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UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of)

WILLIAM A. SEALS,)
a former Director of Concordia)
Federal Bank for Savings, Lansing,)
Illinois; and a former Director and)
Officer of Concor Financial Services,)
Inc. a wholly-owned subsidiary of)
Concordia Federal Bank for Savings,)

and)

ROBERT A. GUARRERA, PETER R. REYNOLDS,)
former Officers and Directors of)
Concor Financial Services, Inc.)

Re: Enforcement Review
Committee Resolution
No. 90-53
dated July 5, 1990

NOTICE OF CHARGES AND HEARING AND
NOTICE OF INTENTION TO PROHIBIT

In accordance with Section 5(d)(1)(A) of the Home Owners' Loan Act ("HOLA"), as amended by Title III of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") (to be codified at 12 U.S.C. § 1464(d)(1)(A)), Sections 8(b) and (e) of the Federal Deposit Insurance Act ("FDIA"), as amended by Title IX of FIRREA (to be codified at 12 U.S.C. § 1818(b) and (e)), and Sections 5(d)(2) and (4) of the Home Owners' Loan Act of 1933 (12 U.S.C. § 1464(d)(2) and (4) (1982)), the Office of Thrift Supervision ("OTS")

being of the opinion that grounds exist to initiate an administrative cease and desist and prohibition proceeding seeking a cease and desist order, including restitution, and an order of prohibition against William A. Seals ("Seals"), Robert A. Guarrera ("Guarrera"), and Peter Reynolds ("Reynolds") hereby issues this Notice of Charges and Hearing and Notice of Intention to Prohibit ("Notice") against Seals, Guarrera, and Reynolds.

I. JURISDICTION

1. Concordia Federal Bank for Savings, Lansing, Illinois ("Concordia"), is a savings association and an insured depository institution maintaining its principal place of business in Lansing, Illinois.

2. Concor Financial Services, Inc. ("Concor"), was an Illinois corporation and a wholly-owned service corporation of Concordia with its principal place of business in Santa Ana, California. Prior to January 21, 1988, Concor was a wholly-owned subsidiary of Concor, Inc., a wholly-owned service corporation of Concordia.

3. William A. Seals was a director of Concordia and a director and president of Concor at all times pertinent to the events described herein.

4. Robert A. Guarrera was a director and executive vice-president of Concor at all times pertinent to the events described herein.

5. Peter R. Reynolds was a director and senior vice-president of Concor at all times pertinent to the events described herein.

6. As officers and directors, Seals, Guarrera, and Reynolds, are subject to the authority of the OTS to maintain both a cease and desist and a prohibition proceeding against them.

7. The Director of the OTS is the "appropriate Federal banking agency" as defined in Section 3(q) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1813(q)).

8. The Director of OTS has the authority to bring a administrative cease and desist and prohibition proceedings seeking a cease and desist order directing restitution and a prohibition order against Seals, Guarrera, and Reynolds pursuant to Section 5(d)(1)(A) of the HOLA, as amended by Title III of the FIRREA (to be codified at 12 U.S.C. § 1464(d)(1)(A)), and Sections 8(b)(8) and 8(e) of the FDIA, as amended by Title IX of the FIRREA (to be codified at 12 U.S.C. §§ 1818(b)(8) and 1818(e)).

II. FACTS

(Unauthorized Compensation Terms)

9. Seals, Guarrera, and Reynolds entered into employment contracts with Concordia as president, executive vice-president, and senior vice-president, respectively, of Concor on or about September 13, 1984 ("1984 Contracts"), for the purpose of managing Concor's proposed commercial construction lending operation.

10. Under the 1984 contracts, Seals, Guarrera, and Reynolds were to receive compensation based on detailed calculations of the fee income Concor received from loans originated, purchased, or otherwise acquired by Concor, a percentage of the increase in net worth of Concor, and the fair market value of loans serviced. The

1984 Contracts provided for the payment of compensation at specified times.

11. All compensation checks were calculated and issued by Concor through its accounting division, either by the controller, chief financial officer, or treasurer of Concor.

12. Later in September 1984, Concordia entered into a Supervisory Agreement that prohibited Concordia and its service corporations from performing commercial construction lending.

13. Seals, Guarrera, Reynolds, and management at Concordia then decided to change Concor into a mortgage banking operation.

