

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:

HARRY M. FISHMAN,

Institution Affiliated Party of

Labe Bank, FSB
Chicago, Illinois
OTS No. 00571

OTS Order No.: ATL-2005-28

Dated: November 30, 2005

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

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Harry M. Fishman ("Fishman"), former Institution-Affiliated Party of Labe Bank, FSB, Chicago, Illinois ("Labe" or the "Institution") that the OTS is of the opinion that grounds exist to initiate a civil money penalty assessment against Fishman pursuant to 12 U.S.C. § 1818(i);¹ and

WHEREAS, Fishman desires to cooperate with the OTS to avoid the time and expense of such administrative litigation and, without admitting or denying that such grounds exist and without any adjudication on the merits, but admitting the statements and conclusions in Paragraph 1 below, and subject to Rule 408 of the Federal Rules of Evidence, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) Labe, at all times relevant hereto, was a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, Labe was an "insured depository

¹ All references in this Stipulation and Consent to Issuance of an Order of Assessment of a Civil Money Penalty ("Stipulation") are to the United States Code as amended.

institution" as that term is defined in 12 U.S.C. § 1813(c).

(b) Fishman, as an appraiser who provided appraisal services to Labe, is an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within 6 years of the date hereof. *See* 12 U.S.C. § 1818(i)(3); *see also* 12 C.F.R. § 564.7 (enforcement jurisdiction over appraisers).

(c) Pursuant to 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an enforcement proceeding against a savings association's institution-affiliated parties. Therefore, Fishman is subject to the authority of the OTS to initiate and maintain administrative civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(i).

2. OTS Findings of Fact.

The OTS finds that:

(a) Fishman served as an institution-affiliated party of Labe in connection with Fishman's development of appraisals and preparation of appraisal reports of a mixed-use property located in Stickney, Illinois as of August 21, 2003. Fishman utilized incorrect, inappropriate, and insufficient analytical techniques.

(b) Because of Fishman's actions and omissions, the appraisal reports were misleading, in violation of professional standards, specifically, Standards Rules 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP), and OTS minimum appraisal standards as set forth at 12 C.F.R. § 564.4.

3. Consent.

Fishman consents to the issuance by the OTS of the accompanying Consent Order of Assessment of a Civil Money Penalty ("the Order"). Fishman 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 by the OTS under the authority of 12 U.S.C. § 1818(i). Upon its issuance by the Regional Director or designee for the Southeast Region, OTS, the Order shall be final, effective, and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. Waivers.

Fishman waives the following:

- (a) The right to be served with a written notice of the OTS's charges against him;
- (b) The right to an administrative hearing of the OTS's charges against him;
- (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; and
- (d) Any and all claims against the OTS, including its employees and agents, or any other governmental entity for the award of fees, costs, or expenses related to this OTS enforcement matter 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.

6. Indemnification.

Fishman shall neither cause nor permit Labe or any holding company, subsidiary, or service corporation thereof to incur, directly or indirectly, any expense for any legal or other professional expenses incurred relative to the negotiation and issuance of the Order. Nor shall Fishman obtain any indemnification (or other reimbursement) from Labe or any holding company, subsidiary, or service corporation thereof with respect to any amounts paid for restitution, reimbursement, or penalties. Any such payments received by or on behalf of Labe in connection with this action shall be returned to Labe (if Labe made such payment) or the holding company, subsidiary, or service corporation that made such payment.

7. Other Government Actions Not Affected.

- (a) Fishman acknowledges and agrees that his consent to the issuance of the Order is for the purpose of resolving any and all claims or causes of action that the OTS has or may have

against Fishman as of the effective date of the Order and any and all claims or causes of action that Fishman has or may have against the OTS or its Director, employees, or agents as of the effective date of the Order, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of Fishman that arise pursuant to the subject matter of this action or otherwise, and that may be or have been brought by any other government entity other than the OTS, including without limitation the United States Department of Justice.

(b) By signing this Stipulation, Fishman agrees that he will not assert this proceeding, his consent to the issuance of the Order, and/or the issuance 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.

8. Miscellaneous

(a) The construction and validity of this Stipulation 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 the Order shall also mean any of the OTS' predecessors, successors, and assigns;

(c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order;

(d) The terms of this Stipulation 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 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, Fishman executes this Stipulation and Consent to Issuance of an Order of Assessment of a Civil Money Penalty, intending to be legally bound hereby.

By:

Accepted by:
Office of Thrift Supervision



Harry M. Fishman

Daniel T. McKee
Acting Southeast Regional Director

Dated: 11/17/05

Dated: _____

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

By:

Accepted by:
Office of Thrift Supervision



Harry M. Fishman



John E. Ryan
Southeast Regional Director

Dated: 12/13/05

Dated: 11/30/05

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In the Matter of:

HARRY M. FISHMAN

Institution Affiliated Party of

Labe Bank, FSB

Chicago, Illinois

OTS No. 00571

OTS Order No.: ATL-2005-28

Dated: November 30, 2005

CONSENT ORDER OF ASSESSMENT OF A CIVIL MONEY PENALTY

WHEREAS, Harry M. Fishman ("Fishman") has executed a Stipulation and Consent to Issuance of an Order of Assessment of a Civil Money Penalty ("Stipulation"); and

WHEREAS, Fishman, by his execution of the Stipulation, has consented and agreed, without admitting or denying the OTS Findings of Fact, to the issuance of this Consent Order of Assessment of a 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. Fishman shall pay to the OTS the sum of Twelve Thousand Dollars (\$12,000) as follows:

- a. Fishman shall pay Six Thousand Dollars (\$6,000) within ten (10) calendar days of the date of this Order by tendering an attorney trust account check or bank draft made payable to the order of the Treasurer of the United States.
- b. Fishman shall pay an additional Six Thousand Dollars (\$6,000) within

ninety (90) calendar days of the date of this Order by tendering an attorney trust account check or bank draft made payable to the order of the Treasurer of the United States.

Each check or bank draft shall be delivered, together with a copy of the Order and a cover letter stating the name of the financial institution, to the following address: Controller's Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552. A copy of the check or bank draft and the cover letter shall be sent by U.S. Mail, first class postage prepaid, to Bryan T. Veis, Special Counsel, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

2. This Order is subject to the provisions of Section 8(j) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(j).
3. The Stipulation is made a part hereof and is incorporated herein by this reference.
4. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and this 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: 
John E. Ryan
Southeast Regional Director