

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

ANDREW M. JACOBSON)

Former Attorney for)
Bay Savings Bank)

West Palm Beach, Florida)

Resolution No.:ATL-92-86
Dated: October 27, 1992

STIPULATION AND CONSENT TO THE ENTRY OF A PROHIBITION ORDER
AND ORDER OF SUSPENSION OF THE PRIVILEGE TO PRACTICE
BEFORE THE OFFICE OF THRIFT SUPERVISION

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Southeast Region, and Andrew M. Jacobson ("Jacobson"), an attorney who represented and provided advice and counsel to Bay Savings Bank, West Palm Beach, Florida, OTS Docket No. 8281 ("Bay Savings"), hereby stipulate and agree as follows:

1. Consideration. The OTS, based upon its investigative findings, is of the opinion that grounds exist to initiate an administrative prohibition proceeding against Jacobson, pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.A. § 1818(e) (West 1989 & Supp. 1992). The OTS is of further opinion that grounds exist to initiate an administrative proceeding to suspend the privilege of Jacobson

to practice before it, pursuant to Part 513 of the Rules and Regulations of the Office of Thrift Supervision, 12 C.F.R. § 513 et seq. The facts in support of OTS's belief include the following:

(a) In March or April, 1989, a Vice President of Fourth Executive Corporation, requested financing from Bay Savings, through one of its Senior Vice Presidents, for a Fourth Executive Corporation project known as the Congress Avenue property.

(b) On or about June 19, 1989, the Fourth Executive Vice President executed a check in the amount of \$5,500, made payable to the Bay Savings Senior Vice President.

(c) On or about June 22, 1989, three days after receipt of the Fourth Executive check for \$5,500, the Bay Savings Senior Vice President signed a commitment letter, prepared by Jacobson, a partner in the law firm of Jacobson, Berkowitz, & Lampert, P.A. and an attorney for Bay Savings, obligating Bay Savings to provide interim financing in the amount of \$1.5 million to Fourth Executive Corporation for the acquisition and renovation of an office building in West Palm Beach, Florida. Said commitment was contingent upon obtaining acceptable permanent financing from a source other than Bay Savings.

(d) On or about June 30, 1989, Fourth Executive Corporation executed a promissory note, prepared by Jacobson, in favor of Bay Savings in the principal amount of \$1.5

million.

(e) Jacobson represented Bay Savings in connection with documenting and closing the Fourth Executive Corporation loan. He prepared the loan documents for this transaction including, but not limited to, the mortgage and security agreement and the promissory note.

(f) In addition, Jacobson represented the borrower, Fourth Executive Corporation, in connection with the loan, as well as in other matters both prior to and subsequent to the Fourth Executive Corporation loan.

(g) Jacobson also was representing the Fourth Executive Vice President who, at the time of Jacobson's involvement with Bay Savings on the Fourth Executive Corporation matter, was indebted to Jacobson's law firm for unpaid legal fees.

(h) The initial proceeds of the loan to Fourth Executive Corporation were dispersed at closing on or about July 7, 1989. Jacobson, ostensibly on behalf of Bay Savings, acted as escrow and disbursing agent for the loan proceeds.

(i) Jacobson disbursed from the loan proceeds checks in the amount of \$25,651.95 to Argosy Capital Corporation, a corporation owned by the Fourth Executive Vice President and \$14,000 to Next Step Brokerage, Inc., a company owned by the Bay Savings Senior Vice President who had approved the loan. Neither of these disbursements were set forth on the loan closing statement nor were said disbursements contemplated or

approved in Bay Savings' underwriting of the Fourth Executive Corporation loan.

(j) At the time the Fourth Executive Corporation loan closed and funds were dispersed, no written commitment had been obtained for permanent financing, contrary to the conditions stated in the loan commitment, dated June 22, 1989, prepared by Jacobson.

(k) Subsequent to the closing of the loan, Jacobson, in representing Fourth Executive Corporation, prepared and caused to be placed of record a second mortgage, in the amount of \$197,500, against the property securing the Fourth Executive Corporation loan granted by Bay Savings. The second mortgage was recorded on September 19, 1989 and is in direct contravention of the first mortgage held by Bay Savings that also was prepared by Jacobson.

(l) On October 26, 1989, Jacobson signed as a witness on a warranty deed transferring the subject property from Fourth Executive Corporation to Heritage Funding Network Corporation, a company involving the Fourth Executive Vice President. The warranty deed was recorded on May 3, 1990 and is a prohibited transfer of the title in accordance with the first mortgage documents prepared by Jacobson on behalf of Bay Savings.

(m) As a result of these actions, Jacobson engaged or participated in unsafe or unsound practices and participated or aided and abetted violations of certain laws and

regulations. By reason of the foregoing unsafe or unsound practices and violations, Jacobson received financial gain or other benefit and Bay Savings suffered substantial financial loss or other damage. Such unsafe or unsound practices and violations demonstrate a willful or continuing disregard by Jacobson for the safety or soundness of Bay Savings.

Furthermore, these actions evidence Jacobson's lack of the requisite qualifications to represent others and his lack of character and professional integrity.

Jacobson desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance of the OTS from initiating an administrative proceeding against Jacobson.

