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UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
MISSISSIPPI SAVINGS BANK)
Batesville, Mississippi)
)
)
)

Re: OTS Resolution No.
ERC-90-37

Dated: April 23, 1990

TEMPORARY ORDER TO CEASE AND DESIST

On April 23, 1990, the Office of Thrift Supervision ("OTS") issued a Notice of Charges and Hearing ("Notice") against Mississippi Savings Bank, Batesville, Mississippi, its service corporations and subsidiaries ("MSB"), pursuant to the authority of 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. 101-73, 103 Stat. 183 ("FIRREA"), to be codified at 12 U.S.C. § 1818(b).

Upon review of the Notice, and of the entire record herein, the OTS has determined, acting through its Enforcement Review Committee, that the regulatory violations and unsafe or unsound practices specified in the Notice, and the continuation thereof, are likely to cause significant dissipation of the assets or earnings of MSB, or are likely to weaken the condition of MSB or prejudice the interest

of depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of Section 8 of the FDIA as amended by FIRREA, 12 U.S.C. § 1818(b).

THEREFORE, by the authority of Section 8(c) of the FDIA, as amended by FIRREA, to be codified at 12 U.S.C. § 1818(c), MSB is ORDERED TO CEASE AND DESIST FROM:

1. Directly or indirectly, making or committing to make, purchasing or committing to purchase, refinancing or committing to refinance, disbursing or committing to disburse, all or any part of any loan, including loans related in any way to All-American Finance, Inc. ("AAF"), without the prior written approval of the Dallas District Director of OTS, or his designee, except for:

(a) original loans of \$250,000 or less to any one borrower secured by existing one-to-four family residential units;

(b) permanent loans to end-users on homes to be built pursuant to take-out or permanent financing commitments, if a lender other than MSB provides the construction financing, and the borrower provides at least a twenty percent (20%) cash down payment.

2. Accepting, renewing, or rolling over any funds obtained, directly or indirectly, by or through any deposit broker, for deposit into one or more deposit accounts except as permitted pursuant to § 29 of the FDIA, as added by FIRREA, 12 U.S.C. § 1831f.

3. Accruing, setting funds aside for, or funding, directly or indirectly, any employee stock ownership plan ("ESOP"), pension plan, retirement plan, or profit sharing plan of any kind whatsoever, for the benefit of any employee, officer or director of MSB, without obtaining prior written approval from the Dallas

District Director of OTS, or his designee.

4. Selling, contracting to sell, or exchanging for consideration or disposing of, in any way whatsoever, any asset of MSB valued in excess of \$2,500, without obtaining the prior written approval from the Dallas District Director of OTS, or his designee.

5. Buying, contracting to buy, or obtaining for consideration of any kind whatsoever, any speculative, high risk or high yield asset without obtaining the prior written approval of the Dallas District Director of OTS.

6. Paying, in any way whatsoever, any dividends on its common or preferred stock, including but not limited to cash and in-kind dividends, until such time that it complies with its fully phased-in capital requirements pursuant to OTS regulations, and receives the prior written approval of the Dallas District Director of OTS.

7. Compensating any employee, officer, or director, on an annualized basis, any amount of compensation, including but not limited to salary, bonus, pension plan contribution or any other remuneration, in excess of their compensation as of the twelve months ending November 31, 1989, without the prior written approval of the Dallas District Director of OTS.

8. Entering into any employment or severance contract(s) without the prior written approval of the Dallas District Director of OTS.

IT IS FURTHER ORDERED THAT:

9. (a) All 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 meaning as defined in the Code of Federal Regulations, Title 12, Chapter V; or as defined in FIRREA; and any such words or terms undefined in the Code of Federal Regulations and in FIRREA shall have meanings that accord with the best custom and usage in the savings and loan industry.

(b) Unless otherwise noted, the following terms shall be defined as set forth herein below:

(1) Mississippi Savings Bank or MSB - all references to MSB include, in addition to the insured institution, any wholly-owned or majority-owned subsidiary, or affiliate, or service corporation of MSB

(2) End-user - means the purchaser of an existing house, or house to be constructed, who intends to use such house as his principal residence;

(3) Loan - means any loan, line of credit, overdraft privilege, finance lease or other extension of credit, or any participation therein, whether originated or purchased by MSB

(4) Refinance - means any modification of the established material terms of an existing loan, including but not limited to extensions of time regarding the repayment of principal or changes relating to the payment of interest, fees or charges;

(5) Transfer - includes any form of conveyance by a person or entity to another person or entity to another person or entity, including but not limited to,

a sale, gift, or exchange.

