

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of:)
DAVID SCOTT CONE, a/k/a/)
D. SCOTT CONE, Former)
Officer and Institution-)
Affiliated Party of:)
)
Oak Tree Savings Bank,)
S.S.B., New Orleans,)
Louisiana)
)

RE: Resolution No. DAL-92-73

DATED: October 30, 1992

STIPULATION AND CONSENT TO ENTRY OF
ORDER OF PROHIBITION AND ORDER OF DEBARMENT
FROM PRACTICING BEFORE THE OFFICE OF THRIFT SUPERVISION

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office ("Regional Director"), and David Scott Cone, also known as D. Scott Cone (Cone"), former officer, certified public accountant, and institution-affiliated party of Oak Tree Savings Bank S.S.B., New Orleans, Louisiana ("Oak Tree" or "Institution"), hereby stipulate and agree as follows:

1. Consideration. The OTS, pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e), and pursuant to Title 12 C.F.R. Part 513 (1991), commenced an administrative proceeding against Cone in the cause entitled In the Matter of: David Scott Cone, Former Officer, Person Participating in the Conduct of the Affairs and Institution-Affiliated Party of: Oak Tree Savings Bank, S.S.B, New Orleans, OTS Order No. AP 92-44 dated April 24, 1992 ("Notice of

Charges"). The Notice of Charges is incorporated herein by this reference as if fully set forth.

Cone, without admitting, and specifically disputing the statements and conclusions of OTS, in accordance with Rule 408 of the Federal Rules of Evidence, desires to settle the said administrative proceedings and to avoid the time and expense of such administrative litigation. Cone hereby stipulates and agrees to the following terms in consideration of the dismissal by the OTS of the Notice of Charges and the further agreement of the OTS to forbear from initiating any other civil or administrative proceeding arising out of Cone's actions, known or discovered by the OTS prior to the issuance of the attached Order, excepting only the following:

Cone acknowledges that OTS for a period of one year from the date of the Order expressly reserves all rights to initiate any civil, administrative, or enforcement action concerning the payment in 1992 of any of Cone's legal fees and costs by any subsidiary or affiliate of Oak Tree Federal Savings Bank.

Cone, without trial or findings of fact pursuant to an administrative hearing, has consented to the terms of this Stipulation and Consent to Entry of Order of Prohibition and Order of Debarment from Practicing before the OTS ("Consent").

The OTS has determined that it is appropriate, and in the best interest of the public, to execute this Consent and the attached Order of Prohibition and Order of Debarment from Practicing before the Office of Thrift Supervision ("Order").

The OTS determination is based upon available evidence and testimony and, in part, is based in reliance upon the written Personal Balance Sheet of August 31, 1992, signed under oath by Cone on September 1992, reflecting Cone as having a negative unrestricted equity. The OTS has further determined that there is sufficient evidence, in its opinion, to prove the allegations of the Notice of Charges filed against Cone.

In the event there are any material misrepresentations in Cone's said personal Balance Sheet of August 31, 1992, OTS shall have the right to reissue the Notice of Charges so as to seek a cease and desist order for additional remedies of restitution and other affirmative relief.

This Stipulation and Consent, the Order, and the payment by Cone of any monies or providing any other financial relief as contemplated by the Order, does not compromise, settle, dismiss, resolve, or in any way affect any civil actions, charges against, or liability of Cone that arise pursuant to the Notice of Charges 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) Oak Tree was a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C.A. § 1813(b) (West 1989 & Supp. 1992) and Section 2(4) of the Home Owners' Loan Act ("HOLA"), 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, 12 U.S.C.A. § 1813(c), as amended.

(b) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB") was the regulatory agency with jurisdiction over Oak Tree and persons participating in the conduct of the affairs thereof, including Cone, 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"), 12 U.S.C. § 1813(q), 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.

(d) Cone, as a former officer and employee of Oak Tree and as a person who participated in the conduct of the affairs of Oak Tree, is deemed to be an "institution-affiliated party" of Oak Tree as that term is defined by Section 3(u) of the FDIA, 12 U.S.C.A. § 1813(u), having served in such capacities within 6 years of the date of the execution of this Consent.

(e) Pursuant to Section 3 of the FDIA, as amended, the OTS is the "appropriate Federal banking agency" to maintain a removal and prohibition proceeding against institution-affiliated parties. Pursuant to Part 513 of the OTS Rules and Regulations, the OTS is the appropriate agency to maintain a professional debarment proceeding against Cone. Therefore, Cone is subject to the authority of the OTS to initiate and maintain removal and prohibition and professional debarment proceedings against him

pursuant to Section 8(e) of the FDIA, 12 U.S.C.A. § 1818(e), and 12 C.F.R. Part 513.

3. Consent. Without admitting, and specifically disputing, the allegations set forth in the Notice of Charges, Cone consents to the issuance by the OTS of the Order, a copy of which is attached hereto. Cone further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all the requirements of Section 8(e) of the FDIA, 12 U.S.C.A. § 1818(e), and 12 C.F.R. Part 513.

