

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of
Christopher E. Hashioka
Former Director and Person
Participating in the Conduct
of the Affairs of ABQ Corporation
and ABQ Bank, Federal Savings Bank,
Albuquerque, New Mexico

No.: KC-94-05
Dated: May 13, 1994

ORDER OF PROHIBITION

WHEREAS, the Office of Thrift Supervision ("OTS") has conducted an investigation pursuant to OTS Resolution No. DAL-91-47, dated May 30, 1991, concerning Peoples Heritage Federal Savings and Loan Association, Salina, Kansas, now in receivership ("Peoples Heritage") and, as a result of that investigation, OTS finds that:

Background. During 1983, Christopher E. Hashioka ("HASHIOKA"), former director and person participating in the affairs of ABQ Corporation, formerly AmeriWest Financial Corporation (referred to herein as "ABQ" or "AmeriWest") and its wholly-owned subsidiary, ABQ Bank, Federal Savings Bank, formerly Albuquerque Federal Savings and Loan Association (referred to herein as "ABQ Bank" or "Albuquerque Federal" or the "Institution"), was introduced to James R. Cruce, former chairman of the board ("Cruce"), and Thomas Burger, former senior executive vice

president and director ("Burger") of Peoples Heritage. Subsequently, HASHIOKA established a borrowing relationship with Peoples Heritage wherein he obtained loans in excess of \$65,000,000 to finance various commercial real estate projects;

Acquisition of Control of AmeriWest

(a) During the period March through April 1985, HASHIOKA participated in separate meetings with others wherein the participants, including HASHIOKA, discussed the investment potential of purchasing the stock of AmeriWest with the intention of taking control and having the ability to direct the management and policies of Albuquerque Federal;

(b) During May 1985, HASHIOKA met with Cruce and others during which an oral understanding was reached by the participants, including HASHIOKA, on the manner in which to proceed with the acquisition of control of AmeriWest. This understanding included a meeting of the minds on the percentage of outstanding AmeriWest stock each individual would acquire, a deadline by which these stock purchases were to be completed, and a coordination of the timing of their respective stock purchases so as to minimize increases in the market price of the stock;

(c) Beginning shortly after the oral understanding had been reached and continuing through August 1985, HASHIOKA, Cruce and others, acting in concert, accumulated AmeriWest stock in accordance with the above-referenced understanding. By virtue of their aggregate stock holdings and while acting in concert, on or about October 28, 1985, HASHIOKA, Cruce and others were successful in electing representatives to the board of directors of AmeriWest and Albuquerque Federal;

(d) At all times relevant hereto, HASHIOKA was aware that AmeriWest stock was registered pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act") and that the Exchange Act and Federal Home Loan Bank Board ("FHLBB") regulations, 12 C.F.R. Part 563d et seq., required the timely and accurate filing of certain reports, including but not limited to Schedule 13Ds, with both the U.S. Securities and Exchange Commission and the FHLBB;

(e) Despite such knowledge, HASHIOKA engaged in an unsafe and unsound practice by failing to file Schedule 13Ds that disclosed that he was acting in concert with a group of others seeking to acquire control of AmeriWest and Albuquerque Federal.

(f) The activities described above further constituted a violation of the Change in Savings and Loan Control Act ("Control Act"), 12 U.S.C. §1730(q) (1982), relocated by FIRREA at 12 U.S.C. § 1817(j)¹, due to HASHIOKA's acting in concert with others to acquire control of an institution, the accounts of which were insured by the Federal Savings and Loan Insurance Corporation, without the prior filing of a notice pursuant to either the Control Act or the Savings and Loan Holding Company Act, 12 U.S.C. § 1730a, relocated by FIRREA at 12 U.S.C. § 1476a, and obtaining favorable action thereon;

1. All references to the United States Code in this Order of Prohibition are as amended.

(g) The above-referenced actions and practices of HASHIOKA were undertaken and accomplished with willful or continuing disregard for the safety and soundness of AmeriWest and Albuquerque Federal, and resulted in loss or risk of loss to AmeriWest and Albuquerque Federal;

Peoples Heritage's \$1,150,000 Loan to HASHIOKA

(a) In furtherance of the above described plan and understanding of how to proceed with the acquisition of control of AmeriWest and Albuquerque Federal, HASHIOKA agreed to acquire approximately 4.9% of the outstanding stock of AmeriWest. HASHIOKA lacked the personal financial resources needed to acquire these shares. However, in furtherance of the above described plan and understanding, Cruce agreed to arrange for HASHIOKA to receive an unsecured commercial loan from Peoples Heritage. As yet another part of this plan and understanding, Cruce and Burger agreed to renew and extend the loan indefinitely until such time as Cruce, Burger and HASHIOKA disposed of their respective personal investments in AmeriWest stock;

