

OFFICE OF THRIFT SUPERVISION

Receivership of a Federal Savings Association

Date: October 22, 2010
Order No.: 2010-63
OTS No.: 08489

The Acting Director of the Office of Thrift Supervision (OTS), or his designee, in cooperation with the Federal Deposit Insurance Corporation (FDIC), has determined to appoint the FDIC as receiver of First Arizona Savings, a f.s.b., Scottsdale, Arizona (Institution).

GROUND FOR APPOINTMENT OF FDIC AS RECEIVER FOR THE INSTITUTION

The Acting Director, or his designee, based upon the administrative record, finds and determines the following:

- (i) The Institution, by resolution of its board of directors, has consented to the appointment of a receiver;
- (ii) The Institution is undercapitalized, as defined in 12 U.S.C. § 1831o(b), and failed to submit a capital restoration plan acceptable to the Office of Thrift Supervision (OTS) within the time prescribed under 12 U.S.C. § 1831o(e)(2)(D);
- (iii) The Institution is critically undercapitalized; and
- (iv) The Institution has substantially insufficient capital.

The Institution is a federally chartered stock savings association, the accounts of which are insured by the Deposit Insurance Fund (DIF). The Institution's home office is in Scottsdale, Arizona, and the Institution has six branches, located in the Scottsdale/Phoenix and Mohave County, Arizona, areas. The Institution is a wholly owned first-tier subsidiary of FASLA Holding Company (FASLA), which is wholly owned by the Lyda Hunt-Herbert Trusts (Trusts).

The Institution's Thrift Financial Report (TFR) for June 30, 2010, reported approximately \$272.2 million in assets, \$262.8 million in liabilities, and a net loss for the first six months of 2010 of approximately \$15.6 million. At June 30, 2010, the Institution

reported tangible, tier 1 (core), and total risk-based capital of 1.50 percent, 1.50 percent, and 4.67 percent, respectively. Based on the tangible capital ratio in the Institution's June 30, 2010, TFR, the Institution is critically undercapitalized under OTS's Prompt Corrective Action (PCA) regulation. While the Institution, during the past year, received capital infusions from the Trusts, the Institution's losses have offset the Trusts' capital infusions.

DISCUSSION OF GROUNDS FOR APPOINTMENT OF A RECEIVER FOR THE INSTITUTION

Section 5(d)(2)(A) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(d)(2)(A), provides that OTS may appoint a receiver for any insured savings association if OTS determines that one or more grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1821(c)(5), exist.

Consent

Under section 11(c)(5)(I) of the FDIA, OTS may appoint a receiver if the institution, by resolution of its board of directors, consents to the appointment. The Acting Director, or his designee, finds that the board of directors of the Savings Bank, by resolution dated October 8, 2010, consented to the appointment of a conservator or receiver by OTS and, on October 8, 2010, the Savings Bank entered into a Consent agreement with OTS for such an appointment.

Failure of an Undercapitalized Institution to Submit an Acceptable Capital Restoration Plan Within the Time Prescribed

Under section 11(c)(5)(K)(iii) of the FDIA, OTS may appoint a receiver for an undercapitalized savings association if that institution fails to submit a capital restoration plan that is acceptable to OTS within the time prescribed under 12 U.S.C. § 1831o(e)(2)(D). Section 1831o(e)(2)(D) provides for OTS to promulgate regulations generally requiring an institution to submit such a plan not later than 45 days after the savings association becomes undercapitalized. OTS promulgated such a regulation. See 12 C.F.R. § 565.5(a)(1). Section 1831o(e)(2)(C)(i)(II) provides that OTS may not accept a capital restoration plan unless OTS concludes that the plan is based on realistic assumptions and is likely to succeed in restoring the institution's capital.

The Institution reported that, as of June 30, 2010, it had a tier 1 (core) capital ratio of 1.50 percent, and a total risk-based capital ratio of 4.67 percent. In addition, the Institution remained undercapitalized as of August 31, 2010, with a tier 1 (core) capital ratio of 1.00 percent and a total risk-based capital ratio of 3.65 percent.

The Institution submitted its capital restoration plan on August 20, 2010. OTS reviewed the capital restoration plan and concluded that the plan was not acceptable because the plan, among other things: (i) failed to provide sufficient support for OTS to

determine that the Institution will be able to maintain PCA adequately capitalized status for four consecutive quarters; (ii) failed to sufficiently specify the types and levels of activities in which the Institution will engage (12 U.S.C. § 1831o(e)(2)(B)(i)(IV)); (iii) failed to contain the required certification set forth in 12 C.F.R. § 567.10(a)(3); (iv) failed to include the required FASLA performance guarantee; and (v) depended upon the Institution receiving OTS permission to reverse a \$4.5 million loan loss provision recorded during the second quarter of 2010.¹ Accordingly, OTS denied the capital restoration plan on September 14, 2010. Therefore, the Acting Director, or his designee, concludes that the Institution is undercapitalized and that the Institution failed to timely submit an acceptable capital restoration plan as required in 12 C.F.R. § 565.5(a).

