

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:

Frank E. Hewitt

Director and Institution-
Affiliated Party of Rochelle
Savings and Loan Association,
Rochelle, Illinois

Re: Resolution No. CHI-92-40

Dated: October 27, 1992

STIPULATION AND CONSENT TO ISSUANCE OF AN ORDER
OF CIVIL MONEY PENALTY ASSESSMENT

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Central Regional Office, and Frank E. Hewitt ("Hewitt"), director of Rochelle Savings and Loan Association, Rochelle, Illinois ("Rochelle" or the "Institution"), hereby 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 civil money penalty assessment proceeding against Hewitt, pursuant to Section 8(i) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C.A. §1818(i) (1989 and West Supp. 1992). Hewitt desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Without admitting or denying the statements, conclusions and terms herein, Hewitt hereby stipulates

and agrees to the following terms in consideration of the forbearance by the OTS from initiating any civil or administrative proceedings against Hewitt with respect to the matters set forth in Paragraph 3 below. The OTS has determined that it is appropriate and in the best interest of the public to execute this Stipulation and Consent to Issuance of an Order of Civil Money Penalty Assessment ("Stipulation") and to issue the attached Order of Civil Money Penalty Assessment ("Order").

2. Jurisdiction. The OTS is of the opinion that:

(a) The Institution is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C.A. § 1813(b) (1989 and West Supp. 1992) and Section 2(4) of the Home Owners' Loan Act ("HOLA"), as amended by Section 301 of the FIRREA, 12 U.S.C.A. § 1462(4) (West Supp. 1992). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by the FIRREA, 12 U.S.C.A. § 1813(c).

(b) Until August 9, 1989, the accounts of the Institution were insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") pursuant to Section 403(b) of the National Housing Act ("NHA"), 12 U.S.C.A. § 1726(b), by reason of which it was an "insured institution" within the meaning of the NHA.

(c) As of August 9, 1989, pursuant to the provisions of the FIRREA, the insurance of the accounts of the Institution was transferred to the Federal Deposit Insurance Corporation.

(d) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB"), as operating head of the FSLIC, was the regulatory agency with jurisdiction over the Institution and persons participating in the conduct of its affairs, including Hewitt, pursuant to Sections 403 and 407 of the NHA, 12 U.S.C. §§ 1726 and 1730.

(e) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended by Section 204 of the FIRREA, 12 U.S.C.A. §1813(q), the OTS succeeded to the interests of the FHLBB with respect to the supervision and regulation of all savings associations, and thus became the "appropriate Federal banking agency" with jurisdiction over the Institution and persons participating in the conduct of the affairs thereof.

(f) The Director of the OTS has the authority to bring administrative civil money penalty proceedings against persons participating in the conduct of the affairs of the Institution and institution-affiliated parties, pursuant to Section 5(d)(1)(A) of the HOLA, as amended by Section 301 of the FIRREA, 12 U.S.C.A. §1464(d)(1)(A) and Section 8(i) of the FDIA, as amended by the FIRREA, 12 U.S.C.A. § 1818(i).

(g) Hewitt was at all times relevant hereto a director of the Institution. Accordingly, Hewitt is an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C.A. § 1813(u), and as such, is subject to the authority of the OTS to maintain civil money penalty proceedings pursuant to Section 8(i) of the FDIA, 12 U.S.C.A. §1818(i).

3. Pertinent Allegations.

Based upon information reported to it, and its review of that information, the OTS is of the opinion that Hewitt's actions, as described below, constituted unsafe and unsound practices, and caused or allowed violations of federal statutes and OTS regulations. The OTS alleges that:

(a) The OTS report of examination which was completed on October 12, 1990 ("1990 ROE") disclosed that several of Rochelle's officers and directors had frequent overdrafts on their bank accounts at Rochelle. President and Director Richard K. Ohlinger ("Ohlinger") was overdrawn numerous times in amounts ranging from \$35 to \$24,588. Director and Senior Vice President Edward J. Hickey ("Hickey") incurred overdrafts ranging in amounts from \$3,618 to \$9,909. Finally, Hewitt had overdrafts ranging in amounts from \$26 to \$2,322. These overdrafts were in violation of Section 22(h) of the Federal Reserve Act (12 U.S.C.A. § 375(b)) and Ill. Rev. Stat., ch. 17, §§ 3303-3309. Hewitt was informed of these overdrafts in the 1990 ROE. Hewitt reviewed, or should have reviewed, this Report of Examination as part of his fiduciary duties as a director.

