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UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
STEPHEN M. DUCKWORTH,)
A Former Officer and)
Director of Investors)
of Florida Savings Bank,)
Deerfield Beach, Florida)

Re: Enforcement Review Committee
Resolution No. 90-51

Dated: July 2, 1990

NOTICE OF INTENT TO PROHIBIT, NOTICE OF ASSESSMENT OF
CIVIL MONEY PENALTY AND NOTICE OF HEARING

The Office of Thrift Supervision ("OTS") is of the opinion that Stephen M. Duckworth ("Duckworth" or "Respondent") (1) violated applicable laws and regulations, engaged or participated in unsafe or unsound practices in connection with the management of Investors Federal Savings and Loan Association, Deerfield Beach, Florida ("Investors" or "Association"), and later renamed, Investors of Florida Savings Bank, Deerfield Beach, Florida, and breached his fiduciary duty to the Association; and (2) Investors, suffered substantial financial loss or other damage as a result of Respondent's conduct, and Respondent received financial gain by

reason of such conduct; and (3) Respondent's conduct involved personal dishonesty, and demonstrated a willful or continuing disregard for the safety or soundness of the Association; and (4) Respondent willfully violated the Change in Bank Control Act of 1978 ("Control Act"), 12 U.S.C. § 1817(j), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. 101-73, 103 Stat. 183.

Therefore, in accordance with the provisions of Section 407(g) of the National Housing Act, 12 U.S.C. § 1730(g), Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e), as amended by the FIRREA and Section 7(j)(16) of the Control Act, 12 U.S.C. § 1817(j)(16) OTS hereby issues this Notice of Intent to Prohibit, Notice of Assessment of Civil Money Penalty and Notice of Hearing.

I. JURISDICTION

1. The Association was chartered as a federal stock association in January of 1985, and commenced operations in May of that year. Its principal place of business was located in Deerfield Beach, Florida.

2. In or about July of 1987, the Association's Board of Directors adopted a plan of reorganization pursuant to which it would reorganize to become a wholly-owned subsidiary of a savings and loan holding company.

3. In August of 1987, the Association filed an application to convert to a Florida state-chartered stock association and to change its name.

4. On October 21, 1987, the Association organized IFS Financial Corp. ("IFS" or "Holding Company") and caused it to be incorporated under the laws of the state of Delaware.

5. Thereafter, the Association and IFS organized New Investors Federal Savings and Loan Association ("New Federal") as an interim wholly-owned subsidiary of the Holding Company for the purpose of facilitating its merger with and into the Association.

6. On or about November 16, 1987, IFS made formal application for permission to acquire all of the issued and outstanding stock of the Association through a merger of New Federal with and into the Association.

7. On or about January 25, 1988, the Association was granted permission to convert to a Florida state-chartered stock association and to change its name to Investors of Florida Savings Bank.

8. On March 4, 1988, IFS changed its corporate name to Investors of Florida Financial Corporation ("IFFC").

9. By means of a letter dated May 20, 1988, the Federal Savings and Loan Insurance Corporation ("FSLIC") notified the parties of its approval of the merger and acquisition.

10. The merger of New Federal with and into Investors, as well as IFFC's acquisition of all of Investors' issued and outstanding stock, were completed on May 31, 1988.

11. Incident to that transaction, shares of Investors common and preferred stock were automatically converted to the same number of shares of IFFC common and preferred shares, respectively.

12. From its commencement of operations until August 9, 1989, the accounts of the Association were insured by the FSLIC pursuant to Section 403 of the National Housing Act, 12 U.S.C. § 1726.

13. Section 401 of FIRREA abolished the FSLIC effective August 9, 1989.

14. As of August 9, 1989, the accounts of Investors became and continue to be insured by the Federal Deposit Insurance Corporation.

15. As an insured institution, Investors was at all times subject in all respects to the Insurance Regulations pursuant to Section 403(b) of the National Housing Act, 12 U.S.C. § 1726(b).