EFFECTIVENESS

10. This Order is effective immediately.

11. This Order shall remain effective and enforceable pending completion of proceedings against MSB pursuant to Section 8(b) of the FDIA, as amended by FIRREA, and until such time as the OTS shall dismiss such proceedings or, if a final Order is issued in such proceedings, until the effective date of any such Order.

Issued: April 23, 1990
8:25 a.m.
EDT

Enforcement Review Committee

RS

Rosemary Stewart
Director of Enforcement and
Secretary, Enforcement Review
Committee

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of)	RE: OTS Resolution No.
)	ERC-90- <u>37</u>
MISSISSIPPI SAVINGS BANK)	
Batesville, Mississippi)	Dated: April 23, 1990
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)	

NOTICE OF CHARGES AND HEARING

In accordance with the provisions of 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, 450-451 ("FIRREA"), to be codified at 12 U.S.C. § 1818(b), the Office of Thrift Supervision ("OTS") hereby issues this Notice of Charges and Hearing against Mississippi Savings Bank, Batesville, Mississippi and its service corporations and subsidiaries ("MSB"). OTS is of the opinion that MSB has violated provisions of the Rules and Regulations applicable to all savings associations, 12 C. F. R. Part 561, et seq., republished at 54 Fed. Reg. 49411 (Nov. 30, 1989), and has engaged in unsafe or unsound practices in violation of the Federal Deposit Insurance Act ("FDIA") and the Home Owners' Loan Act of 1933, as amended ("HOLA").

I. JURISDICTION

1. MSB is a state-chartered savings bank maintaining its principal place of business in Batesville, Mississippi.

2. (a) The accounts of MSB were, until August 9, 1989, insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") pursuant to Section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. § 1728(b), by reason of which it was an "insured institution" within the meaning of the NHA.

(b) As of August 9, 1989, pursuant to the provisions of FIRREA, insurance of the accounts of MSB transferred to the Federal Deposit Insurance Corporation ("FDIC").

3. (a) Until August 9, 1989, the Federal Home Loan Bank Board ("Bank Board"), as operating head of FSLIC, was the regulatory agency with jurisdiction over MSB.

(b) As of August 9, 1989, pursuant to the provisions of FIRREA, the OTS succeeded to the interests of the Bank Board and FSLIC with respect to the supervision and regulation of all savings associations, and thus became the appropriate Federal banking agency with jurisdiction over MSB.

(c) Since August 9, 1989, all rules and regulations of the Bank Board and FSLIC cited herein remain in effect. Section 401(h) of FIRREA.

4. (a) As an insured institution, MSB was at all times prior to August 9, 1989, subject in all respects to the Insurance Regulations pursuant to Section 403(b) of the NHA, 12 U.S.C. § 1726(b) (in effect prior to August 9, 1989).

(b) As a state savings bank, MSB has at all times since August 9, 1989, been subject in all respects to the Insurance Regulations pursuant to Section 401(h) of FIRREA and the determination published pursuant thereto at 54 Fed. Reg. 34637 (August 21, 1989).

5. As a state savings bank, MSB is subject to OTS' authority to maintain a proceeding to determine whether an order to cease and desist should issue pursuant to Section 8(b) of the FDIA, as amended by FIRREA.

II. GROUND'S FOR ISSUANCE OF CEASE AND DESIST ORDER

A. MSB'S FINANCIAL CONDITION

6. MSB is not meeting, and has not met, all of its capital requirements as required by 12 C.F.R. § 567, et seq. (effective December 7, 1989) ("Capital Regulations") and Section 5(t) of the HOLA, as amended by FIRREA, 12 U.S.C. § 1464(t).

7. As of December 31, 1989, MSB's tangible capital requirement was \$2.9 million and its core capital requirement was \$5.8 million, based on total assets reported by MSB on its Thrift Financial Report ("TFR") for the quarter ended December 31, 1989. MSB reported tangible and core capital of \$5.1 million each. Therefore, MSB had a core capital deficiency of \$700,000.

8. As of January 31, 1990, MSB had a tangible capital requirement of \$2.6 million and core capital requirement of \$5.2 million. In its TFR for the month of January 1990, MSB reported tangible and core capital of \$4.3 million each. Therefore, MSB had a core capital deficiency of \$900,000. According to the minutes of

a Board of Directors meeting held on March 7, 1990, MSB was failing its risk based capital requirement by approximately \$750,000.

9. As of February 28, 1990, MSB's tangible capital requirement was \$2.6 million and its core capital requirement was \$5.2 million.

10. In its TFR for the month of February 1990, MSB reported tangible and core capital of \$2.2 million each, resulting in a tangible capital deficiency of \$400,000, and core capital deficiency of \$2.7 million.

