

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
American Savings and Loan)
Association of Bloomfield, N.J.)
)
Bloomfield, New Jersey)

Re: Northeast Regional Director
Resolution No. NE92-96

Dated: October 27, 1992

STIPULATION AND CONSENT TO ISSUANCE
OF ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Northeast Regional Office, OTS, and American Savings and Loan Association of Bloomfield, N.J. (the "Association"), 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 cease and desist proceeding against American pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b). The Association desires to cooperate with the 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 cease-and-desist litigation against American with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) The Association is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owners' Loan Act, as amended by FIRREA. Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) Pursuant to Section 3 of the FDIA, the Director of OTS is the "appropriate Federal Banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, the Association is subject to the authority of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

- (2) Section 563.160 of the OTS Regulations, 12 C.F.R. § 563.160 (regarding classification of assets);
- (3) Section 563.170 of the OTS Regulations, 12 C.F.R. § 563.170 (regarding Examination and audits, appraisals; establishment and maintenance of records); and
- (4) Section 563.172(a) of the OTS Regulations, 12 C.F.R. § 563.172(a) (regarding the requirement to obtain appraisals of real estate owned at the earlier of insubstance foreclosure or at the time of acquisition);
- (5) Section 563.176 of the OTS Regulations, 12 C.F.R. § 563.176 (regarding Interest rate risk management procedures).
- (6) Section 563.233 of the OTS Regulations, 12 C.F.R. § 563.233 (regarding Accounting principles and procedures.
- (7) Section 566.2(c) of the OTS Regulations, 12 C.F.R. § 566.2(c) (regarding the calculation of the average daily balance of liquid assets).

IT IS FURTHER ORDERED that American undertake the following actions to remedy violations of regulation and/or unsafe and unsound practices:

8. Growth Limitations

American shall not increase its total assets during any fiscal quarter in excess of an amount equal to net interest credited on deposit liabilities during the quarter, without the prior written notice of non-objection by the Regional Director.

9. Management/Staffing

A. Performance Goals For Six Months Ending March 31, 1993

No later than October 30, 1992, the Board shall require the President and Chief Executive Officer ("CEO") of the Association to prepare and submit to it (and to the Regional Director) specific goals for the Association's performance during the six month period ending March 31, 1993 in the following areas: (i) capital adequacy and augmentation, (ii) profitability and (iii) reduction in the level of Classified Assets.

B. Report On Actual Performance

No later than April 30, 1993, the CEO shall prepare a written report to the Board on the Association's actual performance, compared to the goals established in A above. Such report shall be attached to the minutes of the meeting of the Board at which it is considered.

C. Staffing Plan/Review

No later than November 15, 1992, the Board shall, after a careful review of the ROE, consider the adequacy of the Association's staffing levels and develop a plan to address any weaknesses identified ("Staffing Plan"). The Staffing Plan shall be attached to the minutes of the meeting of the Board at which it is adopted. Each month thereafter, the Board shall adopt a resolution that addresses the Association's progress (or lack thereof) in implementing the Staffing Plan.

10. Supporting Documentation For Accounting Entries/TFR Reports.

The Board shall take the following actions to improve the Association's accounting systems, records and reports:

A. Support For Accounting Entries

The Board shall obtain reports regarding the adequacy of documentation for accounting entries on a monthly basis. The reports shall:

1. be prepared by an individual who: (i) does not have operating responsibility in this area and (ii) reports, for purposes of presenting such report, directly to the Board, and
2. include results and conclusions based on a random test check of at least 5% of all journal entries (but no less than 50) made during the month to determine whether they are: (i) approved by a supervisor and (ii) supported by sufficient documentation, and
3. be attached as an exhibit to the minutes of the board of directors meeting at which it is presented.

B. Improved TFR Reporting.

1. The OTS Thrift Financial Report's ("TFR") shall be prepared under the direction of the Association's Controller. The Controller shall be listed and identified as the report preparer on the TFR.

