

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)

Wilson Siemens)

President and Director of The)
Overland Park Savings and)
Loan Association, Overland)
Park, Kansas)

Re: Resolution No. KC-92-33
Dated: October 16, 1992

STIPULATION AND CONSENT TO ISSUANCE OF AN ORDER TO CEASE AND
DESIST FOR RESTITUTION AND OTHER AFFIRMATIVE RELIEF

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office, and Wilson Siemens ("Siemens"), president and director of The Overland Park Savings and Loan Association, Overland Park, Kansas ("Overland Park Savings" or the "Institution") and a president and director of the Institution's service corporation, Santa Fe Financial Corporation ("Santa Fe"), hereby stipulate and agree as follows:

1. Consideration. The OTS, based upon information reported to it and discovered during the course of its formal investigation, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Siemens, pursuant to Section 407(e) of the National Housing Act of 1934 ("NHA"), 12 U.S.C.A. § 1730(e), and Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C.A. §1818(b) (1989 and West Supp. 1992). Siemens desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation.

Without admitting and while specifically disputing the statements, conclusions and terms herein, Siemens hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating any civil or administrative proceedings against Siemens with respect to the matters known or discovered by the OTS during the course of its formal investigation of Overland Park Savings pursuant to Resolution No. TOP 91-21, and the matters outlined in the civil money penalty letter addressed to Siemens and dated June 5, 1991. The OTS has determined that it is appropriate and in the best interest of the public to execute this Stipulation and Consent to Issuance of an Order to Cease and Desist for Restitution and Other Affirmative Relief ("Stipulation") and to issue the attached Order to Cease and Desist for Restitution and Other Affirmative Relief ("Order").

2. Jurisdiction. The OTS is of the opinion that:

(a) The Institution is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C.A. § 1813(b) (1989 and West Supp. 1992) and Section 2(4) of the Home Owners' Loan Act, as amended by Section 301 of the FIRREA, 12 U.S.C.A. § 1462(4) (West Supp. 1992). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by the FIRREA, 12 U.S.C.A. § 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 NHA, 12 U.S.C.A. § 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 the 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 Siemens, pursuant to Sections 403 and 407 of the NHA, 12 U.S.C.A. §§ 1726 and 1730.

(e) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended by Section 204 of the FIRREA, 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 the Institution and persons participating in the conduct of the affairs thereof.

(f) The Director of the OTS has the authority to bring administrative cease and desist proceedings directing restitution and other affirmative relief against persons participating in the conduct of the affairs of the Institution and institution-affiliated parties, pursuant to Section 5(d)(1)(A) of the HOLA, as amended by Section 301 of the FIRREA, 12 U.S.C.A. §1464(d)(1)(A) and Section 8(b) of the FDIA, as amended by the FIRREA, 12 U.S.C.A. § 1818(b).

(g) Siemens was at all times relevant hereto president and a director of the Institution and a director of Santa Fe. Accordingly, Siemens is an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C.A. § 1813(u),

and as such, is subject to the authority of the OTS to maintain cease and desist proceedings pursuant to Section 8(b) of the FDIA, 12 U.S.C.A. §1818(b).

3. Pertinent Allegations.

Based upon information reported to it and gathered during the course of its formal investigation of Overland Park Savings, the OTS reviewed two real estate sales transactions undertaken by Overland Park Savings and/or Santa Fe. Based upon that review and investigation, the OTS is of the opinion that Siemens' approval of and participation in these transactions constituted unsafe or unsound practices, and caused or brought about violations of OTS regulations. The OTS alleges that:

(a) On January 20, 1988, Director Fred N. Coulson ("Coulson") and his business partner entered into a contract to purchase the Westwood Plaza Towers located at 1900 West 47th Place, Westwood, Kansas ("Westwood Plaza") from the J. E. Dunn Construction Company ("Dunn"). The next day, on January 21, 1988, Coulson, while a director of Santa Fe and the Institution, offered Santa Fe the opportunity to purchase the Westwood Plaza property from Dunn on the condition that Coulson receive a \$150,000.00 real estate commission from Dunn, and further, that Coulson and a partner would be entitled to receive from Santa Fe forty percent (40%) of any profits recognized upon a subsequent sale of the property by Santa Fe.

(b) On January 21, 1988, the purchase proposal was approved by Santa Fe's board of directors (with Siemens voting for approval). On December 14, 1988, almost a year later, Santa Fe closed on the purchase of the Westwood Plaza property and Dunn paid

director Coulson a \$150,000.00 commission out of the sale proceeds. Thereafter, Santa Fe entered into various market rate fee arrangements with director Coulson and his affiliated companies to manage, renovate and serve as leasing agent on the property for Santa Fe. However, at no time prior to the purchase did Santa Fe or Coulson enter into any written agreement or written understanding concerning any profit distribution in the event of a subsequent sale. Moreover, at no time did the Institution, Santa Fe or Coulson obtain the prior written approval of the OTS as required by 12 C.F.R. §563.41 (1989).

