

**UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION**

In the Matter of)
)
DENNIS MICHAEL WARE,)
)
a former employee of)
Equity One, a Subsidiary of)
Banco Popular)
Newark, New Jersey)
OTS Docket Number: 12764)

Re: Order No. ~~NE 000X~~ NE01-05
Dated: April 17, 2001

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Dennis Michael Ware (Ware) who at all relevant times was an employee of Equity One, a wholly-owned subsidiary of Banco Popular, Newark, New Jersey ("Equity One"), that grounds exist to initiate administrative cease-and-desist proceedings against him pursuant to 12 U.S.C. § 1818(b);¹ and

WHEREAS, Ware desires to cooperate with the OTS and to avoid the time and expense of such administrative proceedings and, without admitting or denying and without any adjudication on

¹ All references to the United States Code ("U.S.C.") are as amended, unless otherwise indicated.

the merits, that such grounds exist, or the Findings of Fact or opinions and conclusions of the OTS, except as to Jurisdiction (paragraph 1, below), which is admitted, hereby stipulates and agrees to the following:

1. Jurisdiction.

(a) Banco Popular is a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c). OTS authority extends over Equity One pursuant to 12 U.S.C. §1818(b)(8).

(b) Ware, as a former employee of Equity One, is deemed to be an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years of the date hereof. *See* 12 U.S.C. § 1818(i)(3).

(c) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" to maintain administrative proceedings against such a savings association or its institution-affiliated parties. Therefore, Ware is subject to the jurisdiction of the OTS to initiate and maintain administrative proceedings against him pursuant to 12 U.S.C. § 1818. The Director of the OTS has delegated to the Regional Director of the Northeast Region of the OTS or his designee ("Regional Director") the authority to issue orders where the individual subject to the order has consented to its issuance.

2. OTS Findings of Fact. The OTS finds that:

Between the end of 1994 and the beginning of 1996, Ware was an employee of Equity One, serving for a period of time as the branch manager of its Birmingham, Alabama office.

During that period of time, Ware engaged in unsafe and unsound practices and breaches of his fiduciary duty to Equity One and violations of law and regulation by improperly allowing a third party contractor, who was to receive the proceeds of certain loans, to fill out the loan applications on those loans, to check the borrower's credit, to verify the borrower's employment and salary, to verify the existence or status of mortgage liens on the property and to order and submit the appraisals on the security property in violation of Equity One's procedures and loan underwriting standards and safe and sound banking practices. Moreover, Ware did not check the accuracy of the information supplied by the third party.

The information gathered, as described in the paragraph above, was submitted by Ware to Equity One for use in underwriting and making loan decisions even though Ware knew, or with the exercise of reasonable prudence should have known, most of that information was false and/or misleading. Further, Ware allowed the third party rather than the actual borrowers to make payments on the loans and then removed information from his files to mislead his superiors as to what he had done. Ware's actions directly contributed to the large losses Equity One realized on those loans.

3. Consent. Ware consents to the issuance by the OTS of the accompanying Consent Order to Cease and Desist for Affirmative Relief ("Order"). Ware 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 pursuant to 12 U.S.C. § 1818(b). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. Waivers. Ware waives the following:

- (i) the right to be served with a written notice of the OTS's charges against him as provided by 12 U.S.C. § 1818;
- (ii) the right to an administrative hearing of the OTS's charges against him as provided by 12 U.S.C. § 1818;
- (iii) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;
- (iv) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412.

6. Indemnification Limitations. Ware represents that he has not received, directly or indirectly, any sums from Equity One for the purpose of indemnifying or reimbursing him for any expenses incurred by him relating to the issuance of the Order. Ware shall neither cause nor permit Equity One (or any successor institution, subsidiary or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional services rendered to Ware relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from Equity One (or any successor institution, subsidiary or service corporation thereof) with respect to such expenses. In the event that any such payments are received by or on behalf of Ware in connection with this action, Ware agrees promptly to notify the OTS of the receipt of such payments

and to return such payments without delay to Equity One (or any successor institution, subsidiary or service corporation thereof).

