

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

Order No. MWR-99-15

NORMAN P. ZIMMERMAN, Director of)

Date: December 2, 1999

Horizon Federal Savings Bank)
Oskaloosa, Iowa)

**STIPULATION AND CONSENT TO THE ISSUANCE OF
AN ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY**

WHEREAS, the Office of Thrift Supervision (OTS), based upon information derived from the exercise of its regulatory responsibilities, has informed **NORMAN P. ZIMMERMAN** (Respondent), a Director of Horizon Federal Savings Bank, Oskaloosa, Iowa (Horizon) (OTS Docket No. 00260), of its conclusion that grounds exist to initiate an administrative civil money penalty assessment proceeding against him pursuant to 12 U.S.C. § 1818(i);¹ and

WHEREAS, Respondent desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, or the Findings of Fact or opinions and conclusions of the OTS, except as to Jurisdiction, paragraph 1, below, which is admitted, Respondent hereby stipulates and agrees to the following:

¹ All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

1. **Jurisdiction.**

- (a) Horizon is a savings association within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is an insured depository institution as that term is defined in 12 U.S.C. § 1813(c);
- (b) Respondent is a director of Horizon, and is an institution-affiliated party as that term is defined in 12 U.S.C. § 1813(u); and
- (c) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal Banking agency" to maintain an administrative civil money penalty assessment proceeding against such a savings association or its institution-affiliated parties. Therefore, Respondent is subject to the jurisdiction of the OTS to initiate and maintain a civil money penalty assessment proceeding against him pursuant to 12 U.S.C. § 1818(i). The Director of the OTS has delegated to the Regional Director of the Midwest Region of the OTS or his designee (Regional Director) the authority to issue orders of assessment of civil money penalty where the individual has consented to the issuance of the order.

2. **OTS Findings of Fact.**

The OTS finds that:

- (a) Respondent, as a director of Horizon, failed to comply with OTS directives contained in the March 23, 1998 Report of Examination and its May 15, 1998 transmittal letter regarding the sale of Horizon's high risk collateralized mortgage obligations; adherence to Horizon's interest rate reduction plan, and implementation of an appropriate interest rate risk modeling system;
- (b) Respondent, as a director of Horizon failed, on a timely basis, to take appropriate corrective actions to reduce Horizon's interest rate risk exposure to a moderate level, as defined by OTS Thrift Bulletin 13a, as directed by the OTS;

- (c) Respondent, as a director of Horizon, failed to take appropriate corrective actions pertaining to Horizon's interest rate risk exposure and collateralized mortgage obligations as set forth in a Board resolution dated May 28, 1998, and in a letter dated June 10, 1998, submitting the interest rate reduction plan. Though Horizon requested, by letter dated December 21, 1998, an extension of time in which to sell its high risk collateralized mortgage obligations, Horizon, in fact, did not sell the high risk collateralized mortgage obligations as directed in the March 23, 1998 report of examination. In addition, Horizon purchased additional high risk collateralized mortgage obligations without having an appropriate modeling system;
- (d) Horizon recognized permanent price impairments of \$1,371,000 (on pre tax basis) on three high risk collateralized mortgage obligations and reported a net loss of \$74,000 for fiscal 1998. As of March 31, 1999, high risk collateralized mortgage obligations had additional unrealized market losses of \$1,495,000; and
- (e) The Respondent's failure to take appropriate corrective the actions as director of Horizon, to reduce the interest rate risk exposure was unsafe and unsound, and a breach of his fiduciary duty.

3. Consent.

Respondent consents to the issuance by the OTS of the accompanying Consent Order of Assessment of Civil Money Penalty (Order). Respondent 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 12 U.S.C. § 1818(i). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. Waivers.

Respondent waives the following:

- (a) the right to be served with a written notice of assessment of civil money penalty against him as provided by 12 U.S.C. § 1818(i);
- (b) the right to an administrative hearing of the OTS's charges against him as provided by 12 U.S.C. § 1818(i);
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;
- (d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and
- (e) the right to assert this proceeding, his consent to issuance of the Order, the issuance of the Order, the payment of any monies or the provision of any other financial relief as contemplated by the Order as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. Indemnification.

Respondent represents that he has not received, directly or indirectly, any sums from Horizon for the purpose of indemnifying or reimbursing him for any expenses incurred by him in connection with the issuance of the Order. Respondent shall neither cause nor permit Horizon (or any successor institution, subsidiary or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional services rendered to Respondent relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from Horizon (or any successor institution, subsidiary or service corporation thereof) with respect to such expenses. In the event that any such payments are received by or on behalf of Respondent in connection with this action, Respondent agrees promptly to notify the OTS of the receipt of such payments and to return such payments without delay to Horizon (or the successor institution, subsidiary or service corporation thereof).

7. Other Governmental Actions Not Affected.

Respondent acknowledges and agrees that the consent to the issuance of the Order is for the purpose of resolving this OTS enforcement matter only, pertaining to Horizon's high risk collateralized mortgage obligations and interest rate risk, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of Respondent that arise otherwise and that may be or have been brought by the OTS or another governmental entity.

8. Miscellaneous.

- (a) The construction and validity of this Stipulation and Consent and the Order shall be governed by the laws of the United States of America;
- (b) All references to the OTS in this Stipulation and Consent and the Order shall also mean any of the OTS' predecessors, successors, and assigns;

- (c) The section and paragraph headings in this Stipulation and Consent and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation and Consent or the Order;
- (d) The terms of this Stipulation and Consent and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters; and
- (e) This Stipulation and Consent and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

WHEREFORE, Respondent executes this Stipulation and Consent to the Issuance of an Order of Assessment of Civil Money Penalty, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION

By: Norman P. Zimmerman
NORMAN P. ZIMMERMAN

Frederick R. Casteel
Frederick R. Casteel
Regional Director
Midwest Region

Dated: Nov. 24, 1999

Dated: 12-2-99

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

NORMAN P. ZIMMERMAN, Director of)

Horizon Federal Savings Bank)
Oskaloosa, Iowa)
_____)

Order No. MWR-99-15

Date: December 2, 1999

CONSENT ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

WHEREAS, NORMAN P. ZIMMERMAN (Respondent) has executed a Stipulation and Consent to the Issuance of an Order of Assessment of Civil Money Penalty (Stipulation); and

WHEREAS, Respondent, by his execution of the Stipulation, has consented and agreed to the issuance of this Consent Order of Assessment of Civil Money Penalty (Order) by the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1818(i).

NOW THEREFORE, IT IS ORDERED that:

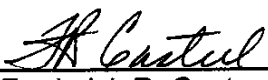
1. Within ten (10) calendar days of the date of this Order, Respondent shall pay to the Office of Thrift Supervision the sum of Three Thousand, Five Hundred Dollars (\$3,500), by tendering a certified check or bank draft made payable to the order of the Treasurer of the United States. The check or bank draft and a copy of the Order shall be delivered, together with a cover letter stating the name of the association, to the following address: Controller's Division, Office of Thrift Supervision, 1700 G Street,

N.W., Washington, DC 20552. A copy of the check or bank draft and the cover letter shall be provided by U.S. Mail to D'Andra A. Hankinson at 122 West John Carpenter Freeway, Suite 600, Irving, Texas 75039-2010.

2. The Stipulation is made a part hereof and is incorporated herein by this reference.

3. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the Order shall remain in effect until terminated, modified or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: 
Frederick R. Casteel
Regional Director
Midwest Region