

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

IN THE MATTER OF:
DREW IR.
~~BIRMINGHAM~~ BIRMINGHAM, FORMER DIRECTOR
OF
MERCANTILE SAVINGS BANK
SOUTHAVEN, MISSISSIPPI

Resolution No. DAL-91-76

Dated: June 27, 1991

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

The Office of Thrift Supervision ("OTS"), by and through the Regional Director for the Midwest Regional Office in Dallas, Texas, and Drew Birmingham ("Birmingham"), former Director of Mercantile Savings Bank, Southaven, Mississippi ("Institution"), 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 Birmingham, pursuant to 12 U.S.C. § 1818(i)(2). Birmingham 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 consideration of the forbearance by the OTS from initiating such administrative civil money penalty assessment proceeding against Birmingham with respect to the following matters:

- (a) As a former Director of the Institution, Birmingham failed to ensure that the Institution comply with the requirements of the Community Reinvestment Act ("CRA") with respect to addressing the credit needs of the Institution's delineated community, in violation of 12 C.F.R. § 563e.2. No loans (other than loans secured by savings accounts) were granted during the six-month review period ending July 31, 1990. As of October 15, 1990, the Institution had not granted a home loan in its delineated community in approximately one year, in violation of 12 C.F.R. § 528.3(a), even though management continuously sought local deposits.
- (b) As a former Director of the Institution, Birmingham failed to ensure that the Institution maintain a CRA Compliance Officer in Southaven, Mississippi. The CRA Officer worked out of the Institution's service corporation in Houston, Texas.

- (c) As a former Director of the Institution, Birmingham failed to ensure that the Institution was able to adequately process loan applications. There were no mortgage loan application forms or a mortgage loan officer at the Institution, in violation of 12 C.F.R. § 528.6(d)(1). Also, there was no maintenance of a loan application register at the Institution's offices.

2. JURISDICTION

- (a) Before being placed into Receivership on April 19, 1991, Mercantile Savings Bank, Southaven, Mississippi, was a "savings association" within the meaning of Section 3 of the Federal Deposit Insurance Act ("FDIA") and Section 2 of the Home Owners' Loan Act of 1933, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183. Accordingly it was 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 of the FDIA, as amended by FIRREA, the OTS is the "appropriate Federal banking agency" to maintain civil money penalty assessment proceedings against such a savings association and persons participating in the conduct of the affairs thereof.
- (c) Birmingham was a director and/or officer and/or person participating in the affairs of the Institution at all times relevant to the allegations set forth herein, and as such, was an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(u).
- (d) As an institution-affiliated party, Birmingham is subject to the OTS's authority to initiate and maintain the assessment of a civil money penalty pursuant to 12 U.S.C. § 1818(i)(2).

3. CONSENT

Birmingham consents to the issuance by OTS of the accompanying Order and 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 12 U.S.C. § 1818(i)(2). Upon its issuance by the Regional Director for the Midwest Regional Office, Dallas, Texas, it shall be a final order, effective and

fully enforceable by the OTS under the provisions of Section 8(1)(2) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(1)(2)).

5. WAIVERS

Birmingham waives the right to a Notice of Assessment of Civil Money Penalty provided by Section 8(1)(2) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(1)(2)) and the administrative hearing provided by 12 U.S.C. Section 1818(1)(2)(h), and further waives his right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(h)) or to otherwise challenge the validity of the Order.

WHEREFORE, in consideration of the foregoing, the Regional Director for the Midwest Regional Office, on behalf of the OTS, and Birmingham, execute this Stipulation and Consent to Issuance of Order of Civil Money Penalty Assessment.

OFFICE OF THRIFT SUPERVISION

BY: /S/
BILLY C. WOOD
REGIONAL DIRECTOR
MIDWEST REGIONAL OFFICE

/S/
~~JOHN~~ BIRMINGHAM JR
De

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

IN THE MATTER OF:

DREW BIRMINGHAM, FORMER DIRECTOR
OF
MERCANTILE SAVINGS BANK
SOUTHAVEN, MISSISSIPPI

Resolution No.: DAL-91-76

Dated: June 27, 1991

ORDER OF CIVIL MONEY PENALTY ASSESSMENT

WHEREAS, Drew Birmingham ("Birmingham"), a former Director of Mercantile Savings Bank, Southaven, Mississippi, has executed a Stipulation and Consent to Issuance of Order of Civil Money Penalty Assessment, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS") acting through the Regional Director for the Midwest Regional Office; and

WHEREAS, Birmingham, in the Stipulation, has consented to the issuance of this Order of Civil Money Penalty Assessment pursuant to 12 U.S.C. § 1818(1)(2).

NOW THEREFORE, IT IS ORDERED that within five (5) days of the effective date of this Order, Birmingham shall pay to OTS a sum of \$1,000 (one thousand dollars) by tendering a check to OTS in that amount made payable to the Treasurer of the United States.

OFFICE OF THRIFT SUPERVISION

BY: /S/
Billy C. Wood
Regional Director
Midwest Regional Office