(b) In furtherance of this plan and understanding, on July 12, 1985, HASHIOKA forwarded a letter to Peoples Heritage requesting a line of credit loan. HASHIOKA's letter falsely stated that the loan was . . . "to be used for business purposes in connection with the various real estate activities that I conduct;"

(c) On or about August 2, 1985, Cruce referred HASHIOKA to a securities brokerage firm ("Securities Broker") where HASHIOKA opened an account and purchased 85,000 shares of AmeriWest stock for \$2,188,750;

(d) On August 8, 1985, the settlement date for this stock purchase, HASHIOKA obtained an unsecured commercial loan from Peoples Heritage in the amount of \$1,150,000 and directed the loan proceeds to be wire transferred to an account owned and maintained by HASHIOKA with a California commercial bank ("California Bank I"). Immediately thereafter, Hashioka directed California Bank I to wire transfer \$1,094,375 of these funds to a Texas commercial bank where it was credited to an account owned and maintained by the Securities Broker. The Securities Broker, at HASHIOKA's direction, then credited this amount to an internal account owned and maintained by HASHIOKA toward the purchase of the AmeriWest stock. The remaining balance of this AmeriWest stock purchase by HASHIOKA was financed through a margin loan provided by the Securities Broker;

(e) On seven separate occasions thereafter, HASHIOKA renewed and extended the terms of this \$1,150,000 loan and made additional draw requests from Peoples Heritage in amounts that increased the outstanding balance of the loan to \$1,578,909.63 as of June 30, 1989. At no time did HASHIOKA disclose to Peoples Heritage the true purpose, intent or use of the loan proceeds;

(f) HASHIOKA, by and through the above-described actions and practices and in furtherance of the above described plan and understanding to secure the unlawful acquisition of control of AmeriWest and Albuquerque Federal, participated in defrauding Peoples Heritage through the disbursement of loan proceeds to or for the mutual benefit of himself, Cruce, Burger and others; engaged in unsafe or unsound practices; and, caused, brought about or knowingly participated in violations of 12 C.F.R. §§ 563.43 and 571.7 (1987 & 1988);

(g) The above-described actions and practices of HASHIOKA were undertaken and accomplished with willful or continuing disregard for the safety and soundness of Peoples Heritage;

(h) As a result of the unsafe or unsound practices and the violations described above, Peoples Heritage has incurred a substantial financial loss on the \$1,150,000 loan to HASHIOKA;

WHEREAS, HASHIOKA, has executed a Stipulation and Consent to the Entry of an Order of Prohibition ("Stipulation"), which is accepted by the Office of Thrift Supervision ("OTS") acting through its Regional Director for the Midwest Regional Office ("Regional Director");

WHEREAS, HASHIOKA, by his execution of the Stipulation has consented and agreed to the issuance of this Order of Prohibition ("Order") pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e); and

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue orders of prohibition where the respondent has consented to the issuance of the order;

NOW THEREFORE, THE OTS ORDERS AS FOLLOWS:

Order of Prohibition

1. HASHIOKA is prohibited from further participation, in any manner, in the conduct of the affairs of ABQ Bank, its holding company(ies), or service corporation(s).

2. HASHIOKA shall not hold any office in, or participate in any manner in the conduct of the affairs of any Federally regulated depository institution or any depository institution or other entity as set forth in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A) ("Covered Institution"), without the prior written approval of OTS (acting through its Director or an authorized representative thereof) and, the "appropriate Federal financial institutions regulatory agency" for the Federally regulated depository institution which is involved.

3. (a) Due to the operation of Section 8(e)(6) of the FDIA, 12 U.S.C. § 1818(e)(6), conduct prohibited by this Order, without the said prior written approval of the OTS and the "appropriate Federal financial institutions regulatory agency", also includes, without limitation: (1) soliciting, procuring, transferring, attempting to transfer, voting, or the attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution or entity described in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A); and (2) voting for a director, or serving as an institution-affiliated party.

(b) Nothing in this Order, however, prohibits HASHIOKA from the following activities, even though such activities may involve or relate to a Covered Institution:

- (i) being a customer, as a depositor or borrower, of a Covered Institution; or
- (ii) owning stock in a Covered Institution.