14. The 1984 Contracts were not changed to reflect the new scope of Concor's operation.

15. From the inception of Concor until December 31, 1986, Seals, Guarrera, and Reynolds received compensation based on net cash gains and losses on the sale of loans by Concor.

16. The 1984 Contracts did not provide for compensation to Seals, Guarrera, and Reynolds based on net cash gains and losses on the sale of loans by Concor.

17. Seals, Guarrera, and Reynolds received over \$500,000 in income by adding net cash gains and losses on the sale of loans into their calculation of compensation.

18. At the request of the the Federal Home Bank of Chicago ("FHLB"), predecessor to the OTS's Chicago District Office, Seals, Guarrera, and Reynolds were instructed to sign new employment contracts during February 1987 ("1987 Contracts").

19. The 1987 Contracts superceded the 1984 Contracts as of January 1, 1987.

20. The 1987 Contracts provided that compensation for Seals, Guarrera, and Reynolds would be based on a yearly salary of \$200,000, a percentage of the increase in net worth of Concor for 1985 and 1986, and a year-end bonus based on the increase in net profit of Concor. The 1987 Contracts provided for the payment of compensation at times described in the 1987 Contracts.

21. The market value of accumulated servicing and/or servicing sales were to be included in determining net worth.

22. On or about October 15, 1986, Platte Valley Federal Savings and Loan Association ("Platte") offered to purchase \$142 million worth of loan servicing rights from Concor at 2.16% of Eligible Principal Balances ("EPB"), the principal balance remaining on the loans for which servicing rights were purchased.

23. Platte completed its purchase of loan servicing rights on or about February 23, 1987.

24. On or about April 28, 1987, Frontier Federal Savings and Loan Association ("Frontier") offered to purchase \$162.6 million of loan servicing rights from Concor for 1.85% of EPB.

25. This offer was amended on May 4, 1987, to purchase \$162.6 million of loan servicing rights for 1.95% of EPB.

26. A second offer was presented by Frontier to Concor on November 12, 1987, for \$125.1 million of loan servicing rights at 3.35% of EPB.

27. Frontier completed the purchase of both loan servicing sales after January 1, 1987.

28. Concor agreed to repurchase all unacceptable loan servicing rights from Platte and Frontier on all three sales of

servicing rights based on, among other things, prepayment penalties, missing documentation and missing loan files.

29. Seals, Guarrera, and Reynolds were paid bonuses totaling \$1,135,418 from the three loan servicing sales.

30. The \$1,135,418 represented 25% of the gross sales price of all the loans originated, purchased, or otherwise acquired by Concor in 1986 and with respect to which servicing rights were sold to Frontier and Platte in 1987.

31. The 1984 and 1987 Contracts contain no provision for bonus payments to Seals, Guarrera, and Reynolds based on the gross sales price of loan servicing rights sales. No market value analysis of the servicing rights sales to Frontier and Platte was performed prior to paying Seals, Guarrera, and Reynolds.

32. The 1984 and 1987 Contracts contain no provision for distinguishing between loans originated, purchased, or otherwise acquired by Concor before January 1, 1987, and loans originated, purchased, or otherwise acquired by Concor after December 31, 1986.

33. After Concor was closed in August 1988, Concordia was forced to repurchase loan servicing rights from Platte based on prepayment penalties. Since Concor failed to create reserves for the repurchased loans from Platte, Concordia incurred losses of \$281,523 from the gross profits of the sale to Platte.

34. Concordia also repurchased loan servicing rights from Frontier based on, among other things, missing documentation from respective loan files, and respective missing loan files. Since Concor failed to create reserves for the repurchase of loans from

Frontier, Concordia incurred losses of \$17,396 from the gross profits of the sales to Frontier.

(Inflated Financial Statements)

35. Intercompany accounts between Concordia and Concor were not reconciled on a timely basis for the years beginning 1985 through August 1988. Management and the board of directors at Concordia and Concor were informed of the reconciliation problems every year by the independent auditors.

36. The independent auditors recommended that intercompany account reconciliations be performed on a monthly basis.

37. Although Seals, Guarrera, and Reynolds were aware of the independent auditors' recommendations when made, they failed to reconcile the intercompany accounts accordingly and overstated Concor's unaudited financial statements by at least \$500,000 for the year ending December 31, 1987.

