

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of)
)
RICHARD D. BARBIERI, SR.)
JOHN A. CORPACI,)
VINAL DUNCAN,)
MARIO ALBINI,)
ANTHONY DIFABIO,)
PAUL KOLOK, and)
RICHARD D. BARBIERI, JR.)
)

RE: OTS Docket No. AP 92-62
Dated: June 23, 1992
Order No. 93-19

STIPULATION AND CONSENT TO ISSUANCE OF CEASE & DESIST
ORDER, ORDER OF PROHIBITION AND ORDER FOR RESTITUTION

The Office of Thrift Supervision ("OTS"), and Richard D. Barbieri, Jr. ("Barbieri, Jr.") stipulate and agree as follows:

1. Consideration. The OTS has initiated an administrative proceeding against Barbieri, Jr. pursuant to the Federal Deposit Insurance Act, §§ 8(b) and (e), 12 U.S.C.A. § 1818(b) and (e) (West 1989). Barbieri, Jr. desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, without either admitting or denying that such grounds exist, for the purposes of these proceedings only, hereby stipulates and agrees to the following terms in consideration of the termination by the OTS of the pending administrative litigation against Barbieri, Jr. with respect to the matters covered in the accompanying Cease and Desist Order, Order of Prohibition and Order for Restitution (the "Order") which is incorporated herein by reference and made a part hereof. OTS hereby releases and

forever discharges Barbieri, Jr. of and from all claims, rights, damages, demands or causes of action which OTS has had, now has, or may have, but only to the extent that such claims, rights, damages, demand or causes of action, arise from or are based upon any matter (i) reported in the OTS Reports of Examination of Security Savings and Loan Association of Waterbury, Connecticut ("Security") for the years 1980 through 1990 or (ii) discovered by the OTS as a result of its investigative proceeding commenced pursuant to Resolution BOS-90-7, dated July 5, 1990, which led to the issuance of the Notice of Charges AP 92-62; provided, however that nothing in this Stipulation shall be a release by OTS of claims, if any, OTS has or may have against any person or entity other than Barbieri, Jr.

2. Jurisdiction.

(a) Security is a "savings association" and an "insured depository institution" as defined by 12 U.S.C.A. §§ 1462 and 1813 (West 1989).

(b) Barbieri, Jr., for the purpose of this proceeding, is an institution-affiliated party as defined by 12 U.S.C.A. §§ 1813(u) (West 1989).

(c) The Director of the OTS is the "appropriate Federal Banking agency" to maintain administrative proceedings against Barbieri, Jr. pursuant to 12 U.S.C.A. §§ 1818(b)(e) (West 1989).

3. Consent. Barbieri, Jr. consents to the issuance by the OTS of the Order. He 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 under 12 U.S.C.A. §§ 1818(b) and (e) (West 1989). Upon its issuance, it shall be a final, unappealable order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C.A. § 1818(i) (West 1989).

5. Waivers. Barbieri, Jr. waives an administrative hearing provided by 12 U.S.C.A. § 1818(b) (West 1989), and further waives his right to seek judicial review of the Order, including any such right provided by 12 U.S.C.A. § 1818(h) (West 1989) or otherwise to challenge the validity of the Order.

6. Representations As To Assets. (a) OTS' decision to enter into this Stipulation has been predicated in part upon representations made by Barbieri, Jr. concerning the nature and value of the assets owned and/or controlled by Barbieri, Jr., his wife Karen, and co-respondent Richard D. Barbieri, Sr., and his wife Vicki Barbieri, (the "Barbieri Assets"). It is understood that Barbieri, Jr. has made a good faith estimate of the current value of the Barbieri Assets, and Barbieri, Jr. understands that should OTS discover or learn from any source that the representations made by him about the nature and value of the Barbieri Assets were wrong, including but not limited to the failure to identify and/or value any material asset, OTS reserves the right to take any action authorized by law, including at its sole option to impose civil money penalties under 12 U.S.C. § 1818(i) or to void the settlement reached between OTS and Barbieri, Jr., including this Stipulation and the Order, and reinstate the administrative proceeding against Barbieri, Jr. or

take any other legal action.

(b) OTS acknowledges that all financial information submitted by Barbieri, Jr. was prepared by Barbieri, Jr. based upon his knowledge of his investments and assets and was not prepared by an accountant, nor based upon the review of any accountant. Further, there were no appraisals performed on any of the properties. Barbieri, Jr. asserts that all information supplied by him to OTS was done in good faith and based upon his best knowledge, information, and belief.

