

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION

In the Matter of:)
)
THOMAS J. FOWLER, Former)
Director of Executive)
Bank Savings Association,)
New Braunfels, Texas)
)

Re: Resolution No. DAL-91-173

Dated: October 25, 1991

STIPULATION AND CONSENT TO
ISSUANCE OF ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office, and Thomas J. Fowler ("Fowler"), former director of Executive Bank Savings Association, New Braunfels, Texas (the "Institution"), hereby 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 proceeding against Fowler 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 ("FIRREA"), 12 U.S.C. § 1818(b) (1988 and Supp. I 1989). Fowler desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Fowler hereby stipulates and agrees to the following terms in consideration of:
(a) the forbearance of OTS from initiating such administrative

litigation against Fowler; and (b) the agreement by the OTS to refrain from seeking the issuance of additional enforcement orders against Fowler with respect to any matters known to the OTS as of the date of issuance of the attached Order to Cease and Desist ("Order").

2. Jurisdiction.

(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 National Housing Act of 1934 ("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 its directors and officers, including Fowler, 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. § 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 an administrative cease and desist proceedings against Fowler, 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 of the FDIA, as amended by the FIRREA, 12 U.S.C. § 1818.

(g) Fowler was a director of the Institution from 1986 to approximately August, 1989. Therefore, Fowler was at all times relevant to the allegations set forth herein, an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(u), and as such, is subject to the OTS's authority to maintain prohibition proceedings.

(h) Fowler, at all times relevant hereto, was an attorney, licensed to practice law in the State of Texas.

(i) During the period June 1986 through August 1989, Fowler as a director of the Institution, along with other members of the board of directors, approved or permitted the Institution to engage in various transactions with affiliated persons that were in violation of 12 C.F.R. §§ 563.40, 563.41, and 563.43, and in violation of the Institution's Plan for the Avoidance of Conflicts of Interest, which had been adopted by the board of directors on December 13, 1985. The aforementioned transactions have resulted in significant loss to the Institution and/or benefit to institution-affiliated parties, including but not limited to Vernon L. Watson, Kenneth R. Rice, Lonnie E. Chunn, and William M. Norris.

3. Consent. Fowler consents to the issuance by the OTS of the accompanying Order, 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(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director for the Midwest Regional Office, 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).

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ORDER TO CEASE AND DESIST

WHEREAS, Thomas J. Fowler ("Fowler") has executed a Stipulation and Consent to Issuance of Order to Cease and Desist ("Stipulation"), which is accepted and approved by the Office of Thrift Supervision ("OTS") acting through its Regional Director for ~~the Midwest~~ Regional Office; and

WHEREAS, Fowler 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 ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1818(e) (1988 and Supp. I 1989);

NOW THEREFORE, IT IS ORDERED that:

1. Fowler shall cease and desist from any acts, omissions or practices that constitute any violation of law or regulation, any

breach of fiduciary duty, or any unsafe and unsound practices, as defined at 12 U.S.C. § 1813, et seq., and 12 C.F.R. § 500 et seq., with respect to an insured depository institution.

2. Without the prior written approval of the Regional Director for the Midwest Regional Office of the OTS, and any other appropriate regulatory agency, Fowler shall not act as a director, officer or controlling person of an insured depository institution.

3. Upon becoming a director, officer or controlling person of an insured depository institution, Fowler shall make reasonable inquiry to assure that transactions between the institution and affiliated person(s) are in compliance with the institution's internal policy concerning conflicts of interest; the conflict of interest regulations at 12 C.F.R. §§ 563.40, 563.41 and 563.43; the conflict of interest policy statements at 12 C.F.R. § 571.7; the conflict of interest statutes at 12 U.S.C. §§ 371c, 371c-1 and 375b; and the provisions of Section 10(d) and 11 of the Home Owners Loan Act, as amended by Section 301 of FIRREA, 12 U.S.C. §§ 1467a(d) and 1468; all as now in effect or as they may hereafter be amended or superseded.

4. In the event that Fowler, as an officer, director or controlling person of an insured depository institution, has

reasonable notice that an institution-affiliated party of the 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, Fowler shall notify said institution-affiliated party, the institution's board of directors, and the appropriate regulatory agency.

5. 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 other similar entities that hold federally insured deposits, and any non-diversified holding company or subsidiary thereof.

(b) "Appropriate regulatory agency" includes the federal agency(ies) with regulatory authority over the particular institution, as defined in more detail at 12 U.S.C. § 1813(q).

(c) "Institution-affiliated party" is defined at 12 U.S.C. § 1813(u).

