

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:

RICKY G. BINGHAM,

FORMER EMPLOYEE AND
INSTITUTION-AFFILIATED PARTY
OF:

BANK UNITED OF TEXAS, FSB
HOUSTON, TEXAS

RE: OTS ORDER NO. DAL-96-16

DATED: July 30, 1996

STIPULATION AND CONSENT TO ENTRY
OF AN ORDER OF PROHIBITION AND ORDER TO
CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Ricky G. Bingham ("BINGHAM"), former employee and institution-affiliated party of Bank United of Texas, FSB, Houston, Texas, OTS No. 8558 ("Bank United" or the "Institution") that the OTS is of the opinion that grounds exist to initiate administrative cease and desist and prohibition proceedings against BINGHAM pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b) and 12 U.S.C. § 1818(e).¹

WHEREAS, BINGHAM desires to cooperate with the OTS to avoid

1. All references in this Stipulation and Consent and the Orders are to the U.S.C. as amended.

the time and expense of such administrative litigation and, without admitting or denying that such grounds exist, but admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) Bank United, at all times relevant hereto, was a "savings association" within the meaning of 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, Bank United was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) BINGHAM, as a former employee of Bank United, is deemed to be an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), having served in such capacity within six (6) years of the date hereof (see 12 U.S.C. § 1818(i)(3)).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an enforcement proceeding against institution-affiliated parties. Therefore, BINGHAM is subject to the authority of the OTS to initiate and maintain cease and desist and prohibition proceedings against him pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b) and Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

2. OTS Findings of Fact. The OTS finds that on various dates in November and December, 1995, BINGHAM, without authorization,

misapplied \$3,670.00 of the funds of Bank United to his own use. As a result of his actions, BINGHAM (1) engaged in a violation of the law or breached his fiduciary duty of honesty to Bank United; and (2) Bank United suffered a financial loss or he received a financial benefit or other gain; and (3) the violation of law or breach of fiduciary duty demonstrates willful and/or continuing disregard by BINGHAM for the safety and soundness of Bank United.

3. Consent. BINGHAM consents to the issuance by the OTS of the accompanying Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders"). He further agrees to comply with their terms upon issuance and stipulates that the Orders comply with all requirements of law.

4. Finality. The Orders are issued by the OTS under the authority of Section 8(b) of the FDIA, 12 U.S.C. §1818(b) and Section 8(e) of the FDIA, 12 U.S.C. §1818(e). Upon their issuance by the Regional Director or designee for the Midwest Region, OTS, they shall be final orders, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. Waivers. BINGHAM waives the following:

(a) the right to be served with a written notice of the OTS's charges against him (see Sections 8(b) and 8(e) of the FDIA);

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

(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.

6. Indemnification. BINGHAM shall neither cause nor permit Bank United (or any successor institution, 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 of Prohibition and Order to Cease and Desist for Affirmative Relief. Nor shall BINGHAM obtain any indemnification (or other reimbursement) from the Institution (or any successor institution, holding company, subsidiary, or service corporation thereof) with respect to such amounts. Any such payments received by or on behalf of BINGHAM in connection with this action shall be returned to Bank United (or the successor institution, holding company, subsidiary, or service corporation thereof).

7. Other Government Actions Not Affected.

(a) BINGHAM acknowledges and agrees that the consent to the entry of the Orders is for the purpose of resolving these cease and desist and prohibition actions only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of BINGHAM that arise pursuant to these actions or otherwise, and that may be or have been brought by any other government entity other than the OTS.

(b) By signing this Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative

Relief, BINGHAM agrees that he will not assert this proceeding, his consent to the entry of the Orders, and/or the entry of the Orders, 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. Acknowledgment of Criminal Sanctions. BINGHAM acknowledges that Section 8(j) of the FDIA, 12 U.S.C. §1818(j), sets forth criminal penalties for knowing violations of the Order.

9. Agreement for Continuing Cooperation. BINGHAM agrees that, at the OTS's request, on reasonable notice and without service of a subpoena, he will provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to any investigation, litigation, or other proceeding maintained by the OTS relating to Bank United, its holding companies, its subsidiaries, and its institution-affiliated parties, except that BINGHAM does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If BINGHAM invokes a privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the OTS inquires or the production of any document requested by the OTS and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., BINGHAM agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial, administrative, or investigative proceeding on the matter for which immunity is given.

