

95046

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION  
DEPARTMENT OF THE TREASURY

\_\_\_\_\_  
In the Matter of )  
 )  
DAVID L. PAUL, )  
 )  
Former Chairman of the Board, )  
Chief Executive Officer, and )  
Controlling Shareholder )  
of CentTrust Bank, a State )  
Savings Bank, Miami, Florida, )  
 )  
EDWARD D.G. DAVIES, )  
 )  
Former Director of CentTrust Bank, )  
Trustee of the Supplemental )  
Executive Retirement Plan, Agent )  
and Person Participating in the )  
Conduct of the Affairs of )  
CentTrust Bank )  
\_\_\_\_\_

Re: Order No. 90-1873  
Dated: October 22, 1990

TEMPORARY ORDER TO CEASE AND DESIST

On October 22, 1990, the Office of Thrift Supervision ("OTS") of the United States Department of the Treasury issued a Notice of Charges and Hearing to Direct Restitution and Other Appropriate Relief; and Notice of Intention to Prohibit Respondent from Participation in the Conduct of the Affairs of Federally Insured Depository Institutions (the "Notice") against David L. Paul ("PAUL"), which Notice also seeks cease and desist relief, including other appropriate relief, from Edward D.G. Davies ("DAVIES") in his capacity as a former director of CentTrust, as a trustee of the Supplemental Executive Retirement Plan ("SERP") and agent and Person Participating in the Conduct of the Affairs

of of CentTrust Bank, a State Savings Bank ("CentTrust"), under the authority of Section 5(d)(1)(A) of the Home Owners' Loan Act of 1933 ("HOLA"), 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. § 1464(d)(1)(A), and Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), as amended by FIRREA, 12 U.S.C. §§ 1818(b), 1818(e), and Sections 407(e) and (g) of the National Housing Act ("NHA"), as amended, 12 U.S.C. §§ 1730(e) and (g) (1982).

Upon review of the entire record herein, the OTS has determined that there is substantial evidence to demonstrate: that PAUL was and continues to be unjustly enriched through his violations of law and regulation, and his repeated and reckless unsafe and unsound practices and breaches of fiduciary duty, as specified in the Notice; that PAUL's violations and practices were committed with reckless disregard for the law and regulations; that CentTrust or its successor has incurred losses and is likely to incur further losses or other damage as a result of PAUL's misconduct as set forth in the Notice; that CentTrust or its successor is likely to incur further losses or other damage in connection with the offshore SERP as a result of the unsafe and unsound practices and breaches of fiduciary duty committed by PAUL and DAVIES in connection therewith; and that the assets of CentTrust or its successor are likely to be further dissipated, and the interests of CentTrust or its successor are likely to be further prejudiced if any of the respondents is allowed to dissipate or conceal his assets or assets of CentTrust or its

successor over which he continues to maintain control, including the SERP, prior to the completion of the proceedings conducted pursuant to FDIA Section 8(b), as amended, 12 U.S.C. § 1818(b).

I.

BACKGROUND

1. The purpose of this Temporary Order to Cease and Desist is to prevent the further weakening of the condition of CentTrust or its successor and the further dissipation of its assets prior to the completion of the proceedings conducted pursuant to FDIA Section 8(b), as amended, 12 U.S.C. 1818(b).

The Notice sets forth allegations of serious and substantial harm suffered by CentTrust or its successor as a result PAUL's reckless violations of law and regulation, unsafe and unsound practices, and breaches of fiduciary duty. Upon proof of these charges, the total amount of restitution, reimbursement or other appropriate relief would exceed Thirty Million Eight Hundred Seventy Nine Thousand Five Hundred Fifty Dollars (\$30,879,550), plus interest.

2. The Notice seeks restitution, indemnification, and a guarantee against loss from PAUL in the amount of \$15,000,000 representing the approximate current value of funds taken out of CentTrust for the creation and funding of a Directors and Officers Indemnity Fund (the "DOIF"). The DOIF was funded even while CentTrust's losses mounted to huge proportions. The DOIF was comprised of CentTrust's most marketable securities, leaving CentTrust with the poorer quality securities. This arrangement was

never properly reflected on the books and records of CentTrust. By virtue of PAUL's breaches of fiduciary duty, unjust enrichment at the expense of CentTrust, conscious disregard for the best interests of CentTrust, willful misconduct, reckless misconduct, and acts, omissions and practices committed in bad faith or with malicious purpose, PAUL has no right or lawful claim of any kind to be indemnified by CentTrust funds for any purpose.