16. On June 1, 1990, Investors was placed into receivership.

17. Duckworth served as Chairman of the Association's Board of Directors from May of 1985 until his replacement on July 20, 1989.

18. Respondent also served as the Association's president and chief executive officer from May of 1985 until his resignation on November 10, 1989.

19. Respondent served as Chairman of the Board of Directors of IFS, and later IFFC, from on or about October 21, 1987, until his replacement on July 20, 1989.

20. Respondent also served as President and Chief Executive Officer of IFS, and later IFFC, from on or about October 21, 1987, until his resignation on November 10, 1989.

21. Until August 9, 1989, the FSLIC was the regulatory agency with jurisdiction over federally insured state-chartered savings associations, pursuant to Section 407 of the National Housing Act, 12 U.S.C. § 1730.

22. As of August 9, 1989, pursuant to the provisions of FIRREA, the OTS succeeded the FSLIC with respect to supervision and regulation of all savings associations and thus became the appropriate Federal banking agency with jurisdiction over Investors, IFFC and persons participating in the conduct of their affairs.

23. The OTS, as successor to the FSLIC, has jurisdiction to maintain a proceeding to determine whether an Order of Prohibition should issue against a former director and officer of an insured institution and its holding company, and whether to assess a civil money penalty for a violation of the Control Act.

II. NOTICE OF CHARGES

A. Unsafe and Unsound Transactions

Loan No. 002479 Granted To Dr. Christopher G. Economides

24. On or about July 1987, Dr. Christopher G. Economides ("Dr. Economides") applied for an unsecured line of credit in the amount of \$750,000.

25. On August 6, 1987, Duckworth and another granted Dr. Economides a \$310,000 unsecured line of credit, which was assigned Loan number 002479.

26. On August 13, 1987, Duckworth caused Investors to disburse the full amount of the proceeds of this line of credit without first obtaining the approval of the Association's board of directors.

27. On August 17, 1987, after the loan proceeds had been fully disbursed, the Association's board of directors approved the loan, but in the amount originally requested by Dr. Economides in his loan application.

Loan No. 118606 Granted To Dr. Economides

28. On July 29, 1988, Duckworth and another granted a \$300,000 unsecured line of credit to Dr. Economides, which was assigned Loan No. 118606.

29. Duckworth approved this loan without obtaining a completed loan application, a financial statement current at the time and signed by the borrower, a written credit report prepared by Investors or by others at the special instance and request of Investors and without documentation evidencing the terms of the loan or the conditions of its approval.

Loan No. 155079 Granted to Dr. Economides

30. On September 29, 1988, Investors granted Dr. Economides a \$650,000 unsecured line of credit, which was assigned Loan No. 155079.

31. The loan file, as well as the minutes of the association's Board of Directors' and Loan Committee's meetings, do not contain any evidence that this loan was ever presented to and approved by the board of directors of Investors.

32. This loan was not one which Dr. Economides sought on his own, but rather was one which Duckworth requested that he apply for and obtain.

33. On September 29, 1988, the Respondent visited Dr. Economides' professional office and requested that Dr. Economides loan \$400,000 to IFFC and \$200,000 to him personally.

34. In response to Duckworth's request Dr. Economides indicated that he did not have any cash.

35. Duckworth thereupon indicated that Investors would extend a line of credit to Dr. Economides so that he could borrow the money with which to make the \$400,000 loan to IFFC and the \$200,000 loan to Duckworth.

36. Duckworth informed Dr. Economides that he would use the \$200,000 he was borrowing to purchase stock in IFFC. He also proposed that the personal loan he was requesting from Dr. Economides be secured by his pledge of the IFFC stock he wished to purchase with the loan proceeds.

37. Dr. Economides had previously made a \$400,000 loan to Investors' wholly owned service corporation, Investors Savings Service Corporation, ("ISSC") and had requested that the loan be repaid. Duckworth proposed that Dr. Economides invest the proceeds of the repayment as well as the additional \$400,000 in the form of a loan to IFFC.