11. Having failed to timely file an acceptable Capital Plan with OTS in accordance with the Capital Regulations, MSB is not entitled to any exceptions from the capital requirements or exemptions from any sanctions for failure to comply therewith.

12. Since December 1989, MSB has been incurring increasing losses.

13. For the month of January 1990, MSB reported to OTS it had incurred a net operating loss of \$644,000 and a net loss of \$811,000.

14. For the month of February 1990, MSB reported to OTS it had incurred a net operating loss of \$2.5 million and a net loss of \$2.2 million.

15. MSB's failure to maintain its capital requirements in accordance with the Capital Regulations is an unsafe or unsound practice.

16. MSB has reduced its total asset size by liquidating assets including but not limited to Federal Home Loan Mortgage Corporation and Federal National Mortgage Association mortgages.

17. Assets declined by approximately \$90 million between August 31, 1989 through February 28, 1990.

18. MSB is required to maintain an average daily balance of liquid assets as set forth in 12 C.F.R. § 566.2 (November 30, 1989).

19. MSB reported a liquidity deficiency of \$2,319,000 for February 1990.

20. Under cover of a letter dated March 12, 1990, signed by MSB's acting president, MSB submitted to OTS a check in the amount of \$15,892.08 representing MSB's deficiency penalty.

21. By letter dated April 6, 1990, OTS advised MSB that the monetary penalty for liquidity deficiency was waived because the imposition of such penalty would further exacerbate operating losses of MSB.

22. As set forth in paragraphs 23 and 24 below, MSB has projected that its cash balance will decline steadily.

23. MSB projects that its total net cash balance will decline from \$9,317,809.79 on April 23, 1990 to negative \$510,567.56 on May 8, 1990.

24. By May 31, 1990, MSB projects that its total net cash balance will be negative \$13,898,515.37.

25. MSB cannot rely upon advances from the Federal Home Loan Bank of Dallas ("FHLB-Dallas") for additional funds, as set forth in paragraphs 26 and 27 below.

26. Currently, MSB has advances outstanding from the FHLB-Dallas totalling \$22 million.

27. The FHLB-Dallas has reviewed the creditworthiness and the collateral position of MSB and has determined that the FHLB-Dallas

will be potentially at risk if further funds are advanced to MSB at this time.

28. As set forth in paragraphs 29-40 below, MSB cannot rely upon brokered deposits for additional funds.

29. A troubled institution, as defined in § 29(g) of the FDIA, 12 U.S.C. § 1831f(g), as added by FIRREA, is any insured depository institution which does not meet applicable capital requirements.

30. MSB is a troubled institution.

31. A troubled institution may not accept funds obtained, directly or indirectly, by or through any deposit broker unless the Federal Deposit Insurance Corporation ("FDIC") waives the prohibitions on acceptance of such funds upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice with respect to such institution.

32. As of December 31, 1989, MSB held brokered deposits of more than \$129 million, more than 75% of its total deposits.

33. On February 1, 1990, MSB submitted a waiver request to the FDIC for permission to accept new or renew and rollover existing brokered deposits.

34. MSB stated as its reason for requesting a waiver, the fact that it had "no 'free' assets upon which the Bank [MSB] can borrow additional funds to use as alternative funding sources; therefore it is imperative that the Bank be allowed to continue to accept, renew and roll over brokered deposits."

35. MSB also stated in its February 1, 1990 request that the waiver was for the purpose of maintaining its short-term liquidity

and meeting depositors' withdrawals.

36. By letter dated March 28, 1990, MSB was granted a temporary waiver regarding the use of brokered deposits subject to certain prohibitions, including the continued funding of existing loan commitments and new business.

37. On April 19, 1990, the FDIC admonished MSB that the funding of loan commitments, including those to All American Finance, Inc. ("AAF") would be a direct violation of the temporary waiver on brokered deposits granted on March 28, 1990.

38. Referring to the results of an OTS/FDIC examination commencing as of January 22, 1990, the FDIC advised MSB on April 19, 1990 that MSB was insolvent.

39. The FDIC's April 19, 1990 letter further stated that unless MSB took action to cure the insolvency, it would likely be closed and/or conserved with resulting loss to the FDIC's Savings Association Insurance Fund.

40. In a separate letter of April 19, 1990, citing MSB's deteriorating financial condition, the FDIC denied MSB's February 1, 1990 application for a waiver concerning brokered deposits, terminated all prior temporary FDIC waivers, and denied MSB's request for an extension of the temporary waiver.