3. The Notice seeks restitution, indemnification, and a guarantee against loss, and other appropriate relief arising from PAUL's actions that caused CentTrust to purchase \$29 million of paintings, \$280,000 of oriental rugs, \$119,000 of rare first edition books, and more than \$300,000 of luxurious china, crystal, and sterling silverware. Thus far, on the paintings alone, CentTrust has sustained a loss of \$4.4 million and a lost opportunity cost in excess of \$3.9 million on the \$29 million spent on the paintings. Further substantial losses are likely to be incurred upon the sale of the remaining luxury items. In addition, PAUL caused CentTrust to spend approximately \$35,000 for 24-karat gold leaf ceilings for PAUL's private office, conference room, and reception areas. In PAUL's private bathroom, the waste pipes, sinks, and faucets were also gold-plated, costing in excess of \$3,500. All of these expenditures were wasteful, reckless and improper for the safe, sound and prudent operation of an insured depository institution. The losses and probable losses resulting from these expenditures are directly attributable to the unsafe and unsound practices, breaches of fiduciary duty, and reckless disregard of the law by PAUL.

4. The Notice seeks restitution, indemnification, and a guarantee against loss from PAUL in the amount of \$4,960,000 representing the amount of money diverted from CentTrust to the SERP. The SERP was created primarily for the benefit of PAUL despite the fact that PAUL and other CentTrust senior executives already received excessive salaries and bonuses and participated in CentTrust's 401(k) plan. As of the date of the conservatorship, PAUL was the only SERP participant who purportedly could earn a benefit under the SERP. The assets and records of the SERP were transferred offshore and currently are not located in the United States. Management of the SERP was entrusted to DAVIES, a long-time associate of PAUL and former director of CentTrust, who managed its assets without a written contract prior to January 1990 and who charged substantial management fees to CentTrust for this service. This diversion of funds offshore was improper at the outset and the money or other property within the SERP properly belongs to CentTrust. Despite the demand made by the Resolution Trust Corporation as receiver of CentTrust for its return, DAVIES has refused to do so. Neither PAUL nor any other person other than CentTrust, has any right, and never had any right, or lawful claim to such money or other property.

5. The Notice seeks restitution and reimbursement of \$515,000, representing the cost of life insurance premiums paid by CentTrust for policies in the amount of \$6 million to benefit Sandra Paul, PAUL's wife. Contrary to the authorization for the acquisition of such policies given by the Board of Directors, the beneficiary of the policies was not CentTrust. PAUL's use of

CentTrust's assets to purchase the policies was a self-enriching and reckless waste of assets of a federally insured savings bank, and constituted an unsafe and unsound practice and breach of fiduciary duty by PAUL.

6. The Notice seeks restitution, indemnification, and a guarantee against loss of \$456,900, representing payments by CentTrust for maintenance of a security system and guard services at PAUL's private residence from in or about January 1987 to on or about February 2, 1990, the date CentTrust was placed into conservatorship. The payments for these items by CentTrust for the personal use of PAUL were wastes of the assets of a federally insured savings bank and constituted unsafe and unsound practices and breaches of fiduciary duty by PAUL.

7. The Notice seeks restitution and reimbursement of \$393,000 representing a bonus and salary increase received by PAUL in or about October 1989, following an OTS directive to CentTrust to cease dividend payments that had enriched PAUL by more than \$11.3 million as the controlling shareholder of CentTrust. PAUL substantially increased his salary and bonus as CentTrust headed towards insolvency and failure. For the fiscal year ended September 30, 1989, CentTrust disclosed in its Annual Report on Form 10K filed with the OTS that it had a net loss for that year of \$119 million. The payments of the bonus and salary increase to PAUL, the controlling shareholder, Chief Executive Officer, and Chairman of the Board of CentTrust, and his receipt of them, at a time when CentTrust was in a critically deteriorating financial condition, was a self-enriching and reckless waste of assets of a

federally insured savings bank, constituted an unsafe and unsound practice and a breach of fiduciary duty by PAUL, and was an effort to circumvent and evade the OTS directive to cease dividend payments.