7. Nondischargeability. Barbieri, Jr. hereby consents and agrees that the obligation to pay the Restitution Amount set forth in paragraph 2 of the Order is not dischargeable in bankruptcy, and further agrees that he shall not seek to have the obligation discharged in any bankruptcy proceeding.

8. Scope of Stipulation and Order. This Stipulation and Consent to Issuance of Cease and Desist Order, Order of Prohibition and Order of Restitution, the Order and the payment by Barbieri, Jr. 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, criminal charges against, or liability of Barbieri, Jr. 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.

9. Execution of Documents. Barbieri, Jr. agrees to cause his wife Karen Barbieri to execute any and all documents necessary to accomplish the agreements reflected herein and the

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RE: OTS Docket No. AP 92-62
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Order No. 93-19

CEASE AND DESIST ORDER, ORDER OF
PROHIBITION AND ORDER OF RESTITUTION

WHEREAS, the Office of Thrift Supervision ("OTS") has issued a Notice of Charges against Respondent Richard D. Barbieri, Jr. ("Barbieri, Jr.") pursuant to the Federal Deposit Insurance Act, 12 U.S.C. §1818 (the "FDIA"), charging him with violations of laws and regulations governing the operation of savings associations, and has initiated administrative proceedings against Barbieri, Jr. seeking, among other relief, an order of restitution under 12 U.S.C. §1818(b)(6), and an order of prohibition under 12 U.S.C. §1818(e);

WHEREAS, Barbieri, Jr. has entered into a Stipulation and Consent to Issuance of a Cease & Desist Order, Order of Prohibition And Order of Restitution (the "Stipulation") that is accepted and approved by OTS and is incorporated herein by reference; and

WHEREAS, Barbieri, Jr., in the Stipulation, without

admitting or denying any of the allegations of OTS, has consented and agreed to the issuance of this Cease & Desist Order, Order of Prohibition and Order of Restitution (the "Order") under the FDIA and has agreed to be bound by the terms hereof;

NOW, THEREFORE, IT IS ORDERED that:

1. (a) For a period of ten years from the effective date of this Order, Barbieri, Jr. is prohibited from holding any office in, or any further participation in any manner, in the conduct of the affairs of any insured depository institution pursuant to 12 U.S.C. § 1818(e). This prohibition shall also apply to any and all affiliates of any insured depository institution, as that term is defined in 12 U.S.C. §§ 1813(w)(6) and 1462(9), where the affiliate is engaged in banking activities or involved routinely in the conduct of the affairs of an insured depository institution or its service corporation. Barbieri, Jr. must apply to the Regional Director of OTS for permission to be employed by an affiliate of an insured depository institution, which permission shall not be unreasonably withheld, pursuant to the standard set forth above. Such permission shall be sought from OTS as soon as practicable and in no event later than 15 days from the date of the offer of employment; Barbieri, Jr. shall be allowed to

commence employment while the request for permission is pending.

(b) In connection with any application or interview for, or subsequent employment in, any insured depository institution by Barbieri, Jr., if Barbieri, Jr. is asked about the circumstances of his departure from Security Savings and Loan Association of Waterbury, Connecticut, he shall make full disclosure of the nature and existence of this Order and its contents.

(c) Barbieri, Jr. shall report on July 1st and December 31st of each year to the Regional Director of OTS or his successor, where he is currently employed, his job title, a brief description of his duties, and shall provide any other information requested by the Regional Director to determine compliance with the terms of this paragraph.

2. Barbieri, Jr. shall pay \$300,000 in restitution (the "Restitution Amount") to the OTS as follows:

(a) Barbieri, Jr. shall cause the real estate located at 1125 Meriden Road, Waterbury, Connecticut, a description of which is attached hereto as Exhibit A, and currently held in the name of his wife, Karen Barbieri, (the "Meriden Road Property") to be sold and the proceeds of such sale to be paid to the OTS no later than June 30, 1993. In the event that the

Meriden Road Property has not been sold by June 30, 1993, then Barbieri, Jr. shall cause the title to such property to be assigned immediately to the Resolution Trust Corporation ("RTC"). In connection with the sale of the Meriden Road Property, Barbieri, Jr. shall keep OTS apprised of all negotiations and shall give OTS notice of all offers. OTS shall have final approval of any sale.