38. Seals, Guarrera, and Reynolds knowingly received compensation based on intercompany accounts that were not reconciled with Concordia.

39. On behalf of Concor, Seals, Guarrera, and Reynolds entered into an oral agreement with management at Concordia, whereby Concordia would periodically purchase adjustable rate mortgages ("ARMs") from Concor for Concordia's portfolio.

40. Under the agreement the ARMs would be purchased in large loan packages from Concor at market value.

41. Concor failed to periodically mark its loans to the lower of cost or market value.

42. Concor sold approximately 22 loan packages to Concordia

from approximately December 31, 1985, through July 13, 1988.

43. At time of transfer of loan packages, loans not previously marked to the lower of cost or market value should have been marked down.

44. The 22 packages were not marked to the lower of cost or market value by Concor on date of transfer from Concor to Concordia.

45. Concor incurred losses of over \$1 million on the loan sales to Concordia, and failed to record such losses at the time.

46. By not recording over \$1 million in losses, Seals, Guarrera, and Reynolds received income based on inflated unaudited financial statements.

47. On or about March 10, 1988, the FHLB issued a directive to Concordia that no imputed gains shall be recorded on the sale of loans with servicing retained by Concordia or its subsidiaries.

48. Seals and Guarrera continued to impute gains of \$2,577,000 on the sale of loans with servicing retained in violation of the directive.

49. By continuing to impute gains in violation of the FHLB directive, Concor inflated its unaudited financial statements.

50. Seals and Guarrera received increased amounts of income based on such statements beyond that amount they would have been entitled to under the 1987 Contracts had gains not been imputed in compliance with the FHLB directive.

51. In the normal course of business, Concor funded millions of dollars of loans for resale on the secondary market.

52. During the first six months of 1988, Concor failed to

create reserves of approximately \$2 million for losses incurred by marking loans sold and loans warehoused by Concor to the lower of cost or market value.

53. Concor's failure to create reserves of over \$2 million resulted in inflated financial statements, and an increase in compensation to Seals and Guarrera based on their 1987 Contracts.

54. Concor also owned loan servicing rights with respect to certain loans it purchased, originated, or otherwise acquired.

55. These loan servicing rights provided actual and projected income for Concor, which was reflected in Concor's financial statements.

56. During the first six months of 1988, Concor failed to reduce the book value of loan servicing rights to the lower of cost or market value, and create valuation reserves of over \$1 million of loan servicing rights losses.

57. Concor's failure to create over \$1 million in reserves resulted in inflated financial statements.

58. Seals and Guarrera received increased amounts of income based on such statements beyond that amount they would have been entitled to under the 1987 Contracts had the financial statements reflected the \$1 million in reserves.

(Bad Loans)

59. From early 1987 until March 1988, Concor originated, purchased, or otherwise acquired loans for resale on the secondary market.

60. Concor did not maintain adequate and complete loan files on over \$10 million of the loans originated, purchased or

otherwise acquired during this period as required by 12 C.F.R. § 563.17-1(c) (1987). Examples of inadequate and incomplete loan files include, among other things, missing deeds, hazard policies, settlement statements, final Regulation Z disclosure statements, funding sheets and appraisal reports.

61. Concor's loans with respect to which there was missing or inadequate documentation could not be resold on the secondary market. As a result, these loans were sold to Concordia.

62. By selling these loans to Concordia, Concor did not incur losses it otherwise would have incurred but for Concordia's acceptance.

63. Concordia suffered losses of over \$1 million by purchasing these loans from Concor and being unable to sell them.

64. Seals, Guarrera, and Reynolds received increased amounts of income based on Concor's inflated financial statements beyond that amount they would have been entitled to under the 1987 Contracts had Concor incurred losses on the loans with missing or inadequate documentation.

III. CHARGES

65. Paragraphs 8 through 34 are realleged and incorporated herein by reference.

66. Seals, Guarrera, and Reynolds were paid compensation based on a percentage of net cash gains and losses on the sale of loans, and a percentage of the servicing rights sales to Platte and Frontier, bases not provided for in the 1984 and 1987 Contracts.

