

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
JOHN H. MCDOWELL, Director)
of Dona Ana Savings and Loan)
Association, F.A.)
Las Cruces, New Mexico)

Re: Resolution No.: DAL-91-157

Dated: September 20, 1991

STIPULATION AND CONSENT TO ISSUANCE OF
ORDER OF CIVIL MONEY PENALTY ASSESSMENT

The Office of Thrift Supervision ("OTS"), by and through the Regional Director for the Midwest Region, and John H. McDowell ("Respondent") 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 civil money penalty assessment proceeding against Respondent pursuant to 12 U.S.C. § 1818(i)(2). Respondent desires to cooperate with 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 civil money penalty assessment proceeding against Respondent with respect to the following matters (excluding violations or practices subsequent to the date hereof):

- a. Violation of 12 C.F.R. § 563.160;
- b. Violation of the Classification of Assets Policy of Dona Ana Savings and Loan Association, F.A., Las Cruces, New Mexico ("Association"); and

c. Violation of Paragraph 3(b) of a Supervisory Agreement with the OTS, dated September 27, 1989.

2. Jurisdiction.

(a) The Association is a "savings association" within the meaning of Section 3 of the Federal Deposit Insurance Act ("FDIA") and Section 2 of the Home Owners' Loan Act of 1933, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183. Accordingly it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1813(c)).

(b) Respondent is an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u).

(c) Pursuant to Section 3 of the FDIA, as amended by FIRREA, OTS is the "appropriate Federal banking agency" to maintain civil money penalty assessment proceedings against such an institution-affiliated party. Therefore, Respondent is subject to the authority of OTS to initiate and maintain the assessment of a civil money penalty pursuant to 12 U.S.C. § 1818(i)(2).

3. Consent.

Respondent consents to the issuance by OTS of the accompanying Order and further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality.

The Order is issued under 12 U.S.C. § 1818(i)(2). Upon its issuance by the Regional Director for the Midwest Region, it shall be a final order, effective

and fully enforceable by OTS under the provisions of Section 8(i) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(i)).

✓ 5. Waivers.

Respondent waives the right to a Notice of Assessment of Civil Money Penalty provided by Section 8(i) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(i)) and the administrative hearing provided by 12 U.S.C. § 1818(i) (2)(H), and further waives his right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(h)) or to otherwise challenge the validity of the Order.

6. Acknowledgments.

(a) The Respondent acknowledges that the debt owed pursuant to the Order is not dischargeable under the Bankruptcy Code, in accordance with 11 U.S.C. § 523(a)(11) and (12), as amended by Section 2522 of the Comprehensive Thrift and Bank Fraud Protection and Taxpayer Recovery Act of 1990, Pub. L. No. 101-647, November 29, 1990.

(b) Respondent acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated as part of the Resolution thereof, and Respondent's consent to the entry of the Order are for the purpose of resolving this OTS enforcement matter only, and do not resolve, affect or preclude any other civil money penalty proceeding which may be brought against Respondent by OTS or another governmental entity.

(c) By signing this document, Respondent agrees that he will not assert the assessment or payment of this penalty as the basis for a claim of double jeopardy in any future proceeding brought by another governmental entity.

the Office of Thrift Supervision ("OTS") acting through the Regional Director for the Midwest Region; and,

WHEREAS, Respondent, in the Stipulation, has consented to the issuance of this Order of Civil Money Penalty Assessment pursuant to 12 U.S.C. § 1818(1)(2);

NOW THEREFORE, IT IS ORDERED that within ten days of the effective date of this Order, Respondent shall pay to OTS a sum of \$1,000, by tendering a check to OTS in that amount made payable to the Treasurer of the United States.

OFFICE OF THRIFT SUPERVISION

/S/

Billy C. Wood
Regional Director
Midwest Regional Office