

UNITED STATES OF AMERICA  
Before the  
OFFICE OF THRIFT SUPERVISION

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In the Matter of	)
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ALLAN H. APPLESTEIN,	)
SHEILA M. APPLESTEIN and	)
DCA GRANTOR TRUST	)
	)
persons participating in the	)
conduct of the affairs of	)
	)
Guardian Savings and Loan	)
Association	)
Fort Lauderdale, Florida	)
_____	)

Re: Enforcement Review  
Committee Resolution  
No. ERC ~~88~~-90-34  
Dated February 27, 1990

STIPULATION AND CONSENT TO ISSUANCE  
OF ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Enforcement Review Committee ("ERC"), and Allan H. Applestein, Sheila M. Applestein, and DCA Grantor Trust ("the Group"), 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 the Group pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") (to be codified at 12 U.S.C. § 1818(b)). The Group 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 initiation of such administrative cease-and-desist litigation against the Group with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) The Group admits that Guardian Savings and Loan Association, Fort Lauderdale, Florida ("Guardian"), is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owner's Loan Act of 1933, 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 (to be codified 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. The Group admits that, at all relevant times herein, they are and were persons participating in the conduct of the affairs of Guardian by virtue of their ownership of the stock of Guardian. Therefore, the Group 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 (to be codified at 12 U.S.C. § 1818(b)).

3. Consent. The Group 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 (to be codified at 12 U.S.C. § 1818(b)). Upon its issuance by the ERC, 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 (to be codified at 12 U.S.C. § 1818(i)).

5. Waivers. The Group waives its right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(b)), and further waives any right to seek judicial review of the order, including any such right provided by Section 8(h) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(h)), or otherwise to challenge the validity of the order.



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ORDER TO CEASE AND DESIST

WHEREAS, Allan H. Applestein, individually and on behalf of DCA Grantor Trust, and Sheila M. Applestein ("the Group"), 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 Enforcement Review Committee; and

WHEREAS, the Group, in its Stipulation, has 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 ("FDIA"), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") (to be codified at 12 U.S.C. § 1818(b)).

NOW THEREFORE, IT IS ORDERED that the Group shall cease and desist from any violation of, or the aiding and abetting of any violation of the Change in Savings and Loan Control Act, 12 U.S.C. § 1730(q) (1982) ("Control Act") and Part 574 of the regulations governing the Acquisition of Control of Insured Institutions, 12 C.F.R. Part 574 (1989).

**IT IS FURTHER ORDERED:**

1. Within 15 days of the effective date of this Order, the Group shall transfer such shares of their stock in Guardian Savings and Loan Association, Fort Lauderdale, Florida ("Guardian Stock") as is necessary to reduce their stock ownership, individually and as a Group, to no more than ten (10) percent, to a trust which the Group members are the beneficiaries, properly endorsed for transfer or accompanied by fully endorsed stock powers. The trust terms and the trustee shall be approved in advance by the District Director at the Office of Thrift Supervision's Atlanta District ("District Director"). During the period that the trustee has possession of the Guardian stock, the Group shall not exercise any control, directly or indirectly, over Guardian, including, but not limited to, the actions set forth below in Paragraphs 3(i) through 3(ix), and shall not exercise any control, directly or indirectly, over said trust or trustee.
2. The trustee shall vote the Guardian stock on a pro-rata basis in accordance with the votes of the other common stockholders. In order to effectuate this requirement, the trustee shall provide written instructions to the Secretary of Guardian that the stock

shall be voted on this basis and shall furnish a copy of such instructions to the District Director. The Group, collectively or individually, shall promptly take whatever action may be requested by the trustee in order to enable the trustee to take such actions.

3. The trustee nor the Group, individually or collectively, shall exercise or attempt to exercise, directly or indirectly, control or a controlling influence over the management or policies of Guardian. While the trustee has possession of the Guardian stock, he shall not, directly or indirectly:

- i. seek or accept more than one representative on the board or directors of Guardian;
- ii. have or seek to have any representative serve on an executive or similar committee of the board of directors of Guardian;
- iii. engage in any transactions with Guardian;
- iv. influence or attempt to influence in any respect the loan and credit decisions or policies of Guardian;
- v. influence or attempt to influence the dividend policies and practices of Guardian or any decision or policies of Guardian as to the offering or exchange of any stock;
- vi. have or seek to have any representative serve as an officer, agent or employee of Guardian;
- vii. propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of Guardian;
- viii. solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the stockholders of Guardian; or
- ix. seek to amend, or otherwise take action to change, the bylaws, articles of incorporation, or charter of Guardian.

4. Within one year of the formation of the trust, the trustee shall sell the stock in the trust.
5. All offers or sales of stock by the trustee shall comply with Section 563g of the Insurance Regulations, 12 C.F.R. § 563g (1989). If the trustee is unable to sell the Guardian stock after making a good faith effort, he or any of the Group members may request a reasonable extension from the District Director, who shall have the authority to grant or deny such extension. The Group members collectively or individually shall take whatever actions requested by the trustee in order to enable the trustee to effect the sale of Guardian stock as required by this order.
  - i. The trustee shall not sell to individuals or companies that are "affiliates" of the Group members, as that term is defined in 12 C.F.R. § 563b.2(a)(2) (1989).
  - ii. Such purchasers shall have no understandings, arrangements or agreements with the Group members, written or oral, relating to any repurchase of any future voting or disposition of the Guardian stock.
6. The costs of administering the voting trust shall be paid from the proceeds of the sale of the stock or by the Group.
7. The execution of this order by the Group shall not preclude the Group from filing a Change of Control Application or Notice to the Office of Thrift Supervision ("OTS") to retain ownership of their stock. In processing such application the OTS shall not be estopped from taking into account the facts that form the basis for its opinion that grounds exist to initiate an administrative proceeding pursuant to Section 8(b) of the FDIA, as amended by the

Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (to be codified at 12 U.S.C. § 1818(b)). So long as the Group is in compliance with this order, the execution of this order shall not be construed as a "presumptive disqualifier" under 12 C.F.R. § 574.7(g) (1989).

THE OFFICE OF THRIFT SUPERVISION

By

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Rosemary Stewart  
Secretary, Enforcement Review  
Committee and  
Director of Enforcement