7. Scope of Release; Other Governmental Actions Not Affected.

(a) Upon the OTS's issuance of the accompanying Order, following the OTS's acceptance of this Stipulation executed by Ware, the OTS does hereby forever release and discharge Ware from all potential claims and charges that have been or might have been asserted by the OTS based on the alleged violations and unsafe or unsound practices summarized in the Findings of Fact set forth at paragraph 2 of this Stipulation and as described below. Ware understands that the release provided by this paragraph is limited *solely* to administrative actions the OTS could take based on the above-alleged violations summarized in the above OTS Findings of Fact, or in any findings or conclusions contained in any Report of Examination of Equity One, conducted by the OTS prior to the effective date of this Order. This release shall not preclude or affect any right of the OTS to determine and ensure compliance with the terms and provisions of the Order and this Stipulation.

(b) Ware acknowledges and agrees that his consent to the issuance of the Order is solely for the purpose of resolving certain potential OTS administrative enforcement charges as provided by paragraph 7(a) above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of Ware that arise pursuant to this action or otherwise and that may be or have been brought by another governmental entity.

8. Miscellaneous.

(a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America;

(b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns;

(c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order;

(d) The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters; and

(e) This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

WHEREFORE, on this 17 day of ^{April 2001, ~~LC~~} ~~November 2000~~ WARE executes this Stipulation, intending to be legally bound hereby.

Accepted on the date of the Order by:
OFFICE OF THRIFT SUPERVISION


Dennis Michael Ware

By: 
Robert C. Albanese
Regional Director, Northeast Region

Relief and Assessment of A Civil Money Penalty on behalf of the OTS where the institution-affiliated party who is the subject of the Order has consented to the issuance of the Orders.

NOW, THEREFORE, IT IS ORDERED, pursuant to 12 U.S.C. § 1818(b) and (i), that:

1. DENNIS MICHAEL WARE shall not, without the prior written approval of the Regional Director of the Northeast Region of the OTS (or, if the institution is not regulated by the OTS, without the prior approval of an appropriate senior official of the appropriate Federal banking agency), accept any position as officer, director or other institution-affiliated party with any insured depository institution, or any other institution listed under 12 U.S.C. § 1818(e)(7)(A), if such position involves direct participation in or oversight of any phase of such institution's lending, credit-granting or investment activities in any form or manner. Expressly excluded from the restrictions of this provision is DENNIS MICHAEL WARE's current position with SouthTrust Bank in Birmingham, Alabama.

2(a). In connection with any position sought or obtained by DENNIS MICHAEL WARE in accordance with paragraph 1 of this Order, DENNIS MICHAEL WARE, at the earliest practicable opportunity, and in any event at least fourteen (14) days before accepting the new employment or appointment at any insured depository institution, shall provide written notice of such intended employment change to: (i) the Regional Director of the OTS's Northeast Regional Office at 10 Exchange Place, Jersey City, New Jersey; and (ii) the Regional Director of the Federal Deposit Insurance Corporation . DENNIS MICHAEL WARE shall include the following information in such written notice: (i) the name and mailing address of the insured depository institution that may or intends to hire or appoint him; (ii) his intended title and position description at the hiring insured depository institution (including name of department, office, or branch where his work will be

conducted); (iii) the name, address, and telephone number of the person who is the supervisor at the insured depository institution department, office or branch; and (iv) a reference to this Order.

(b). Also in connection with any position sought or obtained by DENNIS MICHAEL WARE in accordance with paragraph 1 of this Order, DENNIS MICHAEL WARE shall also provide a copy of this Order and the accompanying Stipulation to such insured depository institution prior to accepting such appointment or position.

3. DENNIS MICHAEL WARE shall cease and desist from any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling or the aiding and abetting of any unsafe or unsound practice or violation of any law or regulation in connection with the operation of any insured depository institution.

ASSESSMENT OF CIVIL MONEY PENALTY

4. Within thirty (30) days of the effective date of this Order DENNIS MICHAEL WARE, shall pay to the OTS the sum of Two Thousand, Five Hundred Dollars (\$2,500), by tendering a certified check or bank draft made payable to the order of the Treasurer of the United States. The check or bank draft and a copy of the Order shall be delivered, together with a cover letter stating the name of the financial institution, to the following address: Controller's Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C., 20552. A copy of the check or bank draft and the cover letter shall be sent by U.S. Mail to Park T. Zimmerman, OTS, 1475 Peachtree Street, N.E., Atlanta, Georgia, 30309.

MISCELLANEOUS PROVISIONS

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

6. DENNIS MICHAEL WARE shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

7. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the Order shall remain in effect until terminated, modified or suspended, in writing by the OTS, acting through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: 
Robert C. Albanese
Regional Director, Northeast Region