67. By receiving a percentage of the net cash gains and

losses on the sale of loans, and a percentage of the servicing rights sales to Platte and Frontier, Seals, Guarrera, and Reynolds received income not provided for in the 1984 and 1987 Contracts.

68. Seals, Guarrera, and Reynolds had a fiduciary duty as officers and directors of Concor and/or Concordia to take compensation only as specified in the 1984 and 1987 Contracts.

69. Seals, Guarrera, and Reynolds breached their fiduciary duty numerous times since 1985 by taking compensation of over \$600,000 not provided for in the 1984 and 1987 Contracts.

70. Seals, Guarrera and Reynolds' breach of fiduciary duty resulted in financial gain or other benefit to Seals, Guarrera, and Reynolds.

71. Seals, Guarrera, and Reynolds' breach of fiduciary duty resulted in Concor and/or Concordia suffering financial loss or other damage.

72. Seals, Guarrera, and Reynolds' breaches of fiduciary duties demonstrated a willful or continuing disregard for the safety and soundness of Concor and/or Concordia.

73. Paragraphs 35 through 58 are realleged and incorporated herein by reference.

74. By not reconciling intercompany accounts between Concor and Concordia, selling loan packages from Concor to Concordia without marking loans to the lower of cost or market value, imputing gains on the sale of loans with servicing released after directed by the FHLB to stop, and not creating reserves for loan losses and losses from servicing rights, Seals, Guarrera, and Reynolds improperly inflated Concor's income by over \$7 million

from 1985 until August 1988.

75. Seals, Guarrera, and Reynolds had a fiduciary duty as officers and directors of Concor and/or Concordia to produce accurate unaudited financial statements for Concor.

76. Seals, Guarrera, and Reynolds breached their fiduciary duty numerous times since 1985 by producing misleading and inaccurate unaudited financial statements for Concor.

77. Seals, Guarrera, and Reynolds received financial gains or other benefits by reason of such breaches with respect to their compensation purportedly based on their 1984 and 1987 Contracts.

78. By reason of the breaches of fiduciary duties by Seals, Guarrera, and Reynolds, Concor and/or Concordia suffered financial loss or other damage.

79. Seals, Guarrera, and Reynolds' breaches of fiduciary duties demonstrated a willful or continuing disregard for the safety and soundness of Concor and/or Concordia.

80. Paragraphs 59 through 64 are realleged and incorporated herein by reference.

81. Seals, Guarrera, and Reynolds violated 12 C.F.R. § 563.17-1(c) (1987).

82. Seals, Guarrera, and Reynolds engaged in an unsafe or unsound practice by failing to maintain complete and adequate loan files and documentation.

83. By reason of the violation of 12 C.F.R. § 563.17-1(c) (1987) and/or unsafe or unsound practice, Seals, Guarrera, and Reynolds received financial gain or other benefit.

84. By reason of the violation of 12 C.F.R. § 563.17-1(c)

(1987) and/or unsafe or unsound practice, Concor and/or Concordia has suffered financial loss or other damage.

85. Such violation and/or the unsafe and/or unsound practice demonstrates a willful or continuing disregard for the safety or soundness of Concor and/or Concordia.

NOTICE OF HEARING

Notice is hereby given that an administrative hearing will be held to determine whether orders to cease and desist and prohibit should be issued against Seals, Guarrera, and Reynolds. The hearing also will include a determination as to whether Seals, Guarrera, and Reynolds shall be required to take affirmative action to correct the conditions resulting from practices alleged hereing, including restitution, reimbursement, indemnification, warrenties against loss, or such other as determinied appropriate. The hearing is hereby fixed for sixty days from the service of this Notice in Chicago, Illinois, subject to change by order of the Administrative Law Judge to preside over the hearing or the OTS. The time of day and the location of the hearing shall be set by the Administrative Law Judge. The hearing will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 554-557 (1982), and Part 509 of the Rules of Practice and Procedure in Adjudicatory Proceedings, 12 C.F.R. pt. 509 (1990).

Seals, Guarrera, and Reynolds are hereby directed to file an answer to this Notice within 20 days after service. The requirements of the answer and consequences of failure to file an

answer are set forth in Section 509.14 of the Rules of Practice and Procedure in Adjudicatory Proceedings.

By the Enforcement Review Committee

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Rosemary Stewart
Secretary
Enforcement Review Committee