

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)	
BARRY W. FLORESCUE,)	Docket No. OTS-AP-96-16
)	
Former Chief Executive Officer)	Order No. ATL-97-1
and Chairman of the Board of:)	
)	Dated: February 19, 1997
CENTURY BANK, A FEDERAL)	
SAVINGS BANK)	
SARASOTA, FLORIDA)	

STIPULATION AND CONSENT TO ISSUANCE OF A
CEASE-AND-DESIST ORDER FOR AFFIRMATIVE RELIEF
AND ORDER ASSESSING A CIVIL MONEY PENALTY

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Barry W. Florescue ("FLORESCUE") former chief executive officer and chairman of the board of directors of Century Bank, A Federal Savings Bank, Sarasota, Florida ("Century" or "the Institution"), that the OTS is of the opinion that grounds exist to initiate an administrative proceeding for affirmative relief against FLORESCUE pursuant to 12 U.S.C. § 1818(b);¹ and civil money penalties pursuant to 12 U.S.C. § 1818(i);

WHEREAS, the OTS, issued a Notice of Charges against FLORESCUE commencing administrative litigation captioned In the

1. All references to the United States Code are as amended, unless otherwise indicated.

Matter of Barry W. Florescue, OTS Docket No. AP-96-16 (June 13, 1996), and

WHEREAS, FLORESCUE desires to cooperate with the OTS to avoid the time and expense of such administrative litigation and, without admitting or denying the Findings or conclusions of the OTS, and without any formal adjudication on the merits, but admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) CENTURY, at all times relevant hereto, was a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, CENTURY was an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c).

(b) FLORESCUE, as a former officer and director of CENTURY 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(g), the Director of the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an enforcement proceeding against institution-affiliated parties. Therefore, FLORESCUE is subject to the authority of the OTS to initiate and maintain a proceeding against him for affirmative relief pursuant to 12 U.S.C. § 1818(b) and a civil money penalty pursuant to 12 U.S.C. § 1818(i).

2. Findings. The OTS finds that: FLORESCUE, during 1990 and 1991, at a time when Century was failing to meet its minimum regulatory capital requirements and when he was an officer and/or director of Century, wrongfully sought to enrich himself at the expense of Century by causing Century, without the approval of its board of directors, unsafely, unsoundly and in violation of law to do the following: (i) to pay insurance premiums for insurance coverage he was not entitled to as an officer/director; (ii) to pay to himself salary and directors fees in advance of his having earned them and without paying interest on the advances; (iii) to pay for an unauthorized and expensive automobile which was titled in his wife's name; (iv) to provide himself with a line of credit on rates and terms more favorable than those available to the general public; (v) to reimburse himself and others for personal expenses they incurred for travel or otherwise not for the benefit of Century or inadequately documented to support their relationship to the business of Century. On or about August 26, 1991, FLORESCUE, only after requests by the OTS examiners and Century's board of directors, repaid approximately \$71,000 to Century for the expenditures described above.

Further FLORESCUE, during 1991, caused Century to violate the law, engage in unsafe and unsound practices and violate the Supervisory Agreement entered into with the OTS when, without the approval of Century's board of directors, (vi) he used the corporate brokerage accounts of Century to engage in personal

securities transactions for himself and his wife. (vii) On another occasion he used Century officers to perform services for another company FLORESCUE owns without reimbursing Century for their services and he caused Century to violate its Supervisory Agreement with the OTS by directing the purchase of prohibited equity risk investments.

3. Consent. FLORESCUE consents to the issuance by the OTS of the accompanying Cease and Desist Order For Affirmative Relief and Order Assessing a Civil Money Penalty ("Order"). FLORESCUE further 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 by the OTS under 12 U.S.C. § 1818(b) and (i). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS and any successor agency or entity under the provisions of 12 U.S.C. § 1818(i).

5. Waivers. FLORESCUE waives the following:

(a) the right to be served with a written notice of the OTS's charges against him (see 12 U.S.C. § 1818(b) and (i));

(b) the right to an administrative hearing of the OTS's charges against him (see 12 U.S.C. § 1818(b) and (i)); and

(c) 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.

