

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION

)
IN THE MATTER OF)
)

SMITHVILLE SAVINGS AND LOAN)
ASSOCIATION)
SMITHVILLE, TEXAS)
_____)

RESOLUTION NO. DAL-91-143

DATED: September 9, 1991

STIPULATION AND CONSENT TO ISSUANCE OF
ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office, OTS, and Smithville Savings and Loan Association, Smithville, Texas ("Smithville"), 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 Smithville pursuant to Section 8(b) of the Federal Deposit Insurance ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") at 12 U.S.C. § 1818(b) (1988 & Supp. I 1989). Smithville 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 initiating such administrative cease and desist litigation against Smithville, with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. JURISDICTION

- (a) Smithville is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owners' Loan Act, 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 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. Therefore, Smithville 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 at 12 U.S.C. § 1818(b).
- (c) The Association has violated the Supervisory Agreement dated August 24, 1990, as well as 12 C.F.R. §§ 563.160 and 563.233.

3. CONSENT

Smithville 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

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ORDER TO CEASE AND DESIST

WHEREAS, Smithville Savings and Loan Association, Smithville, Texas ("Institution"), through its directors, 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 Regional Deputy Director for the Midwest Regional Office ("Regional Office") or his successor or designee; and

WHEREAS, the Institution, in the Stipulation has, without admitting or denying that grounds exist, 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, 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. § 1818(b);

NOW, THEREFORE, IT IS ORDERED that the Institution and its directors, officers, employees, agents and service corporations shall cease and desist from any violation of, or the aiding and abetting of any violation of:

The Supervisory Agreement between the Institution and the OTS dated August 24, 1990 and Sections 563.160 and 563.233 of the Rules and Regulations for the Office of Thrift Supervision, 12 C.F.R. §§ 563.160 and 563.233.

IT IS FURTHER ORDERED that:

1. BUSINESS PLAN

- (a) Within 60 days of the date of this Order, the Board of Directors shall submit to the Regional Deputy Director a new 3 year business plan. The Plan should include strategies for strengthening the Association's capital including all assumptions and facts upon which it is based. The Association shall amend such plan as directed in writing by the Regional Deputy Director and shall not amend it without the written direction or written authorization of the Regional Deputy Director.
- (b) The Association's performance relative to the plan described in Paragraph 1(a) shall be reviewed monthly by the Board of Directors. Variances from the planned results shall be documented and reasons for such variances shall be reflected within the Board's monthly meeting minutes.

2. INTEREST-RATE RISK

- (a) The Board of Directors shall immediately review and familiarize themselves with 12 C.F.R. § 563.176 and Thrift Bulletins 12 and 13, dated December 13, 1988 and January 26, 1989.
- (b) Within 30 days of the date of this Order, the Board of Directors shall review, become familiar with, and implement written interest-rate-risk policies and procedures which comply with, and requires the Institution to comply with, 12 C.F.R. § 563.176, and Thrift Bulletins 12 and 13, dated December 13, 1988 and January 26, 1989, respectively. Said policies shall include reasonable assumptions and control limits to effectively manage the Institution's interest-rate-risk.

- (c) The Institution shall amend the written interest-rate-risk policy described in Paragraph 2(b) above, as directed in writing by the Regional Deputy Director, and shall not amend the written interest-rate risk policy without written notification to the Regional Deputy Director.

3. ASSET REVIEW

- (a) Within 60 days of the date of this Order, the Institution shall appoint an Asset Review Officer and develop an Asset Classification System ("System") which shall be in compliance with the classification standards set forth in 12 C.F.R. §§ 563.160 and 571.26. The System shall provide for the monthly review of the Institution's assets and the identification and rating of such assets in accordance with the standards set forth in 12 C.F.R. §§ 561.13, 561.47, 561.48, and 563.160. The System shall also provide for the review of already classified assets for needed changes in classification, and shall include the calculation of net realizable calculations where appropriate, in accordance with 12 C.F.R. § 563.160(d)(1).
- (b) The results of the reviews described in Paragraph 3(a) above shall be reported to the Board of Directors on a monthly basis.
- (c) Within 60 days of the date of this Order, the Board of Directors shall review the adequacy of the Institution's general valuation allowances ("Allowance") and reaffirm its policy for the maintenance of an adequate Allowance in accordance with 12 C.F.R. §§ 563.160 and 571.26. This review and program shall be designated as discussed in Regulatory Bulletin No. 6., dated December 12, 1988, entitled, "Adequacy of Valuation Allowances".

- (d) The Institution shall establish specific valuation allowances for all known losses and general valuation allowances for other classified assets in accordance with the Report of Examination dated March 18, 1991 and 12 C.F.R. § 563.160. The Institution shall establish additional specific valuation allowances and general valuation allowances as directed by the Regional Deputy Director.
- (e) The policy described in Paragraph 3(c) above shall provide for a review of the Allowance by the Board of Directors at least once each calendar quarter.
- (f) Any deficiency in the Allowance shall be remedied in the quarter in which it is discovered, prior to the filing of the Institution's Thrift Financial Report, by additional provisions charged against earnings.

4. REAL ESTATE OWNED

- (a) The Board of Directors, or a duly authorized committee thereof, shall implement a review of each asset disposition plan on a quarterly basis to determine: (i) the current status of each asset; (ii) Management's compliance with each plan; (iii) the status and effectiveness of each plan; (iv) the need to revise any plan or take alternative action; and (v) all efforts which have been undertaken by the Institution to return the asset to earning status.
- (b) The review findings shall be documented in the minutes of the Board of Directors or the minutes of the committee performing the review.