2. The Board shall include a review of TFR's within the scope of the Association's internal audit function and obtain reports at least quarterly. The Board shall require the Internal Auditor to provide, no later than 30 days from the Effective Date, the methodology by which the TFR's will be checked for accuracy. The reports prepared by the Internal Auditor shall be attached as an exhibit to the minutes of the board of directors meeting at which it is presented.

C. Accounting For Association's Subsidiaries

The Board shall require that the Association's Subsidiaries' accounting records are consistent with the Association's accounting records. The Board shall, at a minimum, require that all major accounting entries on the books of its Subsidiaries are: (i) promptly recorded and (ii) reviewed and understood by the Association prior to the recording of such entry.

11. Modification/Clarification of Asset Workout Policies.

Section 9 of the Order To Cease and Desist dated May 30, 1991 required the Association to develop asset workout policies that called for, inter alia, the formulation of asset action plans.

The Board shall, within 30 days of the the Effective Date, cause the Association's asset workout policies to be modified/clarified as follows:

A. With respect to each Troubled Real Estate Asset, a requirement that the Association have on file an appraisal that reflects the current fair market value of the real estate.

B. A requirement that all contingent liabilities arising from a proposed workout of a Troubled Real Estate Asset be identified and considered in the asset action plan.

C. A requirement that each asset action plan contain a detailed, written analysis of the potential financial impact of the plan on the Association.

D. With respect to any proposed workout of an asset with a book value exceeding \$250,000, a requirement that the asset action plan contain a discussion of alternatives to the strategy being proposed and a discussion of why those alternatives were not recommended.

12. Recognition of Audit Adjustments.

No later than 30 days from the Effective Date, the Board shall adopt a policy for addressing adjustments to the Association's financial records that are recommended by the Association's independent auditor. The policy shall require, at a minimum, that all proposed adjustments are addressed within 30 days of receipt either by: (i) recording the recommended entry on the Association's books or (ii) documenting the reasons why the recommended entry will not be made in a report presented to the Board. Such report shall be attached to the minutes of the meeting of the Board at which it is presented.

13. Audit Program.

A. Expansion Into New Areas.

No later than 30 days from the Effective Date, the Board shall expand the Association's internal audit program to include reviews of the following areas: (i) TFR, (ii) liquidity recordkeeping, (iii) interest rate risk, (iv) mortgage banking/secondary marketing, (v) service corporations and joint ventures, (vi) real estate owned and in-substance foreclosures, (vii) internal loan review, (viii) compliance with policies pertaining to general and specific valuation allowances, (ix) business expenses and (x) appraisal review function. The amended internal audit program shall be attached to the minutes of the meeting of the Board at which they are considered.

B. Adherence To Frequency Schedules.

The Board shall establish and then monitor compliance with the audit program frequency schedules. Evidence of such review shall be documented in the minutes.

14. Business Expenses.

No later than 30 days from the Effective Date, the Board shall establish a written policy governing directors and officers business expenses. At a minimum, such policy shall contain the following:

A. A statement indicating that all expenses paid for or reimbursed by the Association must have a business justification and that the individual incurring the expense has the burden of demonstrating the business purpose.

B. An itemization of the types of expenses and related business purposes that are deemed appropriate by the Board.

C. Overall limits on the amounts that may be incurred by each officer and director per month.

D. A requirement that no payment/reimbursement for expenses exceeding \$100 will be made unless the expenses are authorized in advance.

E. A specification that only individuals who are higher in rank than the employee who incurred the expense may approve payment/reimbursement by the Association. The Board shall designate individuals who may approve payments for business expenses on behalf of the Association. For the CEO, the Chairman of the Board (or his designee) shall be so designated.

F. Maintenance of all applicable documentation.

G. Review by the Board of all business expenses on a monthly basis, documented in the Board minutes.

15. Independence of Internal Asset Review Function.

The Board shall develop procedures to ensure that the internal asset review function is free from influence by anyone in the loan approval process. Recommendations about asset classifications and the appropriate levels of allowances shall be made directly to the Board no less than quarterly to coincide with the preparation of the Association's TFR's. Such recommendations, along with the Board's actions shall be reflected in the minutes.