38. In furtherance of his proposals, Duckworth presented to Dr. Economides the following documents which he indicated were ready for signature so that the proposed transactions could be completed immediately:

(a) A promissory note identified as "Loan No. 1" in the amount of \$400,000 for use in completing the transaction described in Paragraph No. 37;

(b) A promissory note identified as "Loan No. 2" in the amount of \$400,000 for use in completing the transaction between Dr. Economides and IFFC described in Paragraphs Nos. 33 and 35;

(c) A promissory note with no identification in the amount of \$200,000 for use in completing the transaction between Dr. Economides and Duckworth described in Paragraphs Nos. 33, 35 and 36;

(d) A pledge agreement between Duckworth and Dr. Economides for use in accomplishing the pledge of stock referred to in Paragraph No. 36;

(e) An irrevocable stock power running in favor of Dr. Economides for use in completing the transaction between Dr. Economides and Duckworth described in Paragraphs Nos. 33, 35 and 36; and

(f) A stock certificate representing 14,300 shares of IFFC stock which Duckworth proposed to purchase with the proceeds of the requested Economides loan and simultaneously pledge as collateral to secure that loan.

39. Each of the documents described in the immediately preceding paragraph bore the date "September 29, 1988"; each was complete and ready for signature when Duckworth presented them to Dr. Economides on September 29, 1988.

40. Relying upon the expertise and advice of Duckworth, Dr. Economides indicated his willingness to carry out the transactions Duckworth had proposed.

41. In order to expedite Dr. Economides' borrowing from Investors and his simultaneous loans to IFFC and the Respondent, the latter suggested that Dr. Economides write-out in longhand an instruction to Investors to disburse the sums of \$400,000 and \$200,000 from his \$650,000 line of credit directly into the accounts of IFFC and Duckworth, respectively, on September 30, 1988.

42. Again relying upon the expertise and advice of Duckworth, Dr. Economides carried out the request referred to in the immediately preceding paragraph.

43. During the September 29, 1988, meeting referred to in Paragraph No. 33, the documents referred to in Paragraphs Nos. 38, 41 and 42 were executed.

44. Dr. Economides' loan from Investors bore interest at the Citibank prime rate plus 1%, while the Economides loans to IFFC and Duckworth bore interest at the Citibank prime rate plus 1.5%.

45. On September 30, 1988, the following occurred at Duckworth's direction:

(a) Investors disbursed the sums of \$400,000 and \$200,000 into the accounts of IFFC and Duckworth, respectively, and charged them to Loan No. 155079.

(b) Respondent Duckworth used \$165,000 of the \$200,000 disbursed into his account to purchase shares of IFFC stock.

(c) ISSC repaid in full its \$400,000 loan from Dr. Economides, and the entire principal amount was disbursed to IFFC as "Loan No. 1" from Dr. Economides.

(d) IFFC used the total sum of \$965,000 it had received from Dr. Economides and Duckworth as part of \$1,028,988 with which it purchased additional shares of Investors common stock.

46. The purchase of stock referred to in subsection (d) of Paragraph No. 45 led Investors to inflate the amount of capital it possessed in the financial reports it submitted to the FSLIC and the Federal Home Loan Bank Board as of September 30, 1988.

47. Duckworth failed to disclose his September 29, 1988, loan from Dr. Economides in correspondence he filed with the Federal Home Loan Bank of Atlanta ("FHLB").

48. Duckworth failed to list his September 29, 1988, loan from Dr. Economides in his personal financial statements dated February and May, 1989, which he submitted to Investors for use in underwriting his personal line of credit.

49. Sometime after September 30, 1988, Duckworth asked Dr. Economides to return to him the share certificate(s) evidencing his ownership of the IFFC common stock pledged as collateral for the September 29, 1988, loan from Dr. Economides.