(b) At the October 16, 1990 meeting of Rochelle's Board of Directors, the Board was informed by OTS personnel that any future overdrafts by officers or directors would be unacceptable and could result in the assessment of civil money penalties. Hewitt was present at this board meeting.

(c) Furthermore, in a letter dated January 28, 1991 from Wayne F. Dyer, Deputy Director of Savings and Loan Supervision with the Illinois Office of the Commissioner of Savings and Residential Finance ("Supervisory Letter"), a copy of the 1990 ROE was forwarded to Rochelle's Board of Directors. The Supervisory Letter requested the Board's assurance that future overdraft violations "will not be allowed" and warned that "future infractions may be cause for civil money penalties being assessed." Hewitt read or should have read the Supervisory Letter.

(d) Despite the regulatory warnings, improper overdrafts by officers and directors at Rochelle continued. As an initial matter, as of the end of the next OTS examination on October 22, 1991 ("1991 ROE"), Rochelle's Board of Directors had failed to (1) adopt a formal overdraft policy or standardized procedures regarding the assessment of overdraft and insufficient funds checks ("NSF") by customers and Rochelle insiders or (2) establish any means to monitor overdrafts. These failures constituted both unsafe and unsound practices and breaches of Hewitt's fiduciary duties. Hewitt committed these breaches in the face of prior regulatory warnings.

(e) During the examination which resulted in the 1991 ROE, a review of Rochelle's accounts by OTS examiners revealed numerous overdraft items in officers' and directors' checking accounts.

(f) A total of 42 overdraft items were incurred by President Ohlinger, Hickey and Hewitt. The most significant

overdrafts, once again, occurred in President Ohlinger's account. Ohlinger incurred a total of 39 overdraft items between November 1990 and July 1991, for periods ranging from two to ten days and in dollar amounts from \$1.49 to \$3,428. Once again, these overdrafts were in violation of Section 22(h) of the Federal Reserve Act (12 U.S.C.A. § 375(b)) and Ill. Rev. Stat., ch. 17 ¶¶ 3303-3309.

(g) The failure of Hewitt to monitor and prevent these overdrafts constitutes both an unsafe and unsound practice and a breach of his fiduciary duty as a director.

4. Consent. Without admitting or denying the need or basis therefor, Hewitt consents to the issuance by the OTS of the Order, which assesses a civil money penalty of \$1,500. He further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of 12 U.S.C.A. § 1818(i).

5. Finality. The Order is issued under Section 8(i) of the FDIA, as amended, 12 U.S.C.A. § 1818(i) (1989 and West Supp. 1992). Upon its issuance, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, as amended, 12 U.S.C.A. § 1818(i) (1989 and West Supp. 1992).

6. Waivers. Hewitt waives his right to a notice of assessment of civil money penalty and the administrative hearing provided by Section 8(i) of the FDIA, 12 U.S.C. § 1818(i), and further waives any 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.

This Stipulation and the Order are issued solely to settle the matters arising from the allegations set forth in Paragraph 3 above, and are not intended to nor shall they be construed to have the effect of, limiting the right or authority of any other governmental or administrative agency to initiate or pursue any other action, civil or otherwise, against Hewitt. Further, this Stipulation and Order are not intended to nor shall they be construed to have the effect of, limiting the right or authority of the OTS to initiate or pursue any other action, civil or otherwise, against Hewitt for conduct with respect to matters or transactions not specifically outlined in Paragraph 3 of this Stipulation.

By signing this document, Hewitt hereby expressly agrees that he will not assert the assessment or payment of this penalty as the basis for a claim of double jeopardy in any future proceeding brought by any governmental authority.

WHEREFORE, in consideration of the foregoing, the OTS, by and through its Regional Director, and Hewitt, execute this Stipulation.

OFFICE OF THRIFT SUPERVISION

By: / S /
Ronald N. Karr
Regional Director
Central Regional Office

 / S /
Frank E. Hewitt

NOW, THEREFORE, IT IS ORDERED that:

Within thirty (30) days of the effective date of this Order, Hewitt shall pay to the OTS the sum of Fifteen Hundred Dollars (\$1,500) by tendering a cashier's check to the OTS in that amount, made payable to the Treasurer of the United States. This Order shall become effective upon its issuance by the Regional Director of the Central Regional Office on this 27 day of October, 1992.

OFFICE OF THRIFT SUPERVISION

By: /s/
Ronald N. Karr
Regional Director
Central Regional Office