2. Jurisdiction.

(a) Bay Savings was a "savings association" within the meaning of Section 3(b)(1) of the FDIA, 12 U.S.C.A. § 1813(b)(1). The Institution was 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) Jacobson, as an attorney for Bay Savings who knowingly engaged in violations of laws and regulations and unsafe and unsound practices that caused more than a minimal financial loss to Bay Savings, was 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 the 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, Jacobson is subject to the authority of the OTS to initiate and maintain an administrative proceeding against him pursuant to Section 8(e) of the FDIA, 12 U.S.C.A. § 1818(e).

(d) The Director of the OTS further has the authority to bring an administrative proceeding to suspend or permanently revoke the privilege of any person or entity to practice before it, pursuant to Part 513 of the Rules and Regulations of the OTS, 12 C.F.R. § 513 et seq.

3. Consent. Jacobson consents to the issuance by the OTS of the accompanying Order of Prohibition and Order of Suspension of the Privilege to Practice before the OTS ("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(e) of the FDIA, 12 U.S.C.A. § 1818(e) and Part 513 of the Rules and Regulations of the OTS, 12 C.F.R. Part 513. 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. Jacobson waives his right to a notice of intention to prohibit and the administrative hearing provided by Section 8(e) of the FDIA, 12 U.S.C.A. § 1818(e), and 12 C.F.R. § 513.4, 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, Jacobson acknowledges and agrees that his consent to the entry of the Order does not compromise, settle, dismiss, resolve, preclude or in any way affect any civil, criminal or administrative actions including, but not limited to, an action for the payment of restitution against Jacobson that arise pursuant to this action or otherwise, and that may be or have been brought by the OTS, the Resolution Trust Corporation or any other governmental entity.

WHEREFORE, in consideration of the foregoing and intending to be legally bound hereby, the Regional Director for the Southeast Region, on behalf of the OTS, and Jacobson execute this Stipulation and Consent to the Entry of A Prohibition Order and Order of Suspension of the Privilege to Practice before the OTS.

OFFICE OF THRIFT SUPERVISION

By:

/s/

John E. Ryan
Regional Director
Southeast Region

/s/

Andrew M. Jacobson

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In the Matter of)
ANDREW M. JACOBSON,)
Former Attorney for)
Bay Savings Bank)
West Palm Beach, Florida)

Resolution No.: ATL-92-86
Dated: October 27, 1992

ORDER OF PROHIBITION AND ORDER OF SUSPENSION OF THE
PRIVILEGE TO PRACTICE BEFORE THE OFFICE OF THRIFT SUPERVISION

WHEREAS, Andrew M. Jacobson ("Jacobson") has executed a Stipulation and Consent to the Entry of A Prohibition Order and Order of Suspension of the Privilege to Practice Before the Office of Thrift Supervision ("Stipulation"), which is accepted and approved by the Office of Thrift Supervision ("OTS") acting through its Regional Director for the Southeast Region; and

WHEREAS, Jacobson in the Stipulation has consented and agreed to the issuance of this Order of Prohibition and Order of Suspension of the Privilege to Practice Before the Office of Thrift Supervision ("Order"), pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.A. § 1818(e) (West 1989 & Supp. 1992), and Part 513 of the Rules and

Regulations of the OTS, 12 C.F.R. § 513 et seq.

NOW THEREFORE, IT IS ORDERED that:

1. Jacobson is prohibited from further participation, in any manner, in the conduct of the affairs of Bay Savings Bank, West Palm Beach, Florida ("Bay Savings" or "Institution") its holding company(ies), service corporation(s), or its successor(s) and is suspended from practice before the OTS, as defined at 12 C.F.R. § 513.2(e), from and after the effective date of this Order. Jacobson shall not, directly or indirectly, engage in the following activities:

(a) The representation of another person at any adjudicatory, investigatory, removal or rulemaking proceeding conducted before the OTS, or a presiding officer or staff of the OTS, including inter alia, those proceeding covered in 12 C.F.R. Parts 508, 509, 510, and 512;

(b) The preparation of any statement, opinion, report or other document that will be filed with or submitted to the OTS with the knowledge or consent of Jacobson in connection with any application or filing with the OTS;

(c) The presentation to the OTS or a presiding officer or staff of the OTS at a conference or meeting relating to an entity's or other person's rights, privileges or liabilities under the laws administered by the OTS and the rules and regulations promulgated thereunder;

(d) Any business correspondence or communication with the OTS or a presiding officer or staff of the OTS; and

(e) The transaction of any other formal business with the OTS on behalf of another, in the capacity of an attorney.

2. Without the prior written approval of the Regional Director for the Southeast Region and, if appropriate, any other Federal financial institutions regulatory agency, Jacobson may not hold any office in, or participate in any manner in the conduct of the affairs of any institution(s) or other entity as set forth in Section 8(e)(7)(A) of the FDIA, 12 U.S.C.A. § 1818(e)(7)(A). Participation in the conduct of the affairs of any institution or entity includes, but is not limited to, the closing of loans on behalf of any such institution or entity. Pursuant to Section 8(e)(6) of the FDIA, 12 U.S.C.A. § 1818(e)(6), 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.

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

4. Nothing contained in this Order shall be interpreted to prohibit Jacobson from responding in any manner to any charges, inquiries or other contacts initiated by the OTS and/or by any other regulatory agency concerning Jacobson. This Order applies only to Jacobson as an individual, and does not apply to any corporation, firm or other business with which Jacobson is or may become affiliated.

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

successors and heirs in interest.

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

THE OFFICE OF THRIFT SUPERVISION

By:

/s/

John E. Ryan
Regional Director
Southeast Region