

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

_____)
In the Matter of _____)
_____)
RICK POWELL, A Former Officer)
and Director of First Savings)
Bank, A Federal Savings Bank)
Arlington, Texas; and _____)
_____)

Resolution No. DAL-92-01

Dated: January 9, 1992

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OFFICE OF
SUPERVISION
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STIPULATION AND CONSENT TO
THE ENTRY OF A CEASE AND DESIST ORDER

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office of OTS, Dallas, Texas, and RICK POWELL, ("Powell"), a former officer and director of First Savings Bank, A Federal Savings Bank, Arlington, Texas ("First Savings Bank"), stipulate and agree as follows:

1. CONSIDERATION

The OTS, based upon information reported to it, is of the opinion that grounds exist to initiate an administrative cease-and-desist proceeding against Powell pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b) (1988 & Supp. I 1989) as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA"). Powell desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in considera-

tion of the forbearance by the OTS from initiating such administrative cease-and-desist litigation against Powell for such matters further described below.

2. JURISDICTION

- (a) First Savings Bank is a "savings association" within the meaning of Section 3(b) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1813(b)), and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. §1462(4) (Supp. I 1989). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1813(c)).
- (b) Pursuant to Section 3(q) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(q) (1988 & Supp. I 1989), the Director of the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against Powell.
- (c) Powell at all times relevant to the allegations set forth herein was an institution-affiliated party of First Savings Bank as defined in Section 3(u) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1813(u)) in that Powell served as a director and president of First Savings Bank. While serving in that capacity, Powell, contrary to safe and sound practices, and in breach of his fiduciary duty, on or about December 27, 1988, as a member of the directorate, caused to be submitted to the OTS's

predecessor as the then appropriate regulatory agency, a dividend notification H-(f) for approval of payment of a \$50,000 dividend to all stockholders of record as of February 24, 1989. The dividend was subsequently paid to and/or on behalf of Powell and constituted a bonus to him contrary to Powell's representation in the dividend notification.

Therefore, Powell is subject to the authority of the OTS to initiate and maintain a cease-and-desist proceeding against him pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b) (1988 & Supp. I 1989).

3. CONSENT

- (a) Powell consents to the issuance by the OTS of the Order and further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.
- (b) Powell acknowledges that the debt owed pursuant to the Order is not dischargeable under the Bankruptcy Code, in accordance with 11 U.S.C. § 523(a)(11) and (12), as amended by Section 2522 of the Comprehensive Thrift and Bank Fraud Protection and Taxpayer Recovery Act of 1990, Pub. L. No. 101-647, November 29, 1990.
- (c) Powell agrees to cooperate fully and voluntarily with the OTS in pursuing enforcement matters against other institution-affiliated parties of First Savings Bank.

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ORDER TO CEASE AND DESIST

WHEREAS, RICK POWELL ("Powell") has executed a Stipulation and Consent to Issuance of Order to Cease and Desist, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Midwest Regional Office; and

WHEREAS, Powell, in the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist ("Order") pursuant to Section 8(b) of the Federal Deposit Insurance Act, ("FDIA"), 12 U.S.C. § 1818(b) (1988 & Supp. I 1989) as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA").

NOW THEREFORE, IT IS ORDERED that:

1. Powell shall make restitution to First Savings Bank, A Federal Savings Bank ("First Savings Bank"), Arlington, Texas in the amount of eight thousand, five hundred and twenty-five dollars (\$8,525) on or before December 31, 1991. This sum represents one eighth of \$68,200, the amount of a \$50,000 bonus, with interest computed thereon, paid by First Savings Bank, to Rick Powell.

2. Powell shall comply with Paragraph 1 by sending a certified check to the Regional Director of the Midwest Regional Office in Dallas, Texas, made payable to First Savings Bank, A Federal Savings Bank, Arlington, Texas, on or before December 31, 1991.
3. Without the prior written approval of the Regional Director, Powell may not hold any office in, serve as a director for, or participate in any manner in the conduct of the affairs of First Savings Bank.
4. Without the prior written approval of the Regional Director and, if appropriate, another Federal financial institutions regulatory agency, Powell may not hold any office in, serve as a director for, or participate in any manner in the conduct of the affairs of any institution(s) or other entity as set forth in Section 8 of the FDIA, 12 U.S.C. § 1818 (1988 & Supp. I 1989), hereinafter referred to as a "Covered Institution". Conduct prohibited by this Order includes, inter alia, the solicitation, transfer or exercise of any voting rights with respect to any securities issued by any insured depository institution.
5. If approval is obtained from the Regional Director or, where appropriate, another Federal financial institutions regulatory agency, Powell, upon becoming a director, officer, or controlling person of a Federally insured depository institution or any holding company thereof, shall obtain advice of competent counsel on his duties and responsibilities, both initially upon accepting such a position and when particular issues arise that may cause Powell to be uncertain about his responsibilities.

