

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

ROBERT KEITH,)

Former Senior Vice President of)
Fidelity Federal Savings Bank,)

Dalton, Georgia)

Resolution No.: ATL-93-15

Dated: May 3, 1993

STIPULATION AND CONSENT TO THE ENTRY
OF AN ORDER TO CEASE AND DESIST AND FOR RESTITUTION

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Southeast Region, and Robert Keith ("Keith"), a former Senior Vice President of Fidelity Federal Savings Bank, Dalton, Georgia, OTS Docket No. 7112 ("Fidelity" or "Institution"), hereby stipulate and agree as follows:

1. Consideration. The OTS, based upon its supervisory and regulatory findings, is of the opinion that grounds exist to initiate an administrative proceeding against Keith, pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.A. §§ 1818(b) (West 1989 & Supp. 1992). The facts in support of the OTS' belief include the following:

(a) Until June 25, 1992, Keith was a Senior Vice President and Chief Lending Officer of Fidelity;

(b) From May 1991 until April 1992, Fidelity

maintained a lending relationship with a major borrower of the Institution;

(c) Keith allowed the major borrower to create and then failed to report a large overdraft balance in the borrower's checking account at Fidelity;

(d) Keith was able to circumvent Fidelity's requirement that overdrafts in excess of \$1,000 be reported to the board by permitting the borrower to deposit, at the end of each month, an NSF check drawn off another local institution in an amount sufficient to clear the negative balance in the borrower's account at Fidelity;

(e) The NSF check would then cover the overdraft in the borrower's account. Consequently the overdraft would not have be to reported to Fidelity's board;

(f) The NSF check that was deposited to cover the overdraft would then be returned to the institution on which it was drawn approximately five days later, and the appropriate negative balance would be reflected in the borrower's account;

(g) This practice was followed by Keith from May 1991 to April 1992, excluding July and December 1991 and January 1992;

(h) Keith personally reviewed all overdraft reports on a daily basis. Therefore, he was aware of the numerous large deposits of the borrower that were returned after the end of each month;

(i) Regardless of the information Keith obtained from the overdraft reports, he took no action with respect to such reports;

(j) This activity reflects Keith's failure to report both the existence of the overdraft balance and the delinquency of the borrower's loans;

(k) During the same period that NSF checks were being accepted to benefit the major borrower, OTS examiners noted at least fourteen other instances on six different loans where NSF checks were accepted by Keith for the payment of interest, resulting in the renewal of credits and subsequent charge-backs of interest by Fidelity;

(l) Keith's failure to report the borrower's loan delinquencies resulted in the extension of additional credit to the borrower of at least \$15,000 in 1991, the overstatement of interest income by Fidelity, the failure of Fidelity to recognize losses in a timely manner, and Fidelity's eventual charge-off of \$21,366, which has been repaid to Fidelity.

2. Jurisdiction.

(a) Fidelity is a "savings association" within the meaning of Section 3(b)(1) of the FDIA, 12 U.S.C.A. § 1813(b)(1). The Institution is an "insured depository institution" as that term is defined in Section 3(c)(2) of the FDIA, 12 U.S.C.A. § 1813(c)(2).

(b) Keith, as a former Senior Vice President

of Fidelity, is an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C.A. § 1813(u).

(c) The Director of OTS is the "appropriate Federal banking agency" to maintain an administrative proceeding against such a savings association or its institution-affiliated parties, pursuant to Section 3(q)(4) of the FDIA, 12 U.S.C.A. § 1813(q)(4). Therefore, Keith is subject to the authority of the OTS to initiate and maintain an administrative proceeding against him pursuant to Sections 8(b) and 8(e) of the FDIA, 12 U.S.C.A. §§ 1818(b) and (e).

3. Consent. Keith consents to the issuance by the OTS of the accompanying Order to Cease and Desist and for Restitution ("Order"). He further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under Section 8(b) of the FDIA, 12 U.S.C.A. §§ 1818(b). Upon its issuance by the Regional Director 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.A. § 1818(i).

5. Waivers. Keith waives his right to a notice of charges, notice of intention to prohibit and the administrative hearing provided by Sections 8(b) and 8(e) of the FDIA, 12 U.S.C.A. §§ 1818(b), and further waives his right to seek judicial review of the Order, including any

such right provided by Section 8(h) of the FDIA, 12 U.S.C.A. § 1818(h), or otherwise to challenge the validity of the Order.

Further, this Stipulation, the Order, and the payment by Keith of any monies or providing any other financial relief as contemplated by the Order, does not compromise, settle, dismiss, resolve, or in any way affect any civil actions, charges against, or liability of Keith that arise pursuant to this action or otherwise, and that may be or have been brought by the Resolution Trust Corporation or any other governmental entity other than the OTS.

Keith acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated as part of the resolution thereof, and Keith's consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and do not resolve, affect or preclude any other civil or criminal proceeding which may be or has been brought against Keith by the OTS or another governmental entity.

By signing this document Keith agrees that he will not assert the assessment or payment of this restitution 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.

WHEREFORE, in consideration of the foregoing and intending to be legally bound hereby, the Regional Director

Robert Keith
Cease and Desist and Restitution Stipulation (4/93)
Page 6 of 6

for the Southeast Region, on behalf of the OTS, and Keith execute this Stipulation and Consent to the Entry of A Prohibition Order and Restitution Order.

OFFICE OF THRIFT SUPERVISION

By: /S/
John E. Ryan
Regional Director
Southeast Region

/S/
Robert Keith

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ORDER TO CEASE AND DESIST AND FOR RESTITUTION

WHEREAS, Robert Keith has executed a Stipulation and Consent to the Entry of an Order to Cease and Desist and for Restitution ("Stipulation"), which is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Southeast Region; and

WHEREAS, Robert Keith in the Stipulation has consented and agreed to the issuance of this Order to Cease and Desist and for Restitution ("Order") pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.A. § 1818(b) (West 1989 & Supp. 1992).

NOW THEREFORE, IT IS ORDERED that:

1. Robert Keith shall cease and desist from any and all involvement or further participation, in any manner other than as a stockholder, in the conduct of the affairs of Fidelity Federal

Savings Bank, Dalton, Georgia ("Fidelity") its holding company(ies), or service corporation(s), for as long as Fidelity shall remain a "savings association," as that term is defined in Section 3(b)(1) of the FDIA, 12 U.S.C.A. § 1813(b)(1).

2. Robert Keith shall provide thirty (30) days prior written notice to and receive prior approval from the Regional Director for the Southeast Region before accepting employment with any "savings association," as that term is defined in Section 3(b)(1) of the FDIA, 12 U.S.C.A. § 1813(b)(1). The Regional Director will look to approve employment for Keith with any savings association where the following conditions exists:

a. the association has safe and sound lending operations; and

b. adequate supervision will be exercised by such association over Keith's activities on behalf of the association.

3. No less than fifteen (15) days prior to accepting employment with any "insured depository institution," as that term is defined in Section 3(c)(2) of the FDIA, 12 U.S.C.A. § 1813(c)(2), or any "insured credit union," as that term is defined in Section 101(7) of the Federal Credit Union Act, 12 U.S.C.A. § 1752(7), Robert Keith shall inform such institution of the existence of this Order and shall provide OTS written confirmation acceptable to OTS that such advise has been given.

4. Robert Keith shall make restitution or cause restitution to be made to Fidelity in the amount of \$21,366.