WHEREFORE, BINGHAM executes this Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

By:

Ricky G. Bingham

Accepted By:

Office of Thrift Supervision

Frederick R. Casteel
Frederick R. Casteel
Midwest Regional Director

Dated:

7/22/96

Dated:

7-30-96

* * * * *

ACKNOWLEDGMENT

State of _____)

County of _____)

On this _____ day of _____, 19____, before me, the undersigned notary public, personally appeared Ricky G. Bingham and acknowledged his execution of the foregoing STIPULATION AND CONSENT TO ENTRY OF AN ORDER OF PROHIBITION AND CEASE AND DESIST ORDER FOR AFFIRMATIVE RELIEF

Notary Public

My Commission expires:

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:

RICKY G. BINGHAM,

FORMER EMPLOYEE AND
INSTITUTION-AFFILIATED PARTY
OF:

BANK UNITED OF TEXAS, FSB
HOUSTON, TEXAS

RE: OTS ORDER NO. DAL-96-16

DATED: July 30, 1996

ORDER OF PROHIBITION
AND
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, Ricky G. Bingham ("BINGHAM") has executed a Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Stipulation") on July 22, 1996; and

WHEREAS, BINGHAM, by his execution of the Stipulation, has consented and agreed to the issuance of this Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders") by the Office of Thrift Supervision ("OTS"), pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §1818(e) and Section 8(b) of the FDIA, 12 U.S.C. §1818(b).

NOW THEREFORE, IT IS ORDERED that:

ORDER OF PROHIBITION

1. BINGHAM is prohibited from further participation, in any manner, in the conduct of the affairs of Bank United of Texas, FSB, Houston, Texas, and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. BINGHAM is and shall be subject to the statutory prohibitions provided by Section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Due to and without limitation on the operation of Sections 8(e)(6) and 8(e)(7) of the FDIA, 12 U.S.C. §§ 1818(e)(6) and 1818(e)(7), BINGHAM, except upon the prior written consent of the OTS (acting through its Director or an authorized representative thereof) and any other "appropriate Federal financial institutions regulatory agency," for purposes of Section 8(e)(7)(B)(ii) of the FDIA, 12 U.S.C. § 1818(e)(7)(B)(ii), shall not:

(A) hold any office in, or participate in any manner in the conduct of the affairs of, any institution or any agency specified in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A) ("Covered Institution"), including:

(i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, state banks, trust companies, and other banking institutions;

(ii) any institution treated as an insured bank under Sections 8(b)(3) and 8(b)(4) of the FDIA, 12 U.S.C. §§ 1818(b)(3) and 1818(b)(4), or as a savings association under Section 8(b)(9)

of the FDIA, 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings associations;

(iii) any insured credit union under the Federal Credit Union Act, 12 U.S.C. §§ 1781 et seq.;

(iv) any institution chartered under the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 et seq.;

(v) any appropriate Federal depository institution regulatory agency, within the meaning of 12 U.S.C. § 1818(e)(7)(A)(v); and

(vi) the Federal Housing Finance Board and any Federal Home Loan Bank;

(B) solicit, procure, transfer, attempt to transfer, vote or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any Covered Institution;

(C) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of Section 3(q) of the FDIA, 12 U.S.C. §§ 1813(q); or

(D) vote for a director, or serve or act as an "institution-affiliated party," as that term is defined at Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), e.g., a director, officer, employee, controlling stockholder of, or agent for, an insured depository institution.

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

4. This Order is subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), and shall become effective on the date it is issued.

5. BINGHAM shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

6. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

IT IS FURTHER ORDERED that:

ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

7. BINGHAM is and shall be subject to the statutory requirements provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

8. BINGHAM, within fifteen (15) days of the date of this Order, shall pay restitution to Bank United of Texas, FSB, in the amount of \$1,970 according to the following schedule:

August 6, 1996	\$ 500.00
August 20, 1996	\$ 270.00
September 3, 1996	\$ 300.00
September 17, 1996	\$ 900.00
	<u>\$1,970.00</u>

9. All payments should be made by certified check or money order made payable to Bank United of Texas, FSB, and forwarded directly to Bank United of Texas, FSB.

10. The Stipulation is made a part hereof and is incorporated

herein by this reference.

11. This Order is subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. §1818(j), and shall become effective on the date it is issued.

12. BINGHAM shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

13. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

THE OFFICE OF THRIFT SUPERVISION

By:



Frederick R. Casteel
Midwest Regional Director