(c) On September 1, 1989, the Westwood Plaza property was sold to the Midwest Organ Bank ("MOB") for a price at which Santa Fe recognized an \$849,563.00 accounting gain. MOB's purchase of the Westwood Plaza property was conditioned upon Santa Fe's purchase of MOB's property. MOB's purchase of the Westwood Plaza property was financed by Overland Park Savings.

(d) As a part of the Westwood Plaza property sale to MOB, Santa Fe approved (with Siemens' consent) the purchase of the MOB's property located at 43rd Street and Wornall Road, Kansas City, Missouri ("43rd Street property") for \$1,000,000.00 without a prior appraisal of the property. Shortly after the acquisition, Santa Fe demolished the property and expended funds in various municipal zoning proceedings for a total additional cost of \$200,000.00 bringing the total amount expended on the property to \$1,200,000.00.

(e) In September and October 1989, Santa Fe paid Coulson and his partner \$339,825.00, purportedly representing their share of the "profits" realized by Santa Fe from the sale of the Westwood

Plaza property to MOB. No written agreement existed at this time obligating Santa Fe to pay these funds to director Coulson and his business partner.

(f) In December 1989, three months after the sale of the Westwood Plaza property to MOB, Coulson, his business partner, and Santa Fe (by and through Wilson Siemens) prepared and signed a written agreement setting forth the profit distribution to be paid to director Coulson and his business partner as originally contemplated one year earlier. Although the document was prepared and executed in December 1989, it was dated December 14, 1988.

(g) During the course of an OTS examination in 1991, the OTS examiners ordered an appraisal of the 43rd Street property to be performed by an independent appraiser. The appraiser valued the 43rd Street property at \$500,000.00 as of September 1, 1989. Thus, OTS directed the Institution to recognize a \$700,000.00 loss on Santa Fe's purchase of the 43rd Street property.

(h) The OTS examiners further concluded that the two real estate transactions (i.e., the Westwood Plaza sale and the 43rd Street purchase) were linked transactions and, pursuant to generally accepted accounting principles, directed a reversal of the Institution's recognition of the \$849,563.00 gain on the sale of the Westwood Plaza property.

The OTS is of the opinion that director Siemens' approval of the Westwood Plaza and 43rd Street real estate transactions, his failure to ensure prior OTS approval of Coulson's real estate commission and profit participation in Westwood Plaza, his execution of the back-dated profit participation agreement, his failure to

maintain appropriate documents reflecting the profit participation agreement throughout the operative history of the transaction, and his approval of the 43rd Street property purchase by Santa Fe without a prior appraisal, brought about and resulted in violations of OTS regulations, and constituted unsafe or unsound practices in which the Institution recognized significant loss.

4. Consent. Without admitting and while specifically disputing the need or basis therefor, Siemens 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 12 U.S.C.A. § 1818(b).

5. Finality. The Order is issued under Section 8(b) of the FDIA, as amended, 12 U.S.C.A. § 1818(b) (1989 and West Supp. 1992). Upon its issuance, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, as amended, 12 U.S.C.A. § 1818(i) (1989 and West Supp. 1992).

6. Waivers. Siemens waives his right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C.A. § 1818(b), and further waives any 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 otherwise to challenge the validity of the Order.

This Stipulation and the Order are issued solely to settle the matters arising from the formal investigation of The Overland Park Savings and Loan Association conducted pursuant to Resolution No. TOP 91-21, dated August 2, 1991, and those matters outlined in the OTS civil money penalty letter to Siemens dated June 5, 1991,

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:

Wilson Siemens

President and director of The
Overland Park Savings and Loan
Association, Overland
Park, Kansas

Re: Resolution No. KC-92-33
Dated: October 16, 1992

ORDER TO CEASE AND DESIST FOR RESTITUTION
AND OTHER AFFIRMATIVE RELIEF

WHEREAS, Wilson Siemens ("Siemens"), president and a director of The Overland Park Savings and Loan Association ("Overland Park Savings" or "Institution") and a director of its service corporation, Santa Fe Financial Corporation ("Santa Fe") has executed a Stipulation and Consent to Issuance of an Order to Cease and Desist for Restitution and Other Affirmative Relief ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Midwest Region; and

WHEREAS, Siemens has consented and agreed in the Stipulation to the issuance of this Order to Cease and Desist for Restitution and Other Affirmative Relief ("Order"), pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, ("FIRREA"), 12 U.S.C.A. § 1818(b) (1989 and West Supp. 1992);

NOW, THEREFORE, IT IS ORDERED that Siemens shall cease and desist from any violation of, or the aiding and abetting of any violation of:

- a. Section 563.41(b) of the Rules and Regulations of the Office of Thrift Supervision ("OTS Regulations"), 12 C.F.R. §563.41(b)(1992);
- b. Section 563.43(b) of the OTS Regulations, 12 C.F.R. §563.43(b) (1992);
- c. Section 563.160(c) & (d) of the OTS Regulations, 12 C.F.R. §563.160(c) & (d) (1992);
- d. Section 563.170(c) of the OTS Regulations, 12 C.F.R. §563.170(c) (1992); and
- f. Section 563.233 of the OTS Regulations, 12 C.F.R. §563.233 (1992).