Critically Undercapitalized

Under section 11(c)(5)(L)(i) of the FDIA, OTS may appoint a receiver for a savings association if it is critically undercapitalized, as defined in 12 U.S.C. § 1831o(b). Under section 1831o(b), a depository institution is critically undercapitalized if it fails to meet any level of capital specified under section 1831o(c)(3)(A) of the FDIA. Section 1831o(c)(3)(A) provides for the appropriate banking agency to set a ratio of tangible equity to total assets at which a savings association is critically undercapitalized. OTS has promulgated 12 C.F.R. § 565.4(b)(5), which defines an institution as critically undercapitalized if it has a ratio of tangible equity to total assets that is equal to or less than two percent. As of June 30, 2010, the Institution reported a tangible capital ratio of 1.50 percent. The Institution remains critically undercapitalized, having reported tangible capital of 1.00 percent as of August 31, 2010. Thus, the Acting Director, or his designee, concludes that the Institution is critically undercapitalized.

Substantially Insufficient Capital

Under section 11(c)(5)(L)(ii) of the FDIA, OTS may appoint a receiver for a savings association if it has substantially insufficient capital. Pursuant to the authority granted in sections 5(t)(1)(A)(i) and 5(t)(2)(A) of the HOLA, OTS has promulgated 12 C.F.R. Part 567, requiring all savings associations that are not "1" rated to maintain a tier 1 (core) capital ratio of 4 percent and all savings associations to maintain a minimum total risk-based capital ratio of 8 percent of the institution's risk-based assets, as defined. OTS has concluded previously that failure to maintain at least two-thirds of any capital required by 12 C.F.R. Part 567 constitutes a substantial capital insufficiency within the meaning of 12 U.S.C. § 1821(c)(5)(L)(ii). See, e.g., OTS Orders No. 2009-21 (April 17, 2009) and No. 2008-33 (September 19, 2008).

¹ OTS reviewed information that the Institution provided in support of its contention that it should be permitted to reverse loan loss provisions totaling \$4.5 million. OTS concluded that the information the Institution provided did not support this request, and also concluded that the methodology utilized by the Institution in support of its request for a reduction in the loan loss provisions was inappropriate, lacking in documentation and support, and not in compliance with regulatory and accounting guidance.

The Institution is not “1” rated and had a tier 1 (core) capital ratio and a total risk-based capital ratio of 1.50 percent and 4.67 percent, respectively, as of June 30, 2010. Since June 30, 2010, both capital ratios have declined and as of August 31, 2010, the Institution reported that these capital ratios have decreased to 1.00 percent and 3.65 percent, respectively. Accordingly, the Institution’s tier 1 (core) capital ratio and total risk-based capital ratio both are less than two-thirds of the applicable capital requirements. Therefore, the Acting Director, or his designee, concludes that the Institution has substantially insufficient capital.

The Acting Director, or his designee, therefore, has determined that grounds for the appointment of a receiver for the Institution exist under section 5(d)(2) of the HOLA, and sections 11(c)(5)(I), (K)(iii), (L)(i), and (L)(ii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(I), (K)(iii), (L)(i), and (L)(ii).

ACTIONS ORDERED OR APPROVED

Appointment of a Receiver

The Acting Director, or his designee, hereby appoints the FDIC as receiver for the Institution, for the purpose of liquidation or winding up the affairs of the Institution, pursuant to section 5(d)(2) of the HOLA, 12 U.S.C. § 1464(d)(2), and section 11(c)(6)(B) of the FDIA, 12 U.S.C. § 1821(c)(6)(B).

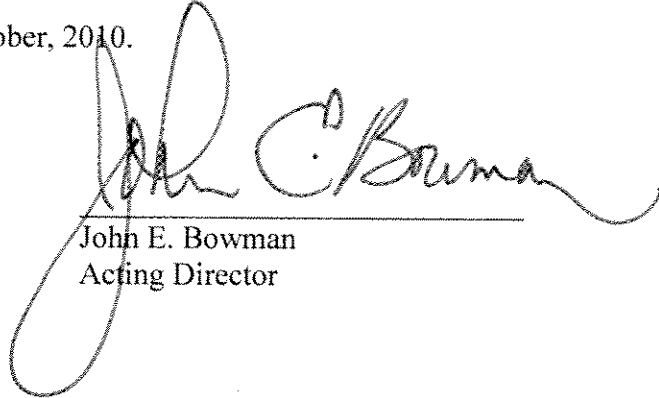
Delegation of Authority to Act for OTS

The Acting Director, or his designee, hereby authorizes the OTS Western Regional Director, or his designee, and the Deputy Chief Counsel for Business Transactions of the Chief Counsel’s Office, or his designee, to: (i) certify orders; (ii) sign, execute, attest, or certify other documents of OTS issued or authorized by this Order; (iii) designate the persons or entity that will give notice of the appointment of a receiver for the Institution and serve the Institution with a copy of this Order pursuant to 12 C.F.R. § 558.2; and (iv) perform such other functions of OTS necessary or appropriate for implementation of this Order. All documents to be issued under the authority of this Order must be first approved, in form and content, by the Chief Counsel’s Office. In addition, the Acting Director, or his designee, hereby authorizes the Deputy Chief Counsel for Business Transactions, or his designee, to make any subsequent technical corrections, that might be necessary, to this Order, or any documents issued under the authority of this Order.

By Order of the Acting Director of OTS, or his designee, effective: (a) as to the above matters regarding the delegation of authority, immediately upon signature; and

(b) as to the above matters regarding the appointment of the FDIC as receiver, immediately upon service of this Order on the Institution.

Executed this 22nd day of October, 2010.



John E. Bowman
Acting Director