

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

ELDON SWINGLER,)

Former Officer and Director)
of First Savings and Loan)
Association of South Dakota, Inc.)
Aberdeen, South Dakota)

Re: Resolution No. 92- 22

November 4
Dated: ~~October 22~~, 1992

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, and Eldon Swingler stipulate and agree as follows:

1. Consideration. The OTS, based upon information reported to it, is of the opinion that the grounds exist to initiate an administrative cease and desist proceeding against Eldon Swingler pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") (12 U.S.C.A. § 1818(b) (West 1992)). Eldon Swingler desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, while denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such administrative cease-and-desist litigation against him with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) First Savings and Loan Association of South Dakota, Inc., Aberdeen, South Dakota, is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owners' Loan Act, as amended by FIRREA. Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA (12 U.S.C.A. § 1813(c) (West 1992)).

(b) Eldon Swingler is an "institution-affiliated party" of First Savings and Loan Association of South Dakota, Inc., Aberdeen, South Dakota, as that term is defined in Section 3(u) of the FDIA, as amended by FIRREA (12 U.S.C.A. § 1813(u) (West 1992)).

(c) Pursuant to Section 3 of the FDIA as amended by FIRREA, the OTS is the "appropriate Federal banking agency" to maintain enforcement proceedings against such a savings association. Therefore, Eldon Swingler 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, as amended by FIRREA (12 U.S.C.A. § 1818(b) (West 1992)).

(d) In the opinion of the OTS, a basis exists for initiating an administrative cease and desist proceeding against Eldon Swingler as a result of unsafe, unsound practices, breaches of fiduciary duty, and regulatory violations in connection with loans made by Swingler to his business associates.

3. Consent. Eldon Swingler 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 Section 8(b) of the FDIA, as amended by FIRREA (12 U.S.C.A. § 1818(b) (West 1992)). Upon its issuance by the Regional Director for the Midwest Regional Office, OTS, 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 by FIRREA (12 U.S.C.A. § 1818(i) (West 1992)).

5. Waivers. Eldon Swingler waives his right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, as amended by FIRREA (12 U.S.C.A. § 1818(b) (West 1992)), and further waives any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, as amended by FIRREA (12 U.S.C.A. § 1818(h) (West 1992)), or otherwise to challenge the validity of the Order.

6. Discharge in Bankruptcy. Eldon Swingler acknowledges that his stipulation and agreement to pay restitution to First Savings and Loan Association of South Dakota, Inc., as set out in the accompanying Order, and any indebtedness or claim that arises therefrom, is nondischargeable in federal bankruptcy pursuant to § 2522 of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, 11 U.S.C.A. § 523 (West 1992).

7. Effect of Agreement. This Stipulation and Consent, the Order, and the payment by the Respondent of any monies or providing any other financial relief as contemplated by the Order, do not compromise, settle, dismiss, resolve, or in any way affect any civil

actions, charges against, or liability of the Respondent 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. Eldon Swingler acknowledges and agrees that the OTS reserves the right to assess further appropriate enforcement relief in the event that Swingler fails to comply with the terms of the Order to Cease and Desist or has provided financial information that is materially inaccurate or incomplete.

This Stipulation, together with two additional Stipulations being executed contemporaneously herewith, constitute the full agreement of the parties and are intended to fully and finally resolve all claims of the OTS in regard to a loan to A. Norgin Sanderson in the amount of Five Hundred Thousand Dollars (\$500,000), provided that Swingler fully performs his obligations thereunder and has not provided financial information that is materially inaccurate or incomplete. It is expressly agreed and understood that OTS does not waive, settle, or release any claims, civil or criminal, of any other governmental agency or the institution.

WHEREFORE, in consideration of the foregoing, the OTS, by and through its Regional Director for the Midwest Regional Office, OTS, and Eldon Swingler, individually, execute this Stipulation and Consent to Issuance of Order to Cease and Desist.

OFFICE OF THRIFT SUPERVISION

By: /s/
Frederick R. Casteel
Regional Director
Midwest Regional Office

/s/
Eldon Swingler

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

ELDON SWINGLER,)

Former Officer and Director)
of First Savings and Loan)
Association of South Dakota,)
Inc., Aberdeen, South Dakota)

Re: Resolution No. DM 92- 22

Dated: November 4, 1992

ORDER TO CEASE AND DESIST

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

WHEREAS, Eldon Swingler, 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.A. § 1818(b) (West 1992)).;

NOW THEREFORE, IT IS ORDERED that Eldon Swingler, shall cease and desist from any violation of, or the aiding and abetting of any violation of 12 C.F.R. § 563.43 or 571.7.

IT IS FURTHER ORDERED THAT:

1. Eldon Swingler shall make restitution to First Savings and Loan Association of South Dakota, Inc. ("First"), in the amount of Fifteen Thousand Dollars (\$15,000.00). Within twenty (20) days from the date of issuance of this Order, Eldon Swingler shall make the first payment of

Five Thousand Dollars (\$5,000) which shall be sent by check payable to First to Deborah C. Jenkins, Regional Counsel, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, P.O. Box 619027, Dallas/Ft. Worth, Texas 75261-9027. Within one year from the date of this Order, Eldon Swingler shall make a second restitution payment in the amount of Ten Thousand Dollars (\$10,000.00) in the same manner. This restitution results from legal and other expenses incurred by First in connection with an action to collect on a loan made to A. Norgrin Sanderson by First in the amount of Five Hundred Thousand Dollars (\$500,000.00).

2. The amount of restitution is based in part on certain representations as to the financial condition of Eldon Swingler. In the event that said representations are inaccurate or incomplete or if there is a failure to comply with the terms of this Order, further action may be brought.

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

4. This Order shall remain in effect until terminated, modified or suspended in writing by the Regional Director or his designee.

5. Requests for extension of time frames may be denied or approved through a letter by the Regional Deputy Director upon a showing of good cause. Such extensions of time frames shall become effective upon ten (10) days after the date of the letter.

6. In case any provision in this Order is ruled to be invalid, illegal or unenforceable by the decision of any Court of competent

jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director or Regional Deputy Director, in his or her sole discretion, determines otherwise.

THE OFFICE OF THRIFT SUPERVISION

By: /s/
Frederick R. Casteel
Regional Director
Midwest Regional Office