41. MSB's failure to maintain adequate liquidity without the use of brokered deposits is an unsafe or unsound practice.

42. MSB's reliance on brokered deposits to fund operations is an unsafe or unsound practice.

B. LOANS INVOLVING AAF

43. AAF specializes in the purchase of high yield, high risk, used car loan contracts, yielding between twenty one percent (21%) and thirty percent (30%), from used car dealers in Arizona.

44. The loan contracts purchased by AAF typically originate at \$7,000 or less, have an average life of 22 months, and are secured by a first lien on vehicles more than four years old.

45. On or about August 2, 1989, MSB entered into an agreement to fund \$1.7 million to AAF pursuant to a revolving commercial line of credit.

46. On or about August 2, 1989, MSB entered into an agreement to fund \$1.9 million to AAF.

47. On or about August 2, 1989, MSB entered into an agreement to fund an additional \$5 million to AAF.

48. On or about December 1, 1989, pursuant to agreements entered into by MSB, MSB agreed to fund an additional \$5 million to AAF.

49. The AAF loans serve as security for commercial loans made by MSB to AAF.

50. AAF's commercial line of credit at MSB was classified by OTS examiners substandard, thereby raising the likelihood of additional costs to the FDIC in the absence of actions on the part of MSB to correct the deficiencies.

51. Pursuant to 12 C.F.R. § 563.9-3(b)(2), in effect on August 2, 1989, as of July 31, 1989, MSB's limit on commercial loans to one borrower was \$4,655,000 or less.

52. As of August 2, 1989, MSB exceeded its commercial loan to one borrower limitation by \$3,945,000 or more, thereby violating 12

C.F.R. § 563.9-3(b)(2).

53. As of November 30, 1989, MSB's limit on commercial loans to one borrower was \$3,420,000 or less pursuant to 12 C.F.R. § 563.93(b)(2) (effective November 30, 1989), and § 5(u) of the HOLA, as amended by FIRREA (effective August 9, 1989), 12 U.S.C. § 1464(u).

54. As of December 1, 1989, MSB exceeded its commercial loans to one borrower limitation by \$10,180,000 or more, thereby violating 12 C.F.R. § 563.93(b)(2) and § 5(u) of the HOLA, as amended.

55. MSB has continued to violate and is currently violating its statutory and regulatory commercial loans to one borrower limitation.

56. MSB's funding or continued funding of the AAF loans is an unsafe or unsound practice.

C. EXCESSIVE COMPENSATION AND DIVIDEND PAYMENTS

57. In June 1989, MSB showed a loss attributable to approximately \$1.5 million from MSB's Employee Stock Ownership Plan ("ESOP") bonus payments.

58. At the July 28, 1989 regular meeting of the Board of Directors, MSB approved contributions of \$75,000 for MSB's ESOP, and \$208,000 for the payment of bonuses.

Based upon the foregoing, OTS is of the opinion that MSB has engaged in unsafe or unsound practices and violations of laws and regulations in conducting the business of MSB and that, unless restrained, MSB will continue to engage in such practices and

violations. OTS is further of the opinion that, unless MSB is restrained by issuance of a temporary order to cease and desist, such practices and violations, or their continuation, are likely to cause MSB's insolvency or substantial dissipation of MSB's assets or earnings, and/or likely seriously to weaken the condition of MSB and/or otherwise seriously prejudice the interests of MSB's depositors prior to the completion of the administrative proceedings instituted pursuant to the foregoing NOTICE.

III. NOTICE OF HEARING

Notice is hereby given that, pursuant to Section 8(b) of the FDIA, as amended by FIRREA, to be codified at 12 U.S.C. § 1818(b), an administrative hearing will be held to determine whether an order to cease and desist should be issued against MSB. The hearing will be held in Washington, D.C. and will commence on or before June 22, 1990, the exact time of day and location to be announced at a later time. The hearing will be conducted by an Administrative Law Judge in accordance with the adjudicatory provisions of the Administrative Procedure Act, 5 U.S.C. §§ 554-557 (1982), and the Rules of Practice and Procedure of the Office of Thrift Supervision, 12 C.F.R. Part 509, et seq. (1989), republished at 54 Fed. Reg. 49411 (November 30, 1989) ("Rules").

MSB is hereby directed to file an Answer to this Notice within 20 days after receiving service. The requirements of the Answer and the consequences of failure to file an Answer are set forth in the

Rules. MSB is also directed, at the same time its Answer is filed, to submit its views as to whether the hearing should be public or private.

Enforcement Review Committee

/s/

Rosemary Stewart
Director of Enforcement and
Secretary of Enforcement Review
Committee