

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)

JOHN M. SMOCK)
Director and Institution-)
Affiliated Party of:)

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

RE: Resolution No. DAL-91-134

DATED: August 30, 1991

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

The Office of Thrift Supervision ("OTS"), by and through its Director, and John M. Smock ("Smock"), director 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 Smock, 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). Smock desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Without admitting, and specifically disputing the

statements, conclusions or terms herein, Smock 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 for restitution against Smock 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, or 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. Smock, 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 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 Smock, 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) Smock has been a director of the Institution since July 20, 1987. Through March 31, 1990, Smock, as a director of the Institution approved or allowed fees in the amount of \$76,200.00 to be paid to advisory directors when said advisory directors were not properly appointed as required by 12 C.F.R. § 545.123.

(h) On August 21, 1989, in his capacity as a director of the Institution, Smock signed a Supervisory Agreement, by and between Davy Crockett Federal Savings Bank and the Office of Thrift Supervision (the "Agreement"). This Agreement provided, among other things, that:

(4.) The Institution or its subsidiaries shall not, either directly or indirectly, engage in any transaction with an affiliated person of the Institution as defined in 12 C.F.R. § 561.29, that would violate any subsection of 12 C.F.R. §§ 563.41 and 563.43.

(5.) The Board of Directors shall review and familiarize themselves with 12 C.F.R. §§ 563.40, 563.41, 563.43, 571.1 and 571.9. Within ninety (90) days of the effective date of this Agreement, the Institution and the Board of Directors shall submit to the PSA for review and comment policy regarding officers' and directors' responsibilities, including business ethics and conflicts of interest guidelines for the Institution, that are compatible with the aforementioned regulations and Bank Board Memoranda ("guidelines"). The Institution and the Board of Directors shall comply and monitor compliance with such guidelines and shall not deviate from such guidelines without the prior written direction of the PSA.

(i) Between August 21, 1989, and March 31, 1990, the Institution originated or renewed eighteen (18) loans to affiliated persons that were in direct violation of the aforementioned terms of the Agreement. Smock knew, or should have known, that the board of directors of the Institution was not in compliance with this Agreement, as it applied to those sections which related to "Conflicts of Interest."

(j) Smock 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, and specifically disputing the need or basis therefor, Smock consents to the issuance by the OTS of the Order, a copy of which is attached hereto and incorporated as Exhibit A. He further agrees to comply with the

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ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, John M. Smock ("Smock") has executed a Stipulation and Consent to Issuance of Order to Cease and Desist 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, Smock has consented and agreed in the Stipulation to the issuance of this Order to Cease and Desist 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 \$76,200.00 in fees to

advisory directors who were not properly appointed in accordance with 12 C.F.R. § 545.123; and

WHEREAS, Smock was an institution-affiliated party at the time said fees were authorized and paid;

IT IS ORDERED AS FOLLOWS:

1. Smock shall be obligated to pay restitution to Davy Crockett Federal Savings Bank of Crockett, Texas in the amount of \$76,200.00.

2. Smock's obligation to pay said restitution shall be satisfied as follows:

(a) By paying \$5,030.00 within fifteen (15) days of the execution by Smock of the Stipulation for the issuance of this Order. Said payment shall be by a certified check in said sum payable to Davy Crockett Federal Savings Bank, tendered to the Regional Director of the Midwest Regional Office of the OTS; and

(b) By receiving credit for the amount of any other restitution paid to Davy Crockett Federal Savings Bank on or before January 1, 1992, by any members of the class of persons composed of:

(i) the original recipients of said unauthorized advisory director fees, and