16. Amendments to Appraisal Policy.

No later than 30 days from the Effective Date, the Board shall amend the Association's appraisal policy:

A. To assign responsibility for appraisal review to a qualified staff member. The Board shall document the qualifications/future training of the individual so designated.

B. To require a written review of all appraisals to determine whether, at a minimum, they satisfy the requirements of Part 564 of the OTS Regulations.

17. Amendments to Business Plan.

No later than 30 days from the Effective Date, the Board shall amend the Association's Business Plan: (i) to correct the interest rate risk analysis discussed on Page 12 of the ROE and (ii) to update expectations regarding levels of nonperforming assets.

18. Amendments to Investment Policy.

No later than 30 days from the Effective Date, the Board shall amend the Association's Investment Policy to:

A. Require a complete understanding of the risk characteristics (i.e. prepayment, credit, and interest rate risks) of each investment that is considered for purchase by the Association. The Association's analysis shall consider all available information, including without limitation, an offering statement or prospectus.

B. Require competitive price quotes prior to purchase of securities that are documented in the Association's files.

C. Establish, with specificity, permissible and impermissible investments.

D. Identify officers with investment authority and specific limits of investment authority.

E. Establish appropriate controls requiring separation of duties.

19. Changes in Directors or Executive Officers; Terms of Employment.

A. As set forth in Section 32 of the FDIA, 12 U.S.C. § 1831i and OTS Thrift Bulletin 45, the Association shall provide at least 30 days prior written notice of any changes to its Directorate or Executive Officer staff to the OTS before the employment becomes effective.

B. Pursuant to the principles of safety and soundness enunciated in OTS Regulatory Bulletin 27, the Association shall not enter into, renew, extend or revise any contractual arrangement related to compensation or benefits with any Director, Executive Officer, or other Institution-affiliated party of the Association or any Subsidiary or affiliate thereof, unless it first (i) provides a minimum of thirty days advance notice of the proposed transaction and (ii) receives a written notice of non-objection from the Regional Director with regard to the transaction.

20. Third Party Contracts; TB 50 Review

A. The Association shall not enter into, renew, or revise any contractual or fee arrangement where the amount to be paid by the Association exceeds \$25,000 with any consultant, investment banker, attorney, accountant or other third party without the prior written notice of non-objection of the Regional Director. All such contracts, fee arrangements, and renewals or revisions thereof, shall comply with the requirements of OTS Thrift Bulletin 50 ("TB 50"). Further, all requests for non-objection pursuant to this Section 20 similarly shall comply with TB 50 and shall specify the proposed terms and requirements of the arrangement, including, but not limited to, a description of the services to be performed and the fees to be paid. Such requests shall also include an analysis by the Board that proposed fees are reasonable and commensurate with industry norms.

B. All contractual or fee arrangements between the Association or any Subsidiary thereof and consultants, investment bankers, attorneys, accountants or other third parties shall require the submission of monthly invoices to the Association specifying the amounts claimed and the services provided.

21. Board Review of Compliance With Order

A. The Board of Directors of the Association shall take prompt action to cause the Association to fully comply with the Order.

B. Each month, the Board of Directors shall adopt a formal resolution (the "Compliance Resolution") resolving that, following a diligent inquiry of relevant information (including reports of management), to the best of its knowledge and belief, during the immediately preceding calendar month, the Association has complied with each provision of this Order currently in effect, except as otherwise stated. The Compliance Resolution shall:

- (i) specify in detail how, if at all, full compliance was found not to exist; and
- (ii) identify all notices of exemption or other exceptions issued by the Regional Director that were outstanding as of the date of the Compliance Resolution.

