

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)

FRANCES AVERY,)
Officer and Institution-)
Affiliated Party)
of:)

Davy Crockett Federal Savings)
Bank, Crockett, Texas)
_____)

RE: Resolution No. DAL-91-92

DATED: July 19, 1991

STIPULATION AND CONSENT TO ISSUANCE OF
ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Director, and Frances Avery ("Avery"), officer of Davy Crockett Federal Savings Bank, Crockett, Texas (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 cease and desist proceeding against Avery, pursuant to Section 407(g) of the National Housing Act of 1934 ("HOLA"), 12 U.S.C. § 1730(e), and Section 8(b) 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. § 1818(b) (1988 and Supp. I 1989). Avery desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Without admitting or denying the statements,

conclusions or terms herein, Avery hereby stipulates and agrees to the following terms in consideration of: (1) the forbearance by the OTS from initiating such administrative cease and desist litigation; and (2) the agreement by the OTS to refrain from seeking the issuance of additional enforcement orders against Avery with respect to any matters (a) reported or otherwise addressed in the OTS Report of Examination of the Institution for the examination commenced as of April 16, 1990, or (b) discovered by the OTS as a result of its investigative proceeding, commenced pursuant to OTS Resolution No. DAL-91-14, March 11, 1991. Avery, without trial, presentation of any evidence, or findings of fact pursuant to an administrative judicial hearing, has consented to the terms of the Stipulation for the sole purpose of resolving the issues in this proceeding without significant legal cost and expense. The OTS has determined that it is appropriate, and in the best interest of the public to execute the Stipulation and the attached Order to Cease and Desist ("Order"). This Stipulation and the attached Order are issued solely to settle this proceeding, and are not the result of factual findings.

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

(a) The Institution at all times relevant to the allegations set forth herein, was a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) and

Section 2(4) of the Home Owners' Loan Act of 1933, as amended by Section 301 of FIRREA, 12 U.S.C. § 1462(4). Accordingly, it was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA, 12 U.S.C. § 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 NHA, 12 U.S.C. § 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 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 Avery, pursuant to Section 5 of the HOLA, 12 U.S.C. § 1464.

(e) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended by Section 204 of FIRREA, 12 U.S.C. § 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 cease and desist proceedings directing restitution 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. § 1464(d)(1)(A), and Section 8(b) of the FDIA, as amended by the FIRREA, 12 U.S.C. § 1818(b).

(g) During the period July 20, 1987 through March 31, 1989, Avery was paid advisory director fees in the total amount of \$2,400.00 by the Institution, although Avery did not attend board meetings or offer advice and guidance to the board of directors, and was not appointed as an advisory director in accordance with 12 C.F.R. § 545.123. The fees remitted to Avery were paid into an account at the Institution that was styled, "John H. Stowe and Henry M. Ellis, Trustees," and were then used to pay interest on a loan at Texas National Bank, Longview, Texas (th "TNB Loan"), that was secured by the stock of the Institution. Avery was neither an obligor nor guarantor on the TNB Loan.

(h) On or about June 29, 1989, Avery was requested by John H. Stowe, then Chief Executive Officer of the Institution, to

execute misleading loan documents, the proceeds of which would be used to make a principal reduction on the TNB Loan. Avery refused to execute such documents, although she understood that such decision could jeopardize her continued employment by the Institution.

3. Consent. Without admitting or denying the need or basis therefor, Avery consents to the issuance by the OTS of the Order, a copy of which is attached hereto and incorporated as Exhibit A. She 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. § 1818(b) and Section 407(e) of the NHA, 12 U.S.C. § 1730(e).

4. Finality. The Order is issued under Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(b). 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 by FIRREA, 12 U.S.C. § 1818(i).

5. Waivers. Avery waives her 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. § 1818(b), and 12 C.F.R. § 513.4(a), 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. § 1818(h), or otherwise to challenge the validity of the Order.

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RE: Resolution No. DAL-91-92

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ORDER TO CEASE AND DESIST

WHEREAS, Frances Avery ("Avery") 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 Director; and

WHEREAS, without admitting that the grounds exist therefor, Avery has consented and agreed in the Stipulation to the issuance of this Order to Cease and Desist ("Order"), pursuant to Section 8(b) of the Federal Deposit Insurance Act, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, ("FIRREA"), 12 U.S.C. § 1818(b) (1988 and Supp. I 1989);

NOW THEREFORE, IT IS ORDERED THAT:

1. Avery shall not accept any fee or other compensation as an advisory director of a savings association, as defined at 12 U.S.C. § 1813(b), unless she has been appointed by the board of directors

of the savings association in accordance with the requirements of 12 C.F.R. § 545.123.

2. When particular issues arise that may cause Avery to be uncertain about her responsibilities as an officer and/or employee of an insured depository institution, Avery shall obtain the advice of competent counsel with regard to the fiduciary duties that she owes to the institution and to the federal deposit insurance fund, and with regard to compliance with this Order.

3. In the event that Avery has reasonable notice that an officer or director of an insured depository institution is engaging, has engaged, or is about to engage in: (a) an unsafe or unsound practice in conducting the business of such institution; (b) the violation of a law, rule, regulation, or any condition imposed in writing by the agency in connection with the granting of any application or any written agreement with the agency; or (c) a breach of his or her fiduciary duties to the insured depository institution, Avery shall notify said officer or director and the appropriate regulatory agency.

4. Definitions: For the purpose of this Order, the terms used herein have the following meanings:

(a) "Insured Depository Institution" is defined to include savings and loan associations, commercial banks, credit unions and