50. Dr. Economides returned the share certificate(s) to Duckworth in compliance with the latter's request.

51. At some later point in time, Duckworth pledged the shares of IFFC common stock, which had formerly served as collateral for his September 29, 1988, loan from Dr. Economides, as collateral for a new additional \$200,000 loan he obtained from Meritor Savings Bank, FSB, Winter Haven, Florida ("Meritor Savings").

52. Duckworth failed to list his September 29, 1988, loan from Dr. Economides in the personal financial statement which he submitted to Meritor Savings in connection with his application for the \$200,000 loan.

53. Respondent utilized the IFFC common stock described in Paragraph No. 51 in an effort to obtain, and with the result that he did in fact obtain, more credit than he was actually qualified to receive.

B. Change of Control Act Violation

54. On or about November 16, 1987, Investors filed an H-(e)1 Application for Merger ("H-e(1)") with the FHLB as part of its plan to reorganize. Subsequent to this filing, Investors filed two amendments to the application.

55. The FSLIC conditionally approved the application based upon the representations contained within the application and the amendments filed.

56. The reorganization as well as IFFC's acquisition of all of Investors' issued and outstanding stock, were completed on May 31, 1988.

57. As a result of that transaction, shares of Investors common and preferred stock were automatically converted to the same number of shares of IFFC common and preferred shares, respectively.

58. In connection with that transaction, Duckworth formally requested permission from FHLB to purchase 3,701 shares of Investors preferred stock (now IFFC preferred stock) and 21,000 shares of Investors common stock (now IFFC common stock).

59. In connection with his request for permission to make the stock purchases described in the immediately preceding paragraph, Duckworth made the following written representations in the H-(e)1 reorganization application filed with the FHLB, which he certified were true and correct to the best of his knowledge and belief:

(a) In the first amendment filed to the H-(e)1 Application on or about February 1, 1988, he represented in one place that he owned or controlled "about sixty-six thousand shares (9.6%) of Investors and ha(d) options on another forty-one thousand shares . . . "; in another place he represented that "since September 30, 1987, Mr. Duckworth has exercised some . . . options to increase his present stockholdings to 66,000 shares or 9.6% of Investors."

(b) In the second amendment filed to the H-(e)1 Application on or about March 16, 1988, he represented that "Mr. Duckworth increased his total stockholdings to approximately 66,000 shares by purchasing shares from other stockholders. It is Mr. Duckworth's intention, however, to exercise stock options representing 21,000 shares before the options expire in October, 1988. Mr. Duckworth agrees and understands that prior to exercising any options which would cause him to own or control more than 9.9% of the outstanding shares of Investors Federal, Mr. Duckworth will file a change of control application with the FHLB of Atlanta and the FHLBB." (emphasis added.)

60. As part of his formal request for permission to make the stock purchases described in Paragraph No. 59, Duckworth represented that he would borrow \$185,000 to accomplish the purchase of Investors common stock and an additional \$48,000 to accomplish the purchase of Investors preferred stock.

61. FSLIC's approval of the merger and acquisition was expressly made based upon the above-mentioned representations and subject to certain conditions with which the parties, including Duckworth, were required to comply.

62. Those conditions included a grant of permission contained in a letter from the FHLB dated May 31, 1988, for the Respondent to purchase up to 3,700 shares, or approximately 25%, of Investors preferred stock and up to 21,000 shares of Investors common stock, thereby increasing his common stockholdings to 87,000 shares, or 12.25%, of Investors' outstanding common stock.

63. The approval was also granted based upon Duckworth's representations that he would borrow no more than \$48,000 to purchase the Investors preferred stock and no more than \$185,000 to purchase the Investors common stock.

