

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of )  
 )  
ELDON SWINGLER, )  
 )  
Former Officer and Director )  
of First Savings and Loan )  
Association of South Dakota, Inc. )  
Aberdeen, South Dakota )

Re: Resolution No. DM 92-21

Dated: 10/20/92 ~~xxxxxx~~ November 4, 1992

STIPULATION AND CONSENT TO THE ENTRY OF AN  
ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES

The Office of Thrift Supervision ("OTS"), by and through the Regional Director for the Midwest Region and Eldon Swingler 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 Eldon Swingler pursuant to 12 U.S.C.A. § 1818(i)(2) (West 1992). Eldon Swingler desires to cooperate with OTS and to avoid the time and expense of such administrative litigation and, while 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 Eldon Swingler with respect to the following matters: five thousand dollars (\$5,000) for violations of the commercial loan limitations of 12 U.S.C.A. § 1464(c)(2)(A) (West 1992).

2. Jurisdiction.

a. First Savings and Loan Association of South Dakota, Inc., Aberdeen, South Dakota ("First"), 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. 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) (West 1992)).

b. Eldon Swingler, as a former officer and director of First, is an institution affiliated party within the meaning of 12 U.S.C.A. § 1813(u) (West 1992).

c. Pursuant to Section 3 of the FDIA, OTS is the "appropriate Federal banking agency" to maintain civil money penalty assessment proceedings against such an institution affiliated party. Therefore, Eldon Swingler is subject to the authority of OTS to initiate and maintain the assessment of a civil money penalty pursuant to 12 U.S.C.A. § 1818(i)(2) (West 1992).

3. Consent.

Eldon Swingler consents to the issuance by OTS of the accompanying Order and further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality.

The Order is issued under 12 U.S.C.A. § 1818(i)(2) (West 1992). Upon its issuance by the Regional Director for the Midwest Region, 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) (West 1992)).

5. Waivers.

Eldon Swingler waives the right to a Notice of Assessment of Civil Money Penalty provided by Section 8(i) of the FDIA, (12 U.S.C.A. § 1818(i) (West 1992)) and the administrative hearing provided by 12 U.S.C.A. § 1818(i)(2)(H) (West 1992), 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) (West 1992)) or to otherwise challenge the validity of the Order.

6. Double Jeopardy.

Eldon Swingler acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated as part of the resolution thereof, and Eldon Swingler'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 has been brought against Eldon Swingler by the OTS or another governmental entity.

By signing this document Eldon Swingler 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 United States Department of Justice or any other governmental entity.

7. Effect of Proceedings.

This Stipulation and Consent, the Order, and the payment by the Respondent of any monies or providing any other financial relief as contemplated by the Order, do not compromise, settle, dismiss, resolve, or in any way affect any civil actions, charges against, or liability of

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WHEREAS, Eldon Swingler 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, Eldon Swingler, in the Stipulation, has consented to the issuance of this Order of Civil Money Penalty Assessment pursuant to 12 U.S.C.A. § 1818(i)(2) (West 1992).

NOW, THEREFORE, IT IS ORDERED that within thirty (30) days of the effective date of this Order, Eldon Swingler shall pay to OTS a sum of five thousand dollars (\$5,000) by tendering a check in that amount made payable to the Treasurer of the United States to Deborah C. Jenkins, Regional Counsel, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, P.O. Box 619027, Dallas/Ft. Worth, Texas 75261-9027.

OFFICE OF THRIFT SUPERVISION

By: \_\_\_\_\_ /s/  
Frederick R. Casteel  
Regional Director  
Midwest Region

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