

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION

IN THE MATTER OF)
)
)

HOMESTEAD SAVINGS ASSOCIATION)
OF TEXAS)
COLLEGE STATION, TEXAS)
_____)

RESOLUTION NO. DAL-91-111

DATED: August 12, 1991

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 Midwest Regional Office, OTS, and Homestead Savings Association of Texas, College Station, Texas ("Homestead"), 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 Homestead pursuant to Section 8(b) of the Federal Deposit Insurance ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") at 12 U.S.C. § 1818(b) (1988 & Supp. I 1989). Homestead 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 Homestead, with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. JURISDICTION

(a) Homestead 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, as amended by FIRREA at 12 U.S.C. § 1813(c).

(b) Pursuant to Section 3 of the FDIA, as amended by FIRREA, the Director of OTS is the "appropriate Federal Banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, Homestead 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, as amended by FIRREA at 12 U.S.C. § 1818(b)

3. CONSENT

Homestead consents to the issuance by the OTS of the Order. It further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. FINALITY

The Order is issued under Section 8(b) of the FDIA, as amended by FIRREA at 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director for the Midwest Regional Office, OTS, 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 by FIRREA at 12 U.S.C. § 1818(i).

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RESOLUTION NO. DAL-91-111

DATED: August 12, 1991

ORDER TO CEASE AND DESIST

WHEREAS, Homestead Savings Association of Texas, College Station, Texas ("Institution"), through its directors, has executed a Stipulation and Consent to Issuance of Order to Cease and Desist, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Midwest Regional Office ("Regional Office") or his successor or designee; and

WHEREAS, the Institution, in the Stipulation, has, without admitting or denying that grounds exist, consented and agreed to the issuance of this Order to Cease and Desist ("Order") pursuant to Section 8(b) of the Federal Deposit Insurance Act, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA"), 12 U.S.C. § 1818(b);

NOW, THEREFORE, IT IS ORDERED that the Institution and its directors, officers, employees, agents and service corporations shall cease and desist from any violation of, or the aiding and abetting of any violation of:

Sections 552.11, 563.43, 563.160, 563.170, 563.176, 563.190, 567.2 and 571.19 of the Rules and Regulations for the Office of Thrift Supervision, 12 C.F.R. §§ 552.11, 563.43, 563.160, 563.170, 563.176, 563.190, 567.2 and 571.19.

IT IS FURTHER ORDERED that:

1. CAPITAL

- (a) Within 15 days of the date of this Order, the Institution shall submit a Capital Restoration Plan ("Plan") to the Regional Director pursuant to Thrift Bulletin 36, dated November 6, 1989 ("TB 36") and Section 5(t) of the Home Owners Loan Act of 1933 ("HOLA"), as added by Section 301 of FIRREA, Pub. L. No. 101-73 § 301 (1989). The Plan shall be in the manner in which the Institution can satisfy and maintain its regulatory capital requirement as set forth in 12 C.F.R. Part 567, adopted by the OTS pursuant to Section 5(t) of the HOLA, and that is acceptable to the Regional Director.
- (b) The Plan shall specifically set forth proposed strategies for raising capital and for accomplishing the overall objectives of the Institution, as required by TB 36.

2. INTEREST-RATE-RISK

Within 30 days of the date of this Order, the Institution shall submit to the Regional Director a written interest-rate-risk policy that complies with, and requires the Institution to comply with, 12 C.F.R. § 563.176, and Thrift Bulletins 12 and 13, dated December 13, 1988 and January 26, 1989, respectively. The Institution shall amend this written interest-rate-risk policy as reasonably directed in writing by the Regional Director, and shall not amend the written interest-rate-risk policy without written notification to the Regional Director.

3. INVESTMENT POLICY

- (a) Within 30 days of the date of this Order, the Board of Directors shall develop, adopt and submit to the Regional Director a written investment policy which complies with, and requires the Institution to comply with, 12 C.F.R. §§ 567.2 and 571.19, and Thrift Bulletin 41, dated December 29, 1989.
- (b) The Institution shall amend this written policy as reasonably directed in writing by the Regional Director and shall not amend this written investment policy without prior written notification to the Regional Director.

4. LOAN ADMINISTRATION

Within 30 days of the date of this Order, the Board of Directors shall direct Management to develop and implement loan administration and credit analysis policies in accordance with 12 C.F.R. §§ 563.170(c)(1)(i), 563.170(c)(1)(v), and 563.170(c)(1)(vii).

5. BOOKS AND RECORDS

- (a) Within 90 days of the effective date of this Order, the Institution shall submit to the Regional Director, for prior review and consent, guidelines and policies for the review and maintenance of the Institution's books and records and for ensuring timely and accurate filing of all financial reports required by the OTS, including monthly and quarterly reports, in accordance with 12 C.F.R. §§ 563.233 and 563.170(c). These guidelines and policies shall include, but not be limited to:

(i) a review of the present practices and procedures of the Institution for maintaining and reviewing its books and records and loan reports, including loan documentation; (ii) a review of all applicable statutes, regulations, or memoranda; (iii) identification of any error or deficiencies in present practices and procedures; and (iv) detailed plans for correcting any errors or deficiencies.

(b) The Institution shall make any revisions to the guidelines and policies as the Regional Director may reasonably request and shall comply with its established guidelines and policies, including any revisions thereto.

6. ASSET REVIEW

(a) Within 30 days of the date of this Order, the Board of Directors shall revise, adopt and submit to the Regional Director, the Institution's internal loan review policy to provide for the periodic review of the Institution's assets and the identification and rating of such assets in accordance with the standards set forth in 12 C.F.R. §§ 563.160 and 571.26 and the general guidelines set forth in Thrift Bulletin No. 3, dated October 17, 1988. The policy shall include the calculation of net realizable calculations where appropriate, in accordance with 12 C.F.R. § 563.160(d)(1).

(b) The Institution shall make any revisions to the internal loan review policy reasonably requested by the Regional Director and shall comply with such policy.

- (c) The Institution shall establish specific valuation allowances for all known losses and general valuation allowances for other classified assets in accordance with the Report of Examination dated November 14, 1990 and 12 C.F.R. § 563.160. The Institution shall establish additional specific valuation allowances and general valuation allowances as directed by the Regional Director.

7. REAL ESTATE OWNED

- (a) The Board of Directors shall immediately direct Management to develop, adopt and implement within 90 days of this Order, an asset disposition plan for each non-earning asset in excess of \$150,000.
- (b) The Board of Directors, or a duly authorized committee thereof, shall conduct a review of each asset disposition plan on a quarterly basis to determine: (i) the current status of each asset; (ii) Management's compliance with each plan; (iii) the status and effectiveness of each plan; (iv) the need to revise any plan or take alternative action; and (v) all efforts which have been undertaken by the Institution to return the asset to earning status.
- (c) The review findings shall be documented in the minutes of the Board of Directors or the minutes of the committee performing the review.

8. COMPLIANCE OFFICER

Within 120 days of the date of this Order, the Board of Directors shall designate an officer to serve as Compliance Officer and shall assign to that officer the responsibility of monitoring compliance by the Institution with all applicable laws and statutes, regulations, policy statements, memoranda, guidelines, and instructions administered by or under the purview of the OTS.

9. CHIEF EXECUTIVE OFFICER

- (a) The Board of Directors shall immediately search for a chief executive officer ("CEO") and shall use reasonable efforts to locate an acceptable candidate within 90 days of the date of this Order.
- (b) The Board of Directors shall provide a monthly status report regarding its progress in hiring a CEO.
- (c) The Board of Directors shall notify the Regional Director of the proposed employment of any person as CEO before employment becomes effective in accordance with Thrift Bulletin 45 dated April 25, 1990 and Section 914 of FIRREA.

10. MINUTES

- (a) The Board of Directors shall maintain minutes of the Board of Directors' meetings in accordance with 12 C.F.R. § 552.11. Said

minutes shall address, but not be limited to, problem loans, disposition of repossessed assets, establishment of valuation allowances, operating concerns and financial trends.

(b) At all times such minutes shall be available at the Institution's home office in College Station, Texas, and shall be available at all times for review by examiners of the OTS.

11. BOARD OF DIRECTORS FEES

Effective immediately, the Institution shall not, either directly or indirectly, pay to any member of the Board of Directors, any fees, commissions or remuneration incurred in connection with the performance of director duties. This limitation shall not preclude reimbursement for reasonable travel expenses for directors attending board and committee meetings.

12. CREDIT LIFE COMMISSIONS

The Institution shall take immediate action to direct that all credit life insurance commissions previously paid to President William F. Phillips, Jr. shall continue to be paid to the Institution. The Institution shall submit written documentation of such action to the Regional Director within 30 days of the date of this Order.

13. COUNTRY CLUB DUES

Effective immediately, the Institution shall not pay any country club membership dues, either directly or indirectly.

14. AFFILIATED PARTY TRANSACTIONS

- (a) Effective immediately, the Institution shall take appropriate steps to ensure the Institution is in full compliance with 12 C.F.R. § 563.43.
- (b) The Board of Directors shall review and familiarize themselves with the following regulatory and statutory provisions: 12 C.F.R. §§ 561.5, 563.43 (1990), and OTS Statements of Policy set forth at 12 C.F.R. §§ 571.7 and 571.9.
- (c) The Institution shall not extend or renew any loan granted by the Institution to any affiliated person without the prior written approval of the Regional Director or his designee.
- (d) The Board of Directors and Management shall take appropriate legal action to recover any losses which the Institution has incurred in connection with any loan made to any affiliated person, including, but not limited to, the following loan transactions: John C. Culpepper, Jr. (Loan No. 26-0612089), John C. Culpepper Trusts (Loan Nos. 33-0610615 and 33-0610627), Barry Turner (Loan Nos. 33-0610998 and 0610997), and David Hicks (Loan Nos. 26-0610867 and 26-0610657).
- (e) Within 30 days of the date of this Order, the Board of Directors shall institute a thorough investigation and analysis of the loan transactions involving David Hicks, Barry Turner, John C. Culpepper, Jr. and the John C. Culpepper Trust to

determine whether legal action is appropriate. The Board shall compile for each loan, a detailed report within 60 days of the date of this Order, setting forth appropriate findings and analysis. The report shall include statements and decisions of all alternative actions or remedies available to the Institution including, but not limited to, criminal referrals, civil actions, restitution, and claims filed pursuant to fidelity bond or directors and officers insurance policies.

- (f) The Board of Directors shall retain independent legal counsel for the purpose of reviewing, analyzing, and making recommendations with respect to the loan transactions described in Paragraph 14(e) above. The Board of Directors shall direct said independent legal counsel to provide a detailed report to the Board of Directors within 90 days of the date of this Order, setting forth appropriate findings and analysis, which shall include, but not be limited to, a review of the Board's findings, analysis, and recommendations.
- (g) Independent legal counsel hired by the Board of Directors pursuant to Paragraph 14(f) shall be subject to the prior written approval of the Regional Director or his designee. The Board of Directors shall also submit to the Regional Director or his designee, for prior written approval, the proposed scope of the analysis to be conducted by independent legal counsel as

well as a written estimate of the fees and costs associated with the engagement of independent legal counsel.

- (h) Within 120 days of the date of this Order, the Board of Directors shall submit to the Regional Director or his designee, a copy of the reports which have been prepared by the Board of Directors pursuant to Paragraph 14(e) above, as well as a copy of the report prepared by independent legal counsel pursuant to Paragraph 14(f) above. The report shall be accompanied by resolutions from the Board of Directors specifying what actions are contemplated in response to the findings and recommendations of counsel.

15. COMMITTEES

- (a) The Board of Directors shall immediately establish if they do not now exist, appropriate committees including, but not limited to, the following: Asset Liability Committee, Loan Committee, and Asset Classification Committee.
- (b) The committees referenced in Paragraph 15(a) shall meet not less than monthly and shall keep minutes of their proceedings in accordance with 12 C.F.R. § 552.11, which shall be properly maintained at the Institution's home office in College Station, Texas and shall be available at all times for review by the OTS.
- (c) Within 45 days of the date of this Order, the Board of Directors shall develop a written strategy and work plan to

properly and fully utilize the committees referenced in Paragraph 15(a). A copy of the written strategy and work plan shall be forwarded to the Regional Director or his designee upon completion.

16. SURETY BOND COVERAGE

Within 30 days of the date of this Order, the Institution shall document its efforts to obtain adequate surety bond coverage as set forth in 12 C.F.R. § 563.190(a).

17. GENERAL PROVISIONS

- (a) Each member of the Board of Directors owes fiduciary duties to the Institution and its depositors and stockholders. Notwithstanding that certain provisions of this Order require the Board of Directors to submit various matters to the Regional Director for the purpose of receiving approval, notice of acceptability or non-objection, such regulatory oversight does not derogate or supplant the fiduciary duties owed by the members of the Board of Directors of the Institution. The Board of Directors, at all times, shall have the ultimate responsibility for overseeing the safe and sound operation of the Institution.
- (b) In connection with its oversight of the Institution, the Board of Directors shall, at a minimum, obtain and consider all applicable information suggested in the Director Information Guidelines, published by the OTS in December of 1989. The Institution shall make such information available to the

Regional Director or his designee upon request.

- (c) The Board of Directors of the Institution shall take immediate action for the purpose of causing the Institution to comply with this Order.

18. BOARD REVIEW OF COMPLIANCE WITH ORDER

- (a) The Board of Directors shall, at each regular meeting, formally resolve that, to the best of its knowledge and belief, and based on a prudent review, during the previous calendar month, the Institution and all its subsidiaries complied with each provision of this Order currently in effect, except as otherwise stated. The resolution shall specify in detail how, if at all, full compliance was found to be lacking. The resolution further shall set forth any exceptions to any provision of this Order approved by the Regional Director or his designee. The aforementioned resolution shall be available at the Institution's home office in College Station, Texas and shall be available at all times for review by examiners of the OTS.
- (b) Within 10 days of each Board of Director's meeting, each director shall provide the Regional Director with certification that, to the best of his or her knowledge and belief, and based upon a prudent review, the above-referenced resolution is accurate or provide the Regional Director or his designee with written statement providing in detail the reason(s) for

disagreement with the resolution. A copy of each certification shall also be maintained at the Institution's home office in College Station, Texas.

19. DEFINITIONS

- (a) The Regional Director or his designee is the "senior supervisory official" within the meaning of Section 723(d) of the FIRREA, 101 Stat. 183, 428 (1989) (to be codified at 12 U.S.C. § 1437(d)). The term "Regional Director" includes the Director's designee.
- (b) As used in this Order, the term "subsidiary" or "subsidiaries" as defined in 12 C.F.R. § 567.1(dd).
- (c) As used in this Order, the term "savings association" shall have the meaning as set forth in Section 2(4) of the HOLA, as amended by FIRREA, 103 Stat. 183, 277 (1989) (to be codified at 12 U.S.C. § 1462(4)).
- (d) As used in this Order, the term "affiliated person" shall be defined in 12 C.F.R. § 561.5.
- (e) As used in this Order, the term "independent" shall mean a person or entity not related to the Institution, its subsidiaries, or its affiliated persons, who is not an affiliate or associate as those terms are defined in 12 C.F.R. § 563b.2(a)(2) and (5) and who is otherwise free of any relationship that would interfere with the exercise of independent judgment.

(f) For purposes of Paragraph 14, the term "independent legal counsel" shall be defined as those law firms or individuals that have not been previously engaged to represent the Institution or any entity or individual involved in any transactions with the Institution.

All other technical words or terms used in this Order, for which meanings are not specified or otherwise provided 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, HOLA, or Federal Deposit Insurance Act, as amended ("FDIA"). Any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Memoranda shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

20. SUCCESSOR REGULATIONS, GUIDANCE, AMENDMENTS

Reference in this Order 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 of this Order and references to successor provisions as they become applicable.

21. MISCELLANEOUS

(a) In the instance that any provision of this Order shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(b) Nothing in this Order shall be construed as permitting the Institution to violate any law, rule, regulation, or policy statement which it is subject.

(c) Except as otherwise noted, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Order to be made upon, given or furnished to, delivered to, or filed with either OTS, the Regional Director, or his designee or the Institution shall be made in writing, mailed, first class, airmail postage prepaid or physically delivered, or telecopied, telexed or sent by other means of electronic transmission and confirmed by mail, first class, airmail postage prepaid, or physically delivered and addressed to the Regional Director, Office of Thrift Supervision, 122 West Carpenter Freeway, Irving, Texas 75039 or the Institution at 2553 South Texas Avenue, College Station, Texas 77840.

22. This Order shall remain in effect until terminated, modified or suspended by the OTS, acting through the Regional Director or his designee. The Regional Director or his designee may suspend, in his or her sole discretion, any or all provisions of this Order.

THE OFFICE OF THRIFT SUPERVISION

BY:

/S/

BILLY C. WOOD
REGIONAL DIRECTOR
MIDWEST REGIONAL OFFICE
DALLAS, TEXAS