8. The Notice seeks restitution and reimbursement of approximately \$300,000 of CentTrust funds paid for interior design consultation services diverted by and to PAUL for his personal benefit. PAUL caused CentTrust to pay for these consultation services by falsely claiming they were for CentTrust. In fact, PAUL used these services for the design of his residence and large motor yacht, the "Grand Cru." This was a conversion and misapplication of CentTrust funds in violation of law and also constituted a breach of fiduciary duty and an unsafe and unsound practice.

9. The Notice seeks restitution and indemnification for losses incurred by PAUL's diversion and waste of the funds of CentTrust Trust (a wholly owned subsidiary of CentTrust) in the amount of approximately \$233,000 to purchase a sailboat named "Bodacious." Losses incurred on the sale of "Bodacious" by the Conservator of CentTrust were approximately \$100,000.

10. The Notice seeks restitution and reimbursement in the amount of \$70,000 representing payments that were made by CentTrust for personal expenses charged to CentTrust by PAUL and that remain unreimbursed. PAUL charged to CentTrust personal travel expenses, expensive dinners, and purchases at exclusive stores such as Hammacher, Schlemmer. These expenditures unjustly enriched PAUL and constituted conversion and misapplication of CentTrust assets

and also constituted breaches of fiduciary duty and unsafe and unsound practices.

11. The Notice seeks restitution and reimbursement in the amount of \$38,850 representing the cost to CenTrust of purchasing materials for the construction of a guard house at PAUL's residence, the hiring of personal servants for PAUL's household, and for vanity photographs taken of PAUL. These expenditures unjustly enriched PAUL and constituted conversion and misapplication of CenTrust funds and also constituted breaches of fiduciary duty and unsafe and unsound practice.

12. The Notice seeks restitution and reimbursement in the amount of \$6,300 representing the cost to CenTrust of sending one of its employees to Paris, France for several days to coordinate the so-called "Great Chefs" dinner at PAUL's Miami, Florida residence in 1988. This was an extravagant private affair for the benefit of PAUL for which he did not make reimbursement to CenTrust until after demands therefor were made by federal regulators. PAUL nonetheless has not reimbursed CenTrust for the cost of airfare, lodging, salary and incidental expenses CenTrust paid to have one of its employees perform services solely for the benefit of PAUL. These expenditures unjustly enriched PAUL and constituted conversion and misapplication of CenTrust assets, and also constituted breaches of fiduciary duty and unsafe and unsound practices.

13. The Notice seeks restitution and reimbursement in the amount of \$2,000 representing the cost to CenTrust of purchasing semi-automatic weapons and ammunition. PAUL requested and

approved this purchase. As of this date, although CentTrust paid for the weapons they have not been recovered. This purchase was improper and constituted a breach of fiduciary duty and unsafe and unsound practice.

14. The Notice and record are the product of extensive examinations of CentTrust by the FHLBB and OTS. CentTrust, under the direction and control of PAUL, frequently sought to frustrate these examination efforts. Prior to the Conservator taking control of CentTrust, volumes of documents were destroyed or removed from the premises of CentTrust by or at the direction of PAUL in order to prevent federal regulators from access to them.

15. The Notice and record also demonstrate that PAUL has repeatedly enriched himself unjustly and has shown a proclivity to breach his fiduciary duty of loyalty and care and engage in unsafe and unsound practices, in order to enrich himself at the expense of CentTrust, its depositors, its deposit insurer, and ultimately, the American taxpayer.

16. It is OTS' experience that the filing of charges prompts respondent insiders to dissipate or conceal their assets. This is true whether or not OTS has already closed the institution and whether or not the respondent insiders had prior reason to believe that OTS might act. There is evidence that PAUL diverted millions of dollars offshore; that he frequently travels overseas; that he conducts transactions with foreign nationals in foreign banks; that he maintains accounts in foreign banks, including margin accounts; and that he engages in securities and commodities trading overseas. He has engaged in questionable transactions

with the Bank of Commerce and Credit Internationale, recently convicted in the United States of money-laundering activities.

17. CentTrust has been the victim of egregious insider abuse by PAUL. OTS concludes that a substantial danger exists for further dissipation in this case. The appropriate and necessary means to prevent further injury to CentTrust and its successor is through this Temporary Order to Cease and Desist. Under the relevant statutory provisions, 12 U.S.C. § 1818(b)(6)(B) and (c)(1), the OTS has a statutory duty to prevent further damage and to order correction of the conditions resulting from the violations, practices, and breaches found in the Notice. The Temporary Order to Cease and Desist is framed to correct those conditions as well as to prevent further injury and dissipation of CentTrust assets.

