative litigation. Without admitting or denying that such grounds exist, Pociask 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 Pociask with respect to the matters set forth

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in this Stipulation and Consent to Entry of an Order of Civil Money Penalty Assessment ("Stipulation") and the accompanying Order of Civil Money Penalty Assessment ("Order"). The OTS has determined that it is appropriate, and in the best interest of the public, to execute this Stipulation and the attached Order.

2. Allegations. The OTS is of the opinion, and Pociask neither admits nor denies, that:

(a) Pociask breached his fiduciary duty to Avondale and engaged in unsafe and unsound practices in that Pociask and other members of the Avondale board of directors:

(1) failed to adequately ensure compliance with the FDIC directive issued following the 1989 FDIC examination that required the implementation of policies and procedures for the payment of charges and expenses;

(2) failed to adequately ensure compliance with the FDIC directive issued following the 1989 FDIC examination that required the board of directors to review the list of approximately \$10,000 in expenses incurred by Irving V. Boberski, to determine whether said expenses were personal in nature, and to require reimbursement of any personal expenses;

(3) failed to adopt and implement, in a timely fashion subsequent to receiving notice of the deficiencies cited in the 1989 FDIC report, written policies and procedures relating to the payment by Avondale of travel advances, travel and entertainment expenses and other business-related expenses; and

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(4) failed to obtain an appraisal of the property located at the intersection of Deerpath and Green Bay Roads, Lake Forest, Illinois, prior to adopting a resolution to donate the property to the Lake Forest Open Lands Association in October 1989 and prior to donating the property to the Lake Forest Open Lands Association in November 1989.

(b) Pociask and other members of the Avondale board of directors caused Avondale to violate 12 C.F.R. §563.170(c) which required Avondale to establish and maintain sufficient records so as to provide an accurate and complete record of all business transactions, in that Pociask and other members of the Avondale board of directors failed to implement adequate policies and procedures, in a timely fashion after receiving notice of the deficiencies cited in the 1989 FDIC report, relating to the establishment and maintenance of records relating to the legitimate Avondale business purpose of charges and expense.

3. Jurisdiction.

(a) Avondale is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C.A. §1813(b) and Section 2(4) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C.A. §1462(4) (West Supp. 1992). Accordingly, Avondale is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C.A. §1813(c).

(b) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB") was the regulatory agency with jurisdiction over Avondale and persons participating in the conduct of the affairs

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thereof, including Pociask, pursuant to Section 5 of the HOLA, 12 U.S.C.A. §1464.

(c) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended by Section 204 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. No. 101-73, 103 Stat. 183 (August 9, 1989)), 12 U.S.C.A. §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 Avondale and persons participating in the affairs thereof.

(d) Pociask, as a director of Avondale is deemed to be an "institution-affiliated party" of Avondale as that term is defined by Section 3(u) of the FDIA, 12 U.S.C.A. §1813(u), having served in such capacity within six (6) years of the date hereof.

(e) Pursuant to Section 3 of the FDIA, as amended, the OTS is the "appropriate Federal banking agency" to assess civil money penalties against institution-affiliated parties. Therefore, Pociask is subject to the authority of the OTS to initiate and maintain civil money penalty proceedings against Pociask pursuant to Section 8(i) of the FDIA, 12 U.S.C.A. §1818(i).

4. Consent. Pociask consents to the issuance by OTS of the accompanying Order and further agrees to comply with its terms, provisions, and conditions upon issuance and stipulates that the Order complies with all requirements of law.

5. Finality. The Order is issued under Section 8(i)(2) of the FDIA, 12 U.S.C.A. §1818(i)(2), as amended. Upon its issuance, it shall be a final order, effective and fully enforceable by OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C.A. §1818(i), as amended.

6. Waivers. Pociask waives the right to a Notice of Assessment of Civil Money Penalty provided by Section 8(i)(2)(H) of the FDIA, 12 U.S.C.A. §1818(i)(2)(H), and the administrative hearing provided by Section 8(i)(2) of the FDIA, 12 U.S.C.A. §1818(i)(2), 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.A. §1818(h), or to otherwise challenge the validity of the Order.

7. Other Actions, Proceedings and Parties. By entering into this Stipulation, the OTS and Pociask acknowledge and agree explicitly to the following provisions:

(a) Pociask acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated as part of the resolution thereof, and Pociask's consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and do not resolve, affect or preclude any other civil or criminal proceeding which may be or have been brought against Pociask by the OTS or another governmental entity. By signing this document Pociask agrees that he will not assert the assessment or payment of this penalty as the basis for a claim of double jeopardy in any pending or future proceeding brought by the