C. No later than three business days after each monthly meeting of the Board of Directors of the Association, the Association shall provide to the Regional Director a certified true copy of the entire minutes of each meeting of its Board of Directors (including any committees thereof) which were approved at such monthly meeting. The Compliance Resolution shall be included with the minutes provided to the Regional Director. The minutes of the meeting of the Board of Directors shall set forth the following information with respect to the adoption of each Compliance Resolution:

- (i) the identity of each director voting in favor of its adoption;
- (ii) the identity of each director voting in opposition to its adoption; and
- (iii) the identity of each director abstaining from voting thereon.

The Board of Directors of the Association, by virtue of the Association's submission of a certified true copy of each such Compliance Resolution to the Regional Director, shall be deemed to have certified to the accuracy of the statements set forth in each Compliance Resolution. In the event that one or more directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the minutes of the meeting.

MISCELLANEOUS PROVISIONS

22. Incorporation of Stipulation

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

23. Definitions

A. General. All technical words or terms used in the Order, for which meanings are not specified or otherwise provided by the provisions of the Order, shall, insofar as applicable, have meanings as defined in the regulations, policy statements, or bulletins issued by the OTS and any such technical words or terms used in the Order and undefined in said regulations, policy statements, or bulletins shall have meanings that accord with the best custom and usage in the savings and loan or banking industries, as applicable. For purposes of this Order, references to regulations, policy statements, bulletins, memoranda and publications shall include any successor regulations, policy statements, bulletins, memoranda and publications.

B. "Regional Director" or his successor is the "senior supervisory official" within the meaning of Section 723(d) of the FIRREA, 101 Stat. 183, 428 (1989). All references to the Regional Director shall include the Regional Director and/or his designee(s).

C. "Subsidiary" or "Subsidiaries" shall have the meaning set forth in Section 567.1(dd) of the OTS Regulations, and subsidiaries of such entities.

D. "Classified Assets" shall mean any asset classified as Substandard, Doubtful or Loss either internally or in an OTS Report of Examination.

E. "Troubled Real Estate Asset" shall mean any of the following assets: (i) Real Estate Owned, (ii) Real Estate Investments, (iii) Insubstance Foreclosure, and (iv) Troubled Debt Restructuring.

24. Successor Statutes, Regulations, Guidance, Amendments.

Reference to provisions of statutes, regulations, and OTS Memoranda shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

25. No Violations of Law, Rule, Regulation or Policy Statement Authorized; OTS Not Restricted; FDICIA Controlling.

A. Nothing in the Order shall be construed as: (i) allowing the Association to violate any law, rule, regulation, or policy statement to which it is subject or (ii) restricting, in any way, the OTS from taking any action(s) that it believes are appropriate in fulfilling the responsibilities placed upon it by law.

B. To the extent that any provision of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2236 (December 19, 1991) ("FDICIA") or any regulation(s) promulgated thereunder imposes more restrictive requirements than any provision contained in the Order (either expressly or through OTS interpretive Bulletins or policy statements), such provision(s) of the FDICIA or such regulation(s) shall be controlling.

26. Effect of Headings.

The Section headings herein are for convenience only and shall not affect the construction hereof.

27. Separability Clause.

In case any provision in this Order is ruled to be invalid, illegal or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his sole discretion determines otherwise.

28. Director Responsibility.

Notwithstanding the requirements of this Agreement that the Board of Directors submit various matters to the Regional Director, such regulatory oversight does not derogate or supplant each individual member's continuing fiduciary duty.

29. Order To Cease and Desist Dated May 30, 1991.

The Order To Cease and Desist dated May 30, 1991 is hereby merged into, and is modified, restated and replaced by this Order as of the date set forth below.

30. Effective Date of Order.

This Order is effective and enforceable immediately upon the date of its issuance by the OTS ("Effective Date"), which date is set forth below. This Order shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been modified, suspended or terminated in writing by the OTS.

IT IS SO ORDERED on this 27th day of October, 1992.

THE OFFICE OF THRIFT SUPERVISION
By:

/s/

Angelo K. Vigna,
Regional Director, Northeast Region