

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
BLUE RIDGE SAVINGS BANK)
)
Asheville, North Carolina)
_____)

Resolution No.: ATL-91-64

Dated: September 23, 1991

**STIPULATION AND CONSENT TO ISSUANCE
OF ORDER TO CEASE AND DESIST**

The Office of Thrift Supervision ("the OTS"), by and through its Regional Director for the Southeast Region ("Regional Director") and Blue Ridge Savings Bank, Asheville, North Carolina, OTS Docket Number 8169 ("Blue Ridge" or "Institution"), stipulate and agree as follows:

1. Consideration. The OTS, based upon information derived from the exercise of its supervisory and regulatory powers, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Blue Ridge pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b) (1988 & Supp. I 1989). The grounds include violations of regulations and of the Supervisory Agreement ("Agreement"), executed by the Directors of Blue Ridge on April 26, 1990, as follows:

(a) Loans to affiliated persons were made without full disclosure to the board of directors being reflected in the minutes and without proper underwriting in one instance, in violation of 12 C.F.R. § 563.43, the Agreement and the Institution's loan underwriting standards.

(b) The Institution did not adequately underwrite and document consumer loans, in violation of 12 C.F.R. § 563.170 and the Agreement's requirement that the Institution develop and comply with comprehensive written consumer loan underwriting policies. The deficiencies include incomplete

applications, renewals and origination of single payment loans without documented sources of repayment, the absence of written approval by the loan officer, and incomplete financial statements. Five of the deficiencies occurred in a one month period after management was notified that the revised policies were acceptable.

(c) The wording of the Institution's revised construction loan policy did not adequately address rotation of inspectors, segregation of duties in the lending area, and maintenance of adequate funds in loans-in-process accounts, in violation of the Agreement.

(d) The Institution's board minutes do not reflect the directors' review of the business plan on a quarterly basis as required by the Agreement.

(e) The Institution originated three loans in excess of the loans to one borrower limit established by 12 C.F.R. § 563.93.

(f) The Institution granted four nonresidential mortgage loans totaling \$365,000, in violation of the limitations of 12 C.F.R. § 545.35. These loans were granted after the Institution received written notice of this limit from the OTS in a letter dated April 24, 1990.

(g) The Institution has not established adequate general valuation allowances as required by the Agreement and by 12 C.F.R. § 563.160(c).

(h) The Institution failed to maintain accurate records verifying its compliance with OTS liquidity requirements, in violation of 12 C.F.R. § 566.4.

Blue Ridge desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding 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 cease-and-desist proceeding against Blue Ridge with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction

(a) Blue Ridge is 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 ("HOLA"), 12 U.S.C. § 1462(4). It is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) Pursuant to Section 3(q)(4) of the FDIA, 12 U.S.C. § 1813(q)(4), the Director of the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, Blue Ridge is subject to the authority of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

3. Consent. Blue Ridge consents to the issuance by the OTS of the accompanying Order. It further agrees to comply with the terms of the Order 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, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. Waivers. Blue Ridge waives its right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and further waives any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.

IT IS FURTHER ORDERED THAT:

CONFLICTS OF INTEREST/TRANSACTIONS WITH AFFILIATES

8. Blue Ridge shall not make, invest in, purchase, sell, refinance, extend or otherwise modify or commit to make, invest in, purchase, sell, refinance, extend, or otherwise modify any loans to, nor engage in any other business arrangement, or real or personal property transactions (other than deposit transactions in the ordinary course of business) with any affiliated person (as defined in 12 C.F.R. § 561.5 (1991)) unless 30 days prior written notice of such transaction has been provided to the Regional Director or his delegate and the Regional Director does not object. This provision shall apply to the transactions described above although notification and/or approval of such transactions may not be required by 12 C.F.R. §§ 563.43(b) and/or 563.41. This provision, however, shall not apply to loans of the following types, provided such loans comply with the Institution's loan underwriting standards and all applicable regulations, and are approved by the board of directors ("Board") in accordance with 12 C.F.R. § 563.43(b):
 - (a) loans secured by savings accounts of the Institution;
 - (b) loans fully secured by the borrower's principal residence;
 - (c) education loans;
 - (d) consumer loans up to \$10,000 in the aggregate to one borrower; and
 - (e) commercial loans up to \$10,000 in the aggregate to one borrower.
9. The Institution shall henceforth comply with its established policy concerning loans to affiliated persons.
10. Within 30 days of the effective date of this Order, the Board shall submit a certified resolution to the Regional Director specifically detailing the corrective actions implemented by the Board to prevent nonpermissible loans to affiliated persons and to prevent the appearance of conflicts of interest.

LOAN REVIEW COMMITTEE

11. Within 30 days of the effective date of this Order, the Board shall establish a loan review committee and shall adopt, approve, and implement detailed written procedures to be used by the loan review committee during the performance of quarterly loan reviews. The membership of the loan review committee shall consist of at least three outside directors.

NONMORTGAGE LENDING

12. Until such time as the loan review committee is established and the loan review procedures are established, adopted, and implemented, the Institution shall not make, invest in, sell, refinance, extend or otherwise modify any nonmortgage loans except for:
 - (a) loans fully secured by savings accounts;
 - (b) the renewal of consumer or commercial loans outstanding or legally committed to as of the effective date of this Order, provided that: (i) the Institution uses its best efforts to first have the loan repaid or converted to a fully amortizing loan and secondly to obtain partial repayment, and the loan file is documented to this effect, (ii) the documentation evidencing said loan renewal complies with prudent loan underwriting standards, (iii) the loan is at market rates and terms, (iv) no new funds are advanced, and (v) written documentation indicating that the action is in the Institution's best interest is maintained in the loan file; and
 - (c) the modification of consumer or commercial loans outstanding or legally committed to as of the effective date of this Order, provided that: (i) such modification serves to improve the Institution's collateral position and increase its chances of collection, (ii) the documentation evidencing said loan modification complies with prudent loan underwriting standards, (iii) the loan is at market rates and terms, (iv) no new funds are advanced, and (v) written documentation indicating that the action is in the Institution's best interest is maintained in the loan file.
13. The Board shall, within 30 days of the effective date of this Order, amend the Institution's written consumer loan underwriting policies and procedures to state that 100% of the consumer loans originated or renewed by the Institution will be reviewed by

the established loan review committee for compliance with said policies and procedures. Such amendment shall further provide detailed guidance designed to avoid the recurrence of each deficiency noted in the January 22, 1991 OTS examination report ("1991 Exam Report") with regard to the origination, modification, or renewal of consumer loans.