6. Other Governmental Actions Not Affected.

(a) FLORESCUE acknowledges and agrees that his consent to the issuance of the accompanying Order is for the purpose of resolving this administrative proceeding only, Docket OTS Order No. 96-16. Upon the OTS's issuance of the accompanying Order, and following OTS's acceptance of this Stipulation executed by FLORESCUE, the OTS releases and discharges FLORESCUE from all potential claims and charges that have been or might have been asserted by the OTS based on or arising out of any conduct or relationship between FLORESCUE and Century, or any affiliate of Century, of which the OTS had knowledge or should have had knowledge in the ordinary course of its duties and responsibilities. FLORESCUE acknowledges and agrees that his consent to issuance of the accompanying Order does not release, discharge, compromise, settle, dismiss, resolve, admit, acknowledge or in any way affect any other actions, charges against, or liability of FLORESCUE, whether administrative, civil or criminal, that may be or have been brought by any other governmental entity.

(b) By signing this Stipulation and Consent to Issuance of a Cease-and-Desist Order for Affirmative Relief and Order Assessing a Civil Money Penalty ("Stipulation"), FLORESCUE agrees that he will not assert this administrative proceeding, his consent to the issuance of the Order, and/or the issuance of the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other federal or state governmental entity.

7. Indemnification. FLORESCUE represents that he has not received, directly or indirectly, any sums from Century for the purpose of indemnifying or reimbursing him for any expenses incurred by him in connection with this administrative proceeding. FLORESCUE shall neither cause nor permit Century or any successor institution, subsidiary or service corporation thereof to incur, directly or indirectly, any expense for any legal (or other professional expenses) incurred relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from the Institution or any successor institution, subsidiary or service corporation thereof, with respect to such amounts. Any such payments received by or on behalf of FLORESCUE in connection with this action shall be returned to Century or the successor institution, subsidiary or service corporation thereof. The provisions of this paragraph do not apply to payments for indemnification to FLORESCUE from Century Financial Group.

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.

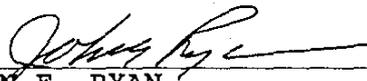
(e) This Stipulation and the Order shall remain in effect until terminated, modified or suspended in writing by the OTS, or any successor agency or entity, acting through its Director, Regional Director or other authorized representative.

WHEREFORE, FLORESCUE executes this Stipulation intending to be legally bound hereby.

By:


BARRY W. FLORESCUE

Accepted by:
Office of Thrift Supervision


JOHN E. RYAN
REGIONAL DIRECTOR
SOUTHEAST REGIONAL OFFICE

Dated: Feb 14, 1997

Dated: Feb 19, 1997

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Before The
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In the Matter of:)

BARRY W. FLORESCUE,)

Former Chief Executive Officer)
and Chairman of the Board of:)

CENTURY BANK, A FEDERAL)
SAVINGS BANK)
SARASOTA, FLORIDA)

Docket No. OTS-AP-96-16

Order No. ATL-97-1

Dated: February 19, 1997

CEASE-AND-DESIST ORDER FOR AFFIRMATIVE RELIEF
AND ORDER ASSESSING A CIVIL MONEY PENALTY

WHEREAS, BARRY W. FLORESCUE ("FLORESCUE") has executed a Stipulation and Consent to Entry of a Cease and Desist Order for Affirmative Relief and Order Assessing a Civil Money Penalty ("Stipulation"); and

WHEREAS, FLORESCUE by his execution of the Stipulation, has consented and agreed to the issuance of this Cease and Desist Order for Affirmative Relief and Assessment of a Civil Money Penalty ("Order") by the Office of Thrift Supervision ("OTS"), pursuant to 12 U.S.C. §1818(b) and (i); and

NOW THEREFORE, IT IS ORDERED that:

Cease and Desist Order

1. FLORESCUE shall cease and desist from any action (alone or with another or others) for or toward causing, participating

in, counseling, or aiding or abetting any violation of 12 U.S.C. §§ 371c and 1468(b), 12 C.F.R. §§ 563.17-1(c) (1989), 563.33(b) (1990), 563.43 (1990), 563.170(c) (1990), and any written agreement that is now or may become outstanding between Century and the OTS.