18. PAUL has, by affidavit, refused to testify in OTS' investigative proceeding by pleading the privilege against self-incrimination under the Fifth Amendment of the United States Constitution in response to a subpoena issued by OTS. When viewed in the light of the charges contained in the Notice, this response creates an inference that PAUL, unless ordered to cease and desist, will otherwise dissipate assets prior to the conclusion of the proceedings to be conducted pursuant to FDIA Section 8(b) as amended, 12 U.S.C. § 1818(b), and therefore, place them beyond the OTS' ability to recover them for the benefit of CentTrust or its successor and the Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation.

II.

TEMPORARY CEASE AND DESIST ORDER

19. THEREFORE, by the authority under FDIA Section 8(c) as amended by FIRREA, 12 U.S.C. § 1818(c), PAUL, is hereby:

a. ORDERED, no later than 12:00 noon Eastern Time, on Thursday, November 1, 1990, to provide security in the amount of Thirty Million Eight Hundred Seventy Nine Thousand Five Hundred Fifty Dollars (\$30,879,550). This sum, excluding interest, which is to be computed on the basis of the prime interest rate + 2 percentage points as established by a national bank acceptable to the Director of OTS as of the time payment is made pursuant to a final Order, represents the amount of unjust enrichment to PAUL as a result of violations of law and regulation or unsafe or unsound practices committed or engaged in by PAUL, or losses to CenTrust caused by PAUL's reckless disregard of the law. PAUL shall comply with this section by one or a combination of any of the following means: (1) by paying cash to the Resolution Trust Corporation as Receiver for CenTrust; (2) by establishing and maintaining an escrow account in the amount of \$30,879,550 at a financial institution and with an escrow agent approved by the Director of OTS; (3) by providing an irrevocable letter of credit or fidelity bond from a federally insured institution or an insurer approved by the Director of OTS and subject to terms and conditions as

approved by the Director of OTS; or (4) by providing other security deemed adequate by the Director of OTS. To the extent that the \$15,000,000 CentTrust Directors and Officers Indemnity fund is returned to the custody of the Resolution Trust Corporation, as Receiver for CentTrust, or that PAUL can demonstrate to the satisfaction of the OTS that the \$15,000,000 fund will remain frozen, undiminished and secure in the custody of Citibank during the pendency of the administrative proceeding noticed hereby, then PAUL shall to that extent only be credited for having satisfied the amount of security required hereunder. PAUL's remittance of these monies, if made in cash pursuant to subparagraph (1) above, should be made payable to the Resolution Trust Corporation as Receiver for CentTrust, and delivered to:

Resolution Trust Corporation as Receiver  
for CentTrust Bank, a State Savings Bank  
One CentTrust Financial Tower  
Miami, Florida 33131

b. FURTHER ORDERED to submit to OTS within five (5) business days following entry of this Order the following: (1) a sworn statement identifying all accounts or other assets located outside the United States in which PAUL or any member of his immediate family has any legal or beneficial interest; (2) United States and state tax returns for 1988 and 1989, including all schedules and attachments thereto, and (3) a financial statement prepared by a Certified Public Accountant in accordance with generally accepted accounting principles and certified by PAUL as accurate showing his

assets and liabilities, and those of PAUL's immediate family, as of a date no earlier than September 1, 1990. Similar updated financial statements shall be filed with the OTS no less frequently than quarterly. Upon written request of PAUL, the financial statements submitted pursuant to this paragraph will not be made public to persons or entities other than employees and agents of governmental authorities; and

c. FURTHER ORDERED TO CEASE-AND-DESIST from, directly or indirectly, causing the sale, transfer or encumbrance of funds or other assets of any nature whatsoever in which PAUL or any member of his immediate family, have a legal or beneficial interest, whether directly or through any other person or entity, including but not limited to the transfer of assets outside of the United States. The foregoing shall not apply to assets used to pay ordinary and reasonable living expenses which have a value either singly or through related transactions, of less than five thousand dollars (\$5,000.00). For proposed expenditures of \$5,000 or more, whether singly or through related transactions, PAUL shall provide the OTS with two full business days advance written notice. At such time as PAUL has fully complied with Paragraph 19.a., he may make application to the Director of OTS for any appropriate relief from this subparagraph.