14. The Institution shall comply with its written consumer lending policies and procedures, as amended.
15. Within 45 days after the effective date of this Order, the Board shall provide the Regional Director with a certified resolution stating that the Board has appointed a loan review committee, has established written procedures for such committee, and that the written consumer lending policies and procedures have been amended, adopted, and implemented in accordance with Paragraph 13 of this Order.
16. The Institution shall take all available steps to reduce its level of nonresidential real estate loans to an amount permissible for a federally chartered savings association. The Board shall monitor the Institution's volume of nonresidential real estate loans on a monthly basis and shall document its efforts to reduce said volume in the Board meeting minutes. Upon correction of the lending limit violation, the Board shall provide the Regional Director with a certified resolution stating that the Institution's volume of nonresidential real estate loans is within the level permissible for a federally chartered savings association.

LOANS TO ONE BORROWER

17. The Institution shall take all available steps to cause all currently outstanding extensions of credit that exceed the Institution's loans to one borrower limitations to be reduced to a level in compliance with the limitations of 12 C.F.R. § 563.93. Upon compliance with the limitations, the Board shall provide the Regional Director with a certified resolution stating that all extensions of credit comply with the Institution's loans to one borrower limitations.
18. Within 30 days of the effective date of this Order, the Board shall provide the Regional Director with a certified board resolution stating that all future loan commitments in excess of \$400,000 shall be supported and confirmed by written documentation,

which shall include, at a minimum, terms, dates, and a notarized written acknowledgment from the prospective borrower. Such resolution shall further state that the Board will establish, within 30 days of the effective date of this Order, an internal reporting system that shall be used by the Board, on a monthly basis, to monitor loans and commitments in excess of \$400,000. The Board's monthly monitoring effort of such loans and commitments shall be documented in the board minutes.

CRITICIZED ASSETS/GENERAL VALUATION ALLOWANCES

19. Within 60 days of the effective date of this Order, the Board shall develop, adopt and implement a comprehensive plan to reduce the Institution's total volume of criticized assets. Specific plans shall be developed and implemented for the resolution of each criticized asset in which the Institution's total exposure to the borrower exceeds \$100,000. Within 30 days after the Institution or OTS classifies any other asset pursuant to 12 C.F.R. § 563.160(c), the Board shall develop and implement a written plan for the resolution of such asset if the Institution's total exposure to the borrower exceeds \$100,000. Such plans shall be updated at least quarterly and shall set reasonable targets and timeframes for the resolution, assign specific responsibilities, and require reports to the Board evidencing progress towards such targets.
20. The Board shall review, on a monthly basis, all assets for which a written plan has been implemented to determine: (a) the status of the asset and its underlying collateral; (b) compliance with the written plan and with all loan agreements; (c) the need for specific reserves and/or general valuation allowances; and (d) action taken by the Institution to eliminate the basis for classification. The Institution shall maintain a written report of actions taken as a result of the Board's review.
21. Within 60 days of the effective date of this Order, the Board shall submit a certified resolution to the Regional Director stating that the Board has taken the actions noted in the provisions of Paragraphs 19. and 20. of this Order.
22. The Board shall establish adequate general valuation allowances in accordance with 12 C.F.R. § 563.160(d) and the Institution's general valuation allowance policy, which was approved by the Board on October 1, 1990. Within 60 days of the effective date of this Order, the Board shall provide the Regional

Director with a certified board resolution indicating that adequate general valuation allowances, in an amount not less than the amount specified in the 1991 Exam Report, have been established. The Board may submit a written request that the Regional Director adjust the dollar amount of the general valuation allowances specified in the 1991 Exam Report. Further, the Board, using the general valuation allowance policy as its guide, will monitor and provide for adequacy of valuation allowances on a quarterly basis.

BUSINESS PLAN/BUDGET

23. The Board shall review the Institution's existing 3-year business plan on a quarterly basis, to compare actual types and levels of activities, and actual quarterly financial results with the projections contained in the business plan. If the Board determines that the Institution has deviated significantly from its business plan, or if changes are necessary to the business plan as a result of a change in budgeted projections, the Board shall revise, to the extent necessary, its 3-year business plan and submit the revised plan to the Regional Director within 30 days after the end of the quarter in which the deviations and/or changes occurred.
24. The Board shall review the projections contained in its one year budget on a quarterly basis, and advise the Regional Director of any deviations from the budget and/or business plan, that exceed the dollar level set forth in the budget and/or business plan for any activity involving an asset category with a risk-based capital weighting of 100 percent or greater by more than 5 percent of consolidated total assets, within 15 days of each quarterly review.
25. The Board's minutes shall fully disclose its consideration of the quarterly discussions referenced in Paragraphs 23. and 24. of this Order.

POLICIES

26. Within 30 days of the effective date of this Order, the Board shall submit a certified resolution to the Regional Director stating that the Institution's investment, asset classification, and construction lending policies, have been amended, approved and implemented in accordance with comments contained in the 1991 Exam Report.