2. FLORESCUE may serve as a director of Century, including as a member of any committee of the board of directors, but FLORESCUE shall not, without the prior written approval of the OTS, or any successor Agency, serve as an officer or employee of Century, nor in any other capacity, except as a director, participate in the day to day operations of Century.

3. Whenever FLORESCUE is serving as a member of the board of directors of Century, or of any committee thereof, or in any other capacity with respect to Century, he shall not:

- a. receive director's fees in advance of earning such fees;
- b. receive a salary. This shall not preclude FLORESCUE from receiving a salary from Century Financial Group ("CFG");
- c. receive an automobile allowance;
- d. receive reimbursement for or advances on expenses, other than for reasonable expenses incurred when attending Century's board of directors' meetings or reasonable business expenses incurred on behalf of Century which have been specifically approved in advance of payment by the board of directors. Any such payments

- shall be in accordance with Century's written policies and must be fully substantiated by the type of expense and evidence of payment;
- e. seek or receive any loan or extension of credit from Century, except credit cards issued by Century in the normal course of business at rates and on terms available to the general public;
 - f. use any brokerage accounts or other corporate accounts maintained by Century to transact any personal business. This would not preclude FLORESCUE, or any affiliated corporations or corporations or entities controlled by him, from maintaining deposit accounts at Century, or FLORESCUE from maintaining retirement accounts at Century;
 - g. receive, or any member of his family receive, any insurance benefits from Century, unless such benefits are available to all directors and have been formally approved in advance by the board of directors; and
 - h. use any resource of Century, including but not limited to the services of any of its officers or employees, to provide any personal services, directly or indirectly, including but not limited to services for Century Financial Group, unless the board of directors of Century has given prior approval in writing and Century

receives reasonable compensation for such services.

4. FLORESCUE shall not seek to become or accept a position as an "institution-affiliated party," as that term is defined in 12 U.S.C. 1813(u), of any other "insured depository institution," as that term is defined in 12 U.S.C. 1813(c), unless (i) he first provides to that institution and its appropriate Federal banking agency a copy of this Order; and (ii) the insured depository institution has operative, written policies and procedures that would prevent FLORESCUE, or others at his direction, (a) from receiving reimbursement for personal expenses not incurred for, or in the ordinary course of, the business of such insured depository institution; (b) from receiving compensation and/or director's fees in advance of having earned them; (c) from receiving insurance benefits other than those provided to all other officers and employees of such institution; (d) from using such institution's corporate brokerage accounts to transact his personal business; (e) from using such institution's officers or employees to provide services to or on behalf of another entity without the approval of such institution's board of directors and without reasonable compensation being paid to such institution; and (f) from receiving credit on rates or terms more favorable than those offered to the general public.

Civil Money Penalty Assessment

5. FLORESCUE shall pay a Civil Money Penalty in the amount of \$ 50,000 (Fifty Thousand Dollars) within ten (10) days of the

effective date of this Order. Payment shall be made by delivering a certified or cashier's check made payable to the Treasurer of the United States to the OTS's Controller's Division at 1700 G Street, N.W., Washington, D.C. with a copy of the check and transmittal letter to Park T. Zimmerman, Special Counsel, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309.

6. FLORESCUE shall respond promptly to any request from the OTS for information and/or documents to demonstrate compliance with this Order.

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

8. This Order shall be and is effective on the date it is issued, as shown on the caption on the first page hereof, and shall remain effective until it is terminated, modified or suspended in writing by the OTS, or any successor agency or entity, acting through its Director, Regional Director or other authorized representative.

9. On the effective date of this Order, the Notice of Charges in Docket OTS No. AP 96-16 shall be dismissed.

THE OFFICE OF THRIFT SUPERVISION

By:



JOHN E. RYAN
REGIONAL DIRECTOR
SOUTHEAST REGIONAL OFFICE