d. IT IS FURTHER ORDERED that PAUL is prohibited from soliciting, receiving, using, directing the use of, or taking any other action with respect to, whether directly or through

any other person or entity, any funds or other assets of any nature whatsoever of the CenTrust Directors and Officers Indemnity Agreement dated August 21, 1986, and any amendments thereto.

e. IT IS FURTHER ORDERED that (1) PAUL and DAVIES and shall take all steps available to each of them to require the return to CenTrust of all assets contributed to or presently held by the Supplemental Executive Retirement Plan; and that (2) except as set forth in paragraph (e)(1), PAUL and DAVIES is each prohibited from soliciting, receiving, directing the use of, receiving any benefit from, or taking any other action with respect to, whether directly or through any other person or entity, any funds, instruments or other assets of any nature whatsoever, of the CenTrust Supplemental Executive Retirement Plan ("SERP"), and, as to PAUL, of the Indemnity fund; (3) except as set forth in paragraph (e)(1) above, any custodian, trustee or manager of the SERP funds or assets, including without limitation, DAVIES, Dinam Management and Finance Company, and Midland Bank Nominees, Ltd. of the United Kingdom, is hereby prohibited from using, transferring, paying, encumbering, or selling, whether directly or through any other person or entity, any funds, instruments or other assets of any nature whatsoever of the SERP. Any such custodian, trustee or manager of the SERP shall, within thirty (30) calendar days from the date of issuance of this Order, provide a full and complete accounting as of September 30, 1989 to the date of the

issuance of this Order, to the Director of OTS. Such accounting shall include all activity, transfers, purchases, sales, distributions, if any, and current balances and location of all assets of any nature whatsoever of the SERP.

f. IT IS FURTHER ORDERED that the terms in paragraphs a, b, c, d, and e shall be construed in their broadest and most inclusive senses.

20. If PAUL contends that compliance with this Order would cause undue hardship to him or his dependents, or causes him to be unable to hire legal counsel, PAUL shall make appropriate application to the Director of OTS supported by (a) financial statements for himself and his dependents, prepared by and certified to by a nationally recognized firm of accountants; (b) the United States and state tax returns for the years 1988 and 1989 for each such person; (c) statements pertaining to arrangements, funds or trust established for his benefit or for the payment of his legal or other fees or other expenses, whether directly or indirectly, along with a statement of fees or other expenses advanced but not exhausted, and (d) affidavits setting forth such other facts as thought to be pertinent.

III.

COMPLIANCE PROCEDURES

21. Notice of the establishment of an escrow account referenced in Paragraph 12 above and all events required by this Order and notice of PAUL's compliance with this Order shall be provided in writing to:

Chief Counsel  
Office of Thrift Supervision  
U.S. Department of the Treasury  
1700 G Street, N.W.  
Washington, D.C. 20552  
Fax Number: (202) 906-7606  
(202) 898-0230

Copies should be provided to:

Faith Hochberg, Senior Deputy Chief Counsel  
Office of Thrift Supervision  
U.S. Department of the Treasury  
10 Exchange Place  
Jersey City, New Jersey 07302  
Fax Number: (201) 413-5863

and

Deborah E. Siegel, Senior Enforcement Attorney  
Office of Thrift Supervision  
U.S. Department of the Treasury  
1700 G Street, N.W.  
Washington, D.C. 20552  
Fax Number: (202) 906-7005

#### IV.

#### DEFINITIONS

22. 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, the FDIA, or the Home Owners

Loan Act of 1933 ("HOLA"), and any such words or terms undefined in the foregoing shall have meanings that accord with the best custom and usage in the savings association industry.

V.

EFFECTIVENESS

23. THIS ORDER shall be and is effective upon service or other notice thereof and shall remain effective and enforceable until the completion of the administrative proceedings initiated by the Notice, incorporated by reference herein, or until such time as the OTS shall dismiss the charges specified in such Notice, or if a Cease and Desist Order is issued against PAUL or DAVIES until the effective date of such Order.

Issued: October 22, 1990

151  
\_\_\_\_\_  
Timothy Ryan  
Director  
Office of Thrift Supervision