64. The materials subsequently submitted by or on behalf of Duckworth in compliance with the above requirements in the May 20, 1988 letter, stated the following:

(a) Although Duckworth had only been given permission to purchase up to 3,700 shares of Investors preferred stock, he nevertheless purchased 3,701 preferred shares;

(b) Although Duckworth had certified to the truth of the written representation that as of the time of the filing of the H-(e)1 Application he owned 66,000 or approximately 66,000 shares of Investors common stock, actually he owned 66,788 shares of such stock;

(c) Although Duckworth had only been given permission to purchase up to 21,000 shares of Investors common stock, thereby raising his Investors common stockholdings to 87,000 shares, or 12.25% of Investors outstanding common stock, he nevertheless made the following acquisitions:

(i) Between March 15 and 31, 1988, he purchased 3,500 shares from other stockholders, raising his Investors' common shareholdings to 70,288 shares or 9.95% of Investors' outstanding common stock;

(ii) In June of 1988, Investors declared a 4% stock dividend which added 2,810 shares to Respondent's common shareholdings;

(iii) In September of 1988, Respondent acquired 31,500 common shares via an exercise of options, thereby raising his total common shareholdings to 104,598 shares or 13.4% of Investors' outstanding common shares; and

(d) Although Duckworth had represented that he would borrow up to \$185,000 in connection with his purchase of the 21,000 shares of Investors common stock, he nevertheless borrowed a total of \$500,000 for this purpose, or \$315,000 more than he had represented the he needed to borrow.

65. Duckworth acquired the above-mentioned excessive stock without filing an amendment to the H-(e)1 Application and without the approval of the FSLIC.

66. In a letter dated February 21, 1989, addressed to the FHLB, Duckworth acknowledged, for the first time, his acquisition of the additional stock referred to above.

67. Duckworth's failure to file an amendment to the H(e)(1) Application disclosing his intentions to acquire the above-mentioned excessive stock was a false and misleading omission of a material fact.

68. From on or about September 30, 1988, Duckworth willfully acquired, and has continually owned 17,598 shares of IFFC's issued and outstanding common stock in excess of that which he was granted permission to obtain, as more specifically described in the immediately preceding paragraphs. Thus, Respondent has and continues to control IFFC in willful violation of the Control Act and Control Act Regulations, which prohibit any person, directly or indirectly or acting in concert, from acquiring control of an

insured depository institution unless the appropriate Federal banking agency has been given sixty days' prior written notice and during that time the agency has not issued a notification disapproving the proposed acquisition.

69. After taking into account the good faith of the Respondent and the gravity and continuing nature of his violation, the Director of the Office of Thrift Supervision ("DOTS") has determined that the appropriate civil money penalty for the Respondent is \$1,000 per day from September 30, 1988.

NOW THEREFORE, pursuant of Section 7(j)(16) of the Change in Bank Control Act of 1978 ("Control Act"), 12 U.S.C. § 1817(j)(16), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. 101-73 Stat. 183, the DOTS hereby assesses a civil money penalty of:

- 1) \$608,000 against Respondent Stephen M. Duckworth for the period commencing October 1, 1988, and continuing through the date hereof; and, in addition,

2) \$1,000 per day against Stephen M. Duckworth for the period, commencing 60 days from the date of service of this Notice of Assessment upon the said Respondent, during which the violation of the Control Act continues, for his willful violation of the Control Act.

70. The above civil money penalty shall be paid within sixty (60) days after the issuance of this Notice of Assessment and shall be made payable to the Treasurer of the United States and sent to the Controller's Division of the Office of Thrift Supervision at 1700 G Street, N.W., Washington, D.C. 20552.

IV. NOTICE OF HEARING

Notice is hereby given that, pursuant to Section 407(g) of the National Housing Act, 12 U.S.C. § 170(g), an administrative hearing will be held to determine whether an Order of Prohibition and Assessment of Civil Money Penalty should be issued against the Respondent. The hearing will be held in Miami, Florida, and will commence on September 4, 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 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. §§ 509.1 et seq. (1989), published at 54 Fed. Reg. 49446 (November 30, 1989) ("Rules").

Respondent 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.

By the Enforcement Review Committee

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Rosemary Stewart
Secretary, Enforcement Review
Committee
Director of Enforcement