- (b) Barbieri, Jr. shall cause the note from Kevin S. Donadio and Marlon A. Duren to Karen Barbieri in the amount of \$4,900, a copy of which is attached hereto as Exhibit B, to be assigned to the OTS upon the execution of this document.
- (c) Barbieri, Jr. shall, and hereby does, assign to the RTC any and all interests in his ESOP and IRA accounts at Security.
- (d) (i) The Restitution Amount shall be reduced by the amounts actually recovered by the OTS and/or the RTC pursuant to paragraphs 2(a), (b), and (c) above, and pursuant to Article II, paragraph 2(d) of the Order to Cease and Desist, Order of Prohibition, and Order For Restitution entered into jointly between co-respondent Richard D. Barbieri, Sr. and OTS and the Office of the Comptroller of the Currency (the "Barbieri, Sr. Order"). A true copy of the Barbieri, Sr. Order is attached

hereto as Exhibit C.

- (ii) For the purposes of this paragraph 2(d), the amount recovered by the RTC pursuant to paragraph 2(c) shall be \$6,000.
- (iii) If the Meriden Road Property is not sold, but is instead assigned to the RTC, the amount recovered by the RTC for purposes of this paragraph 2(d) shall be the higher of the net amount actually recovered by the RTC upon its sale of the Property, or \$52,000.
- (iv) If, pursuant to the Barbieri, Sr. Order, title to the property located in Pittstown, New York, as described in Article II, Paragraph 2(d) of the Barbieri, Sr. Order (the "Pittstown Property") is assigned to the RTC, then the amount recovered by the RTC for the purposes of this paragraph 2(d) shall be the higher of the net amount actually recovered by the RTC upon its sale of the Pittstown Property, or \$60,000. If title to only a portion of the Pittstown Property, is assigned to the RTC pursuant to Article II, Paragraph 2(d) of the Barbieri, Sr. Order, then the amount received by the RTC for purposes of this paragraph 2(d) shall be the higher of the net amount actually recovered by the RTC upon its sale of the Portion of

the Pittstown Property that has been assigned to it, or \$25,000.

(v) The balance of the Restitution Amount shall be paid over time, in accordance with the formula for Restitution Payments set forth in paragraphs 2(e) and 2(f) below.

(e) In any year in which Barbieri, Jr.'s adjusted gross income as reported to the Internal Revenue Service exceeds \$40,000, Barbieri, Jr. shall pay to OTS 35% of the adjusted gross income over \$40,000 (the "Restitution Payments"). For purposes of this paragraph any income earned by, and payable to, Barbieri, Jr. but that he agrees or arranges to assign, pledge, give or otherwise transfer to any third party shall be included in the calculation of income. Barbieri, Jr.'s obligation to make the Restitution Payments shall cease on December 31, 2013, or at such time as the Restitution Amount is fully paid, whichever is sooner.

(f) The Restitution Payments shall be adjusted annually for inflation as follows. For each year in which Restitution Payments are owing, the base income for the preceding year shall be multiplied by the Consumer Price Index ("C.P.I.") for that year in accordance with the formula $\text{Base Income} \times (1 + \text{C.P.I.})$ to establish the threshold for which Restitution Payments are triggered for that year.

The base income level for the initial year is \$40,000.

- (g) Barbieri, Jr. shall further provide to RTC, OTS or any person designated by either agency any financial information requested by those agencies or designated persons to verify compliance with this paragraph.

3. Barbieri, Jr. shall cooperate fully with OTS by providing complete and truthful information in connection with any pending or future litigation, including administrative litigation, or any pending or future investigation pertaining to or arising out of Security Savings and Loan Association of Waterbury, Connecticut ("Security").

4. The entry of this Order is for the purpose of resolving only those matters (i) reported in the OTS Reports of Examination of Security for the years 1980 through 1991 or (ii) discovered by the OTS as a result of its investigative proceeding commenced pursuant to Resolution BOS-90-7, dated July 5, 1990, which led to the issuance of the Notice of Charges AP 92-62, subject to paragraph 8 of the Stipulation.

5. Barbieri, Jr. shall execute any and all documents necessary to effect the obligations represented herein, including but not limited to notes, assignments, and deeds.

6. OTS reserves the right to take any action authorized by law, including at its sole discretion, to impose civil money penalties under 12 U.S.C. §1818(i) or to void the settlement reached between it and Barbieri, Jr., including the Stipulation

and this Order, to reinstate the administrative proceeding against Barbieri, Jr., or to take any other legal action, should Barbieri, Jr. fail to comply with any of the terms of this Order.

7. This Order shall be effective from the date of its execution.

Date: *March 23, 1993 Jfk*

/S/

Jonathan Fiechter
Acting Director