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No.: KC-94-05
Dated: May 13, 1994

STIPULATION AND CONSENT TO
THE ENTRY OF AN ORDER OF PROHIBITION

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the formal investigation concerning Peoples Heritage Federal Savings and Loan Association, Salina, Kansas ("Peoples Heritage"), and the exercise of its regulatory responsibilities, has informed Christopher E. Hashioka ("HASHIOKA"), former director and person participating in the conduct of the affairs of ABQ Corporation, formerly AmeriWest Financial Corporation (referred to herein as "ABQ" or "AmeriWest") and its wholly-owned subsidiary, ABQ Bank, Federal Savings Bank, formerly Albuquerque Federal Savings and Loan Association (referred to herein as "ABQ Bank" or "Albuquerque Federal" or the "Institution") that the OTS is of the opinion that the grounds exist to initiate an administrative prohibition proceeding against HASHIOKA pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e)¹; and

1. All references to the U.S.C. in this Stipulation and Consent to the Entry of an Order of Prohibition are as amended.

WHEREAS, HASHIOKA desires to cooperate with the OTS to avoid the time and expense of such administrative litigation and, without admitting and specifically disputing the statements and conclusions of the OTS, in accordance with Rule 408 of the Federal Rules of Evidence and without trial or hearing, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) At all times relevant hereto, ABQ Bank was a "savings association" as that term is defined by Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act ("HOLA"), 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, 12 U.S.C. § 1813(c).

(b) Until August 9, 1989, the accounts of ABQ Bank were insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), pursuant to Section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. § 1726(b), by reason of which it was an "insured institution" as that term was defined by the NHA.

(c) As of August 9, 1989, pursuant to the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), the insurance of the accounts of ABQ Bank were transferred to the Federal Deposit Insurance Corporation ("FDIC").

(d) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB") was the regulatory agency with jurisdiction over ABQ Bank, its directors, officers and persons participating in the conduct of its affairs, pursuant to Section 5 of HOLA, 12 U.S.C. § 1464.

(e) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, 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, its directors, officers and persons participating in the conduct of its affairs.

(f) HASHIOKA at times relevant hereto, was a director and/or a person participating in the conduct of the affairs of both ABQ and ABQ Bank. Accordingly, he is an "institution-affiliated party" of each, within the meaning of Section 3(u) of the Federal Deposit Insurance Act ("FDIA"), as amended by FIRREA, 12 U.S.C. § 1813(u).

(g) Pursuant to Section 3 of the FDIA, as amended by FIRREA, the OTS, as successor to the FHLBB, is the "appropriate Federal banking agency" to maintain an enforcement proceeding against a savings association and/or its institution-affiliated parties including its officers, directors and persons participating in the conduct of its affairs. Therefore, HASHIOKA is subject to the authority of the OTS to initiate and maintain a prohibition proceeding against him pursuant to Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

2. Consent. HASHIOKA consents to the issuance by the OTS of the accompanying Order of Prohibition ("Order"). He further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.

3. Finality. The Order is issued by the OTS under the authority of Section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Upon its issuance by the Regional Director or designee for the Midwest

Regional Office, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

4. Waivers. HASHIOKA waives the following:

(a) the right to be served with a written notice of the OTS's charges against him (referred to as a Notice of Intention to Prohibit) (see Section 8(e) of the FDIA);

(b) the right to an administrative hearing of the OTS's charges against him (see Section 8(e) of the FDIA);

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and

(d) any and all claims for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

OTS agrees to refrain from seeking the issuance of additional enforcement orders or civil money penalties against HASHIOKA with respect to any matters discovered by the OTS as a result of its investigative proceeding, commenced pursuant to Midwest Regional Office Resolution No. DAL.91-47 dated May 30, 1991.

5. Other Government Actions Not Affected.

(a) HASHIOKA acknowledges and agrees that the consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of HASHIOKA that arise pursuant to this action or otherwise, and that may be or have been

brought by the Resolution Trust Corporation or any other government entity other than the OTS.

(b) By executing this Stipulation and Consent to Entry of an Order of Prohibition, HASHIOKA agrees that he will not assert this proceeding, his consent to the entry of the Order, and/or the entry of 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 federal or state governmental entity.

7. Cooperation. HASHIOKA shall, at the OTS's request, on reasonable notice and without service of a subpoena, provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding brought by the OTS as a result of its investigation relating to Peoples Heritage and its institution-affiliated parties. HASHIOKA does not waive his privilege against self-incrimination under the Fifth Amendment of the United States Constitution nor does he waive the effect of any previous grant of immunity and any testimony (or its derivative use) furnished by HASHIOKA under that grant of immunity. If HASHIOKA invokes his privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the OTS may inquire or the production of any document requested by the OTS and OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., HASHIOKA will, consistent with any such grant of immunity, provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding on the matters for which immunity is given.

7. Acknowledgment of Criminal Sanctions. HASHIOKA acknowledges that Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), sets forth criminal penalties for knowing violations of the Order.

WHEREFORE, HASHIOKA executes this Stipulation and Consent to the Entry of an Order of Prohibition, intending to be legally bound hereby.

By:

/s/

Christopher E. Hashioka

Date:

4/27/94

Accepted by:

Office of Thrift Supervision

/s/

Harlan G. Halsne

Its: Midwest Regional Deputy Director

Date: May 13, 1994