

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION

In the Matter of:)
)
MILTON L. FERGUSON,)
Former Director of)
Executive Bank Savings)
Association, New)
Braunfels, Texas)
)

Re: Resolution No. DAL-91-174

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 Milton L. Ferguson ("Ferguson"), 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 Ferguson 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). Ferguson, without admitting that such grounds exist and without admitting any of the allegations, assertions or opinions of the OTS set forth herein, desires to cooperate with the OTS in order to avoid the time and expense of such administrative litigation. The OTS acknowledges and agrees that Ferguson's agreements and stipulations herein, and his consent to the issuance of the

accompanying Order shall not be deemed admissions by him of any opinions or matters asserted or alleged herein; and that Ferguson continues to dispute the same. Subject to the foregoing, Ferguson hereby stipulates and agrees to the following terms in consideration of: (a) the forbearance of OTS from initiating such administrative litigation against Ferguson; and (b) the agreement by the OTS to refrain from seeking the issuance of additional enforcement orders and from bringing any other administrative litigation or action against Ferguson with respect to any other 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 Ferguson, 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 Ferguson, 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) Ferguson was an a director of the Institution from 1985 through approximately August, 1989. Therefore, Ferguson 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) The OTS asserts that, during the period June 1986 through August 1989, Ferguson 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 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 OTS is of the opinion that 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, and Lonnie E. Chunn.

3. Consent. Ferguson, for the consideration recited hereinabove, and without any admissions as stated hereinabove, 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

2. Without the prior written approval of the Regional Director for the Midwest Regional Office of the OTS, and any other appropriate regulatory agency, Ferguson 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, Ferguson 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 Ferguson, 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, Ferguson shall notify said officer or director, 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).

(d) The term "violation" includes any action (alone or with another or others) for or toward causing, bringing about, participating, counseling or aiding or abetting a violation.

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