4. Finality. The Order is issued under Section 8(e) of the FDIA, 12 U.S.C.A. § 1818(e), and Part 513 of the OTS Regulations, 12 C.F.R. Part 513. 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, 12 U.S.C.A. § 1818(i).

5. Waivers. Cone waives his right to the administrative hearing provided by Section 8(e) of FDIA, 12 U.S.C.A. § 1818(e), 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. Cone also waives any claim for attorney's fees or expenses under the Equal Access to Justice Act, 5 U.S.C.A. § 504.

WHEREFORE, in consideration of the foregoing, the OTS, by and through its Midwest Regional Director, and David Scott Cone execute this Stipulation and Consent to Entry of an Order of

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Oak Tree Savings Bank,)
S.S.B., New Orleans,)
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RE: Resolution No. DAL-92-73

DATED: October 30, 1992

ORDER OF PROHIBITION
AND
ORDER OF DEBARMENT FROM PRACTICING
BEFORE THE OFFICE OF THRIFT SUPERVISION

WHEREAS, David Scott Cone, also known as D. Scott Cone (Cone"), has executed a Stipulation and Consent to Entry of an Order of Prohibition and an Order of Debarment from Practicing Before the Office of Thrift Supervision ("Consent"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting by and through its Regional Director for the Midwest Regional Office ("Regional Director"); and

WHEREAS, Cone has consented and agreed in the Consent to the issuance of this Order of Prohibition and Order of Debarment from Practicing Before the Office of Thrift Supervision ("Order").

THEREFORE, OTS ORDERS AS FOLLOWS:

1. Cone is prohibited from further participation, in any manner, in the conduct of the affairs of Oak Tree Savings Bank S.S.B., Oak Tree Federal Savings Bank of New Orleans, Louisiana

(both referred to as "Oak Tree" or "Institution"), and any of its or their subsidiaries, service corporations, or holding companies.

2. Cone shall not, without the prior written approval of the OTS and any other appropriate regulatory agency of any federally insured depository institution with respect to which Cone may propose to become an institution-affiliated party, hold any office in or participate in any manner in the conduct of the affairs of any insured depository institution or any institution or other agency as set forth in Section 8(e)(7)(A) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), now codified at 12 U.S.C.A. § 1818(e)(7)(A). Pursuant to Section 8(e)(6) of the FDIA, as amended by FIRREA, 12 U.S.C.A. § 1818(e)(6), conduct prohibited by this Order includes the solicitation, transfer or the exercise of any voting rights with respect to any securities issued by any insured depository institution, as well as all other conduct prohibited by 12 U.S.C.A. § 1818(e)(6).

3. Nothing in this Order, however, shall be construed as prohibiting Cone from the following activities, even though such activities may involve or relate to an insured depository institution:

(a) being a customer, as a depositor or borrower, of an insured depository institution;

(b) owning stock in an insured depository institution; Provided, that the activities outlined in subparagraphs 3(a) and 3(b) above shall not be performed by Cone in a manner that would result in Cone being an "institution-affiliated party" as that term is defined in 12 U.S.C.A. § 1813(u).

4. Cone's privilege to practice as an accountant before the OTS, as defined at 12 C.F.R. § 513.2(e), is hereby revoked. From and after the date of this Order, Cone shall not, directly or indirectly, engage in the following activities:

(a) The preparation of any statement, opinion, financial statement, report or other document on behalf of another person that will be filed in, or used with the knowledge or consent of Cone at, any adjudicatory, investigatory, removal or rulemaking proceeding conducted before the OTS, or a presiding officer or staff of the OTS, including inter alia, those proceedings covered in 12 C.F.R. Parts 508, 509, 510 and 512;

(b) The preparation of any statement, opinion, financial statement, report or other document that will be filed with or submitted to the OTS with the knowledge or consent of Cone in connection with any application or filing with the OTS;

(c) Any business correspondence or communication with the OTS or a presiding officer or staff of the OTS; and

(d) The transaction of any other formal business with the OTS on behalf of another, in the capacity of an accountant.

5. From and after the effective date of this Order, Cone, in the capacity of an accountant, shall not, directly or indirectly, prepare or participate in the preparation of any statement, opinion, financial statement, or audit report, or perform other accounting services for, or on behalf of, any institution(s) or other entity as set forth in Section 8(e)(7)(A) of the FDIA, as amended, 12 U.S.C.A. §1818(e)(7)(A), or any subsidiary or holding company thereof.

6. Five (5) years from and after the effective date of this Order, Cone may apply to the OTS for reinstatement of the privilege to practice before the OTS, as provided in 12 C.F.R. § 513.5, and termination of paragraph 5 of this Order; provided, that Cone has maintained full compliance with all terms and conditions of this Order. The OTS shall be under no obligation to approve, or otherwise act favorably upon, any such application filed by Cone.

7. Cone shall promptly respond to any request from OTS for documents that OTS reasonably requires to determine compliance with this Order.

8. For the purpose of this Order, the terms used herein have the following meanings:

(a) "Insured Depository Institution" is defined to include savings and loan associations, commercial banks, credit