IT IS HEREBY FURTHER ORDERED that:

1. From and after the effective date of this Order, Siemens shall be liable to make restitution to Overland Park Savings in the total amount of \$231,000.

2. Payment of the restitution obligation outlined in paragraph 1 of this Order shall be made in the following manner:
(a) within five (5) days from the effective date of this Order, Siemens shall make written assignment and transfer to Overland Park Savings of any and all rights, title and interest in and to the accrued funds contained in Siemens' deferred benefits account (which has been represented by Siemens, and relied upon by the OTS, to be at least \$226,000), which is maintained and funded in the accounting records of Overland Park Savings; and (b)

Any restitution obligation required by the terms of their Order which remains due and owing after written assignment and transfer of the accrued funds in his deferred benefits account will be paid by certified check, drawn by Siemens, and made payable to Overland Park Savings and delivered to the Regional Deputy Director of the OTS - Kansas City Area Office.

3. Within five (5) days from the effective date of this Order, or as soon thereafter as possible (in the exercise of due diligence), Siemens shall execute a written release in favor of The Overland Park Savings and Loan Association forever releasing, waiving and discharging any and all of his past, present and future rights existing under the Agreement by and between Overland Park Savings and Wilson W. Siemens, executed with an effective date of July 1, 1987. The terms and conditions of said release shall be acceptable to independent counsel retained by Overland Park Savings and a fully-executed copy of the same shall be delivered to the OTS at its Kansas City Area Office.

4. Within five (5) days from the effective date of this Order, Siemens shall resign as a director of Overland Park Savings and any of its affiliates or service corporations, including Santa Fe. Without the prior written approval of the OTS, Siemens shall not hold any such director position(s) in the future at Overland Park Savings, its subsidiaries, service corporation(s) or holding company.

5. Siemens shall comply in all respects with all lending and investment policies as adopted by the board of directors of Overland Park Savings from time to time. In addition, Siemens

shall ensure that Institution personnel who have authority to approve loans are advised of, and comply with, the requirements of 12 C.F.R. §563.170(c).

6. Siemens shall ensure that Overland Park Savings complies in all respects with 12 C.F.R. §563.233. When issues arise that cause Siemens to be unsure about the appropriate accounting entries to be made on any loan or investment transaction of the Institution or its service corporations, Siemens shall obtain, or cause to be obtained, the written advice and guidance of the Institution's independent auditors. Siemens shall thereafter, and shall cause Overland Park Savings to, comply with and follow the advice and guidance of the Institution's independent auditors.

7. Siemens shall comply, and shall ensure that Overland Park Savings complies, in all respects with 12 C.F.R. §§ 563.41 and 563.43. Prior to consideration or approval of any loan to, or other transaction with, an affiliated person, Siemens shall ensure that he and the Institution's board of directors receives full, complete and accurate information concerning the proposed transaction. When issues arise that cause Siemens to be unsure about statutory and/or regulatory compliance concerning these transactions, Siemens shall seek and obtain written advice and guidance of competent and independent legal counsel to determine whether a proposed transaction complies with applicable regulatory requirements, and whether prior regulatory notification or approval of the proposed transaction is required. Siemens shall thereafter comply in all respects with said legal advice.

8. Siemens shall fully advise the board of directors on all matters required by 12 C.F.R. §§ 563.41 and 563.43 and all other matters appropriate for review by the board of directors. Further, Siemens shall fully advise the board of directors of all correspondence and other contacts with the OTS.

9. Siemens shall promptly respond to any request from OTS for documents or other information that the OTS reasonably requests to determine compliance with this Order.

10. The Stipulation is made a part hereof and is incorporated herein by this reference.

11. This Order is subject to the provisions of Section 8(i) of the FDIA, 12 U.S.C.A. §1818(i), and shall, unless otherwise noted by the terms of the Order, become effective on the date it is issued.

12. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, FDIA, or the Home Owners' Loan Act ("HOLA"), or as such definition is amended after the execution of this Order, and any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, FDIA, or HOLA, shall have meanings that accord with their best custom and usage in the savings and loan industry.

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)

Wilson Siemens)

President and Director of The)
Overland Park Savings and)
Loan Association, Overland)
Park, Kansas)

Re: Resolution No. KC-92-34
Dated: October 16, 1992

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

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office, and Wilson Siemens ("Siemens"), president and director of The Overland Park Savings and Loan Association, Overland Park, Kansas ("Overland Park Savings" or the "Institution") and a president and director of the Institution's service corporation, Santa Fe Financial Corporation ("Santa Fe"), hereby stipulate and agree as follows:

1. Consideration. The OTS, based upon information reported to it and discovered during the course of its formal investigation, is of the opinion that grounds exist to initiate an administrative civil money penalty assessment proceeding against Siemens, pursuant to Section 8(i) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C.A. §1818(i) (1989 and West Supp. 1992). Siemens desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation.