

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)

BARBARA CROSS, Former Officer)
and Institution-Affiliated)
Party of:)

Davy Crockett Federal Savings)
Bank, Crockett, Texas)
_____)

RE: Resolution No. DAL-91-183

DATED: October 25, 1991

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

The Office of Thrift Supervision ("OTS"), by and through its Director, and Barbara Cross ("Cross"), a former officer of Davy Crockett Federal Savings Bank, Crockett, Texas (the "Institution"), hereby 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 Cross, pursuant to Section 407(g) of the National Housing Act of 1934 ("HOLA"), 12 U.S.C. § 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. § 1818(b) (1988 and Supp. I 1989). Cross desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Without admitting or denying the statements,

conclusions or terms herein, Cross hereby stipulates and agrees to the following terms in consideration of: (1) the forbearance by the OTS from initiating such administrative cease and desist litigation; and (2) the agreement by the OTS to refrain from seeking the issuance of additional enforcement orders against Cross with respect to any matters (a) reported or otherwise addressed in the OTS Reports of Examination of the Institution for the examinations commenced as of April 16, 1990, and July 8, 1991, or (b) discovered by the OTS as a result of its investigative proceeding, commenced pursuant to OTS Resolution No. DAL-91-14, March 11, 1991. Cross, without trial, presentation of any evidence, or findings of fact pursuant to an administrative judicial hearing, has consented to the terms of the Stipulation for the sole purpose of resolving the issues in this proceeding without significant legal cost and expense. The OTS has determined that it is appropriate, and in the best interest of the public to execute the Stipulation and the attached Order to Cease and Desist and for Affirmative Relief ("Order"). This Stipulation and the attached Order are issued solely to settle this proceeding, and are not the result of factual findings.

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

(a) The Institution at all times relevant to the allegations set forth herein, was a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) and

Section 2(4) of the Home Owners' Loan Act of 1933, as amended by Section 301 of FIRREA, 12 U.S.C. § 1462(4). Accordingly, it was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA, 12 U.S.C. § 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. § 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 ~~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 Cross, pursuant to Section 5 of the HOLA, 12 U.S.C. § 1464.

(e) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended by Section 204 of FIRREA, 12 U.S.C. § 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 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. § 1464(d)(1)(A), and Section 8(b) of the FDIA, as amended by the FIRREA, 12 U.S.C. § 1818(b).

(g) Cross was been an officer of the Institution from July 20, 1987, until September 13, 1991.

(h) During the period July 20, 1987 through March 31, 1990, Cross was paid advisory director fees in the total amount of \$3,300.00 by the Institution, and attended periodic meetings of the Advisory Board. Cross did not attend meetings of the board of directors or offer advice and guidance to the board of directors, and was not appointed as an advisory director in accordance with 12 C.F.R. § 545.123. The fees Cross received were paid into an account at the Institution that was styled, "John H. Stowe and Henry M. Ellis, Trustees," and were then used to pay interest on a loan at Texas National Bank, Longview, Texas (the "TNB Loan"), that was secured by the stock of the Institution. Cross was neither an obligor nor a guarantor on the TNB Loan.

(i) On or about June 29, 1989, Cross executed loan documents as a borrower of the Institution, for an unsecured loan in the amount of \$15,000.00. The loan documents did not accurately reflect the substance of the transaction, which was to make a principal reduction on the TNB Loan.

(j) Cross is an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, as amended by FIRREA, 12 U.S.C. § 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, as amended by FIRREA, 12 U.S.C. § 1818(b).

3. Consent. Without admitting, or denying the need or basis therefor, Cross consents to the issuance by the OTS of the Order, a copy of which is attached hereto and incorporated as Exhibit A. She 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. § 1818(b) and Section 407(e) of the NHA, 12 U.S.C. § 1730(e).

4. Finality. The Order is issued under Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(b). 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 by FIRREA, 12 U.S.C. § 1818(i).

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ORDER TO CEASE AND DESIST AND
FOR AFFIRMATIVE RELIEF

WHEREAS, Barbara Cross ("Cross") has executed a Stipulation and Consent to Issuance of Order to Cease and Desist and for Affirmative Relief ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Director;

WHEREAS, without admitting that the grounds exist therefor, Cross has consented and agreed in the Stipulation to the issuance of this Order to Cease and Desist and for Affirmative Relief ("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, ("FIRREA"), 12 U.S.C. § 1818(b) (1988 and Supp. I 1989);

WHEREAS, affirmative relief is required to correct the conditions which resulted from Davy Crockett Federal Savings Bank

of Crockett, Texas ("the Institution") paying fees during the period July 20, 1987 through March 31, 1990 to advisory directors; and,

WHEREAS, Cross was an institution-affiliated party to whom said fees were paid;

NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:

1. Cross shall be obligated to pay restitution to Davy Crockett Federal Savings Bank of Crockett, Texas in the amount of \$1,000.00.

2. Cross's obligation to pay said restitution shall be satisfied by paying \$1,000.00 within fifteen (15) days of the issuance of this Order. Said payment shall be by a certified check in said sum, payable to Davy Crockett Federal Savings Bank, and tendered to the Regional Director of the Midwest Regional Office of the OTS;

IT IS FURTHER ORDERED AS FOLLOWS:

3. Cross shall not accept any position as an officer, director or advisory director of an insured depository institution, without the prior written approval of the Regional Director of the Midwest Regional Office of the OTS, and the appropriate regulatory agency.

4. When particular issues arise that may cause Cross to be uncertain about her responsibilities as an officer, director, advisory director and/or employee of an insured depository

institution, Cross shall obtain the advice of competent counsel with regard to the fiduciary duties that she owes to the institution and to the federal deposit insurance fund, and with regard to compliance with this Order.

5. In the event that Cross, while an officer, director, advisory director and/or employee of an insured depository institution, has reasonable notice that an officer or director of an insured depository institution is engaging, has engaged, or is about to engage in: (a) an unsafe or unsound practice in conducting the business of such institution; (b) the violation of a law, rule, regulation, or any condition imposed in writing by the agency in connection with the granting of any application or any written agreement with the agency; or (c) a breach of his or her fiduciary duties to the insured depository institution, Cross shall notify said officer or director and the appropriate regulatory agency.

6. Definitions: 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 unions and other similar entities that hold federally insured deposits, and their non-diversified holding companies.

(b) "Appropriate regulatory agency" includes the federal agency(ies) with regulatory authority over the particular institution, as defined in more detail at 12 U.S.C. § 1813(q).