5. COMPLIANCE OFFICER

Within 120 days of the date of this Order, the Board of Directors shall designate a director to serve as Compliance Officer and shall assign to the Compliance Officer the responsibility of reviewing compliance by the Institution with all applicable laws and statutes, regulations, agreements, orders, policy statements, memoranda, guidelines, and instructions administered by or under the purview of the OTS.

6. CHIEF EXECUTIVE OFFICER

(a) The Board of Directors shall continue its search for a chief executive officer ("CEO") and shall use reasonable efforts to locate an acceptable candidate within 90 days of the date of this Order.

(b) The Board of Directors shall provide a biweekly status report regarding its progress in hiring a CEO.

(c) The Board of Directors shall notify the Regional Deputy Director of the proposed employment of any person as CEO before employment becomes effective in accordance with Thrift Bulletin 45 dated April 25, 1990 and Section 914 of FIRREA.

7. EXPANSION OF BOARD

(a) Within 30 days of the date of this Order, the Board of Directors shall use its best efforts to appoint or elect persons who are acceptable to the Regional Deputy Director to expand the expertise on the Board of Directors in accordance with 12 C.F.R. § 552.6-1(b). Prior to appointment or election, the Institution shall submit the name and background information of each proposed director to the Regional Deputy Director for prior written approval in accordance with Thrift Bulletin 45 dated April 25, 1990 and Section 914 of FIRREA.

- (b) The Institution shall provide a progress report to the Regional Deputy Director by the 10th day of each month concerning its efforts to locate acceptable board candidates.

8. THRIFT FINANCIAL REPORTS

- (a) Within 30 days of the effective date of this Order, the Board of Directors shall develop, adopt, and implement written policies and procedures designed to facilitate the accuracy of the Thrift Financial Reports submitted by the Institution.
- (b) The Board of Directors shall ensure these policies and procedures are revised as directed by the Regional Deputy Director. The Institution shall comply with these policies and procedures as so revised.

9. COMMITTEES

- (a) The Board of Directors shall immediately establish an Asset Review and Classification Committee and an Interest-Rate-Risk Committee.
- (b) The committees referenced in Paragraph 9(a) above, shall meet not less than quarterly and shall keep minutes of their proceedings in accordance with 12 C.F.R. § 552.11, which shall be properly maintained at the Institution's home office in Smithville, Texas and shall be available at all times for review by the OTS.
- (c) Within 45 days of the date of this Order, the Board of Directors shall develop a written strategy and work plan to properly and fully utilize the committees referenced in Paragraph 9(a). A copy of the written strategy and work plan shall be forwarded to the Regional Deputy Director or his designee upon completion.

10. GENERAL PROVISIONS

- (a) Each member of the Board of Directors owes fiduciary duties to the Institution and its depositors and stockholders. Notwithstanding that certain provisions of this Order require the Board of Directors to submit various matters to the Regional Deputy Director for the purpose of receiving approval, notice of acceptability or non-objection, such regulatory oversight does not derogate or supplant the fiduciary duties owed by the members of the Board of Directors of the Institution. The Board of Directors, at all times, shall have the ultimate responsibility for overseeing the safe and sound operation of the Institution.
- (b) In connection with its oversight of the Institution, the Board of Directors shall, at a minimum, obtain and consider all applicable information suggested in the Director Information Guidelines, published by the OTS in December of 1989. The Institution shall make such information available to the Regional Deputy Director or his designee upon request.
- (c) The Board of Directors of the Institution shall take immediate action for the purpose of causing the Institution to comply with this Order.

11. BOARD REVIEW OF COMPLIANCE WITH ORDER

- (a) The Board of Directors shall, at each regular meeting, formally resolve that, to the best of its knowledge and belief, and based on a prudent review, during the previous calendar month, the Institution and all its subsidiaries complied with each provision of this Order currently in effect, except as otherwise stated.

The resolution shall specify in detail how, it at all, full compliance was found to be lacking. The resolution further shall set forth any exceptions to any provision of this Order approved by the Regional Deputy Director or his designee. The aforementioned resolution shall be available at the Institution's home office in Smithville, Texas and shall be available at all times for review by examiners of the OTS.

- (b) Within 10 days of each Board of Director's meeting, each director shall provide the Regional Deputy Director with certification that, to the best of his or her knowledge and belief, and based upon a prudent review, the above-referenced resolution is accurate or provide the Regional Deputy Director or his designee with written statement providing in detail the reason(s) for disagreement with the resolution. A copy of each certification shall also be maintained at the Institution's home office in Smithville, Texas.

12. DEFINITIONS

- (a) The Regional Director or his designee is the "senior supervisory official" within the meaning of Section 723(d) of the FIRREA, 101 Stat. 183, 428 (1989) (to be codified at 12 U.S.C. § 1437(d)). The term "Regional Deputy Director" includes the Director's designee.
- (b) As used in this Order, the term "subsidiary" or "subsidiaries" as defined in 12 C.F.R. § 567.1(dd).

- (c) As used in this Order, the term "savings association" shall have the meaning as set forth in Section 2(4) of the HOLA, as amended by FIRREA, 103 Stat. 183, 277 (1989) (to be codified at 12 U.S.C. § 1462(4)).

All other 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 meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, HOLA, or Federal Deposit Insurance Act, as amended ("FDIA"). Any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Memoranda shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

13. SUCCESSOR REGULATIONS, GUIDANCE, AMENDMENTS

Reference in this Order to provisions of statutes, regulations, and OTS Memoranda shall be deemed to include references to all amendments to such provisions as have been made as of the effective date of this Order and references to successor provisions as they become applicable.

14. MISCELLANEOUS

- (a) In the instance that any provision of this Order shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (b) Nothing in this Order shall be construed as permitting the Institution to violate any law, rule, regulation, or policy statement which it is subject.

