

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)

JAMES F. GIBSON)

Former Chief Executive Officer)
and Director of First Savings)
Bank, F.S.B.,)
Clovis, New Mexico)

Order No. MWR -97-03

Date: April 4, 1997

STIPULATION AND CONSENT TO ISSUANCE OF ORDER
OF PROHIBITION, ORDER TO CEASE AND DESIST FOR RESTITUTION,
AND ORDER OF CIVIL MONEY PENALTY ASSESSMENT

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed JAMES F. GIBSON ("GIBSON"), former Chief Executive Officer and Director of First Savings Bank, F.S.B., Clovis, New Mexico ("FSB" of the "Institution"), that grounds exist to initiate an administrative proceedings against pursuant to 12 U.S.C. § 1818(e), (b), and (i), and

WHEREAS, GIBSON desires to cooperate with the OTS and to avoid the time and expense of such administrative proceedings and, without any adjudication on the merits and solely for purposes of settlement in accord with Federal Rule of Evidence 408 and, without admitting or denying that such grounds exist, and further without admitting or denying the Findings of Fact or opinions and conclusions of the OTS stated herein, except as to jurisdiction,

paragraph 1, below, which is admitted, hereby stipulates and agrees to the following:

1. Jurisdiction. (a) FSB is a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1818(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).

(b) GIBSON was Chief Executive Officer and a Director of FSB from June 1984 until April 18, 1991, and, as such, he is an "institution-affiliated party as that term is defined in 12 U.S.C. § 1813(u).

(c) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal Banking agency" to maintain administrative prohibition, cease and desist, and civil money penalty assessment proceedings against such a savings association or its institution-affiliated parties. Therefore, GIBSON is subject to the jurisdiction of the OTS to initiate and maintain prohibition, cease and desist, and civil money penalty assessment proceedings against him pursuant to 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Director of the Midwest Region of the OTS or his designee ("Regional Director") the authority to issued enforcement orders where the individual has consented to the issuance of the order.

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

(a) from June 1984 until April 1991, GIBSON, while acting as Chief Executive Officer and a Director of the Institution, repeatedly and routinely undertook actions with regard to large commercial loans which demonstrated a willful and continuing

default

disregard for the known or perceived risks to the safe and sound operation of FSB. The OTS further finds that the actions that GIBSON took which demonstrate a willful and continuing disregard are illustrated by the following facts concerning FSB's approval and funding of a commercial loan secured by property located in Portland, Oregon, known as the Postal Building ("POSTAL BUILDING" or "POSTAL BUILDING LOAN")¹:

(a) On or after April 23, 1986, GIBSON knew or should have known that the then outstanding loan from Willamette Savings and Loan Association, Portland, Oregon, secured by the Postal Building was in default and foreclosure proceedings had commenced. GIBSON knew or should have known these facts because on or after April 23, 1986, he received a copy of a letter disclosing this information. GIBSON failed to disclose these material facts to the board of directors ("BOD") of FSB;

(b) On or about August 20, 1986, GIBSON, instructed a Vice President of FSB to fund the POSTAL BUILDING LOAN without having first obtained an appraisal of the property as expressly required by the BOD. The minutes of the meeting at which this condition of approval was imposed by the BOD reflect GIBSON's attendance and participation;

(c) On or about September 29, 1986, GIBSON instructed a Vice President of FSB, without any authorization from the BOD, to execute a modification to the Postal Building Loan promissory note, materially altering the terms and conditions of liability upon

1. The POSTAL BUILDING LOAN was a \$2.94 Million loan in which FSB recognized a loss of principal in the amount of \$2,438,477.

default of the borrowers on the **POSTAL BUILDING LOAN**.

3. Consent. **GIBSON** consents to the issuance by the OTS of the accompanying Order of Prohibition, Order to Cease and Desist for restitution, and Order of Civil Money Penalty Assessment ("Order"). **GIBSON** further agrees to comply with the terms of the Orders upon issuance and stipulates that the Orders comply with all requirements of law.

4. Finality. The Order is issued under 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. Upon issuance of the Order, **GIBSON** waives the following:

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

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

(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, and;

(d) 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.

(e) **GIBSON** agrees that he will not assert this proceeding, his consent to issuance of the Order, the issuance of the Order, the

payment of any moneys or the provision of any other financial relief as contemplated by 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 governmental entity.

(f) In any bankruptcy proceeding in which it is or may be contended that GIBSON's obligation to pay restitution pursuant to the Order is subject to discharge, GIBSON will in no manner contest OTS's assertions, pursuant to 11 U.S.C. § 523(a)(11) or otherwise, that the restitution obligation in the Order arises out of acts that result in claims not dischargeable in bankruptcy.

6. Other Governmental Actions Not Affected. GIBSON and the OTS acknowledge and agree that the consent to the issuance of the Order is for the purpose of resolving all potential OTS enforcement matters arising out of GIBSON's service as the institution's Chief Executive Officer and Director from June 1984 through April 18, 1991 only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of GIBSON that arise pursuant to GIBSON's employment at the Institution that may be brought by another governmental entity or private party or the Institution.

7. Indemnification. GIBSON represents that he has not received, directly or indirectly, any sums from FSB for the purpose of indemnifying or reimbursing him for any expenses incurred by him in connection with the OTS investigation. GIBSON shall neither cause nor permit FSB (or any successor institution, holding company, subsidiary or service corporation thereof) to incur,

directly or indirectly, any expense for any legal or other professional services rendered to GIBSON relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from FSB (or any successor institution, holding company, subsidiary or service corporation thereof) with respect to such expenses. In the event any such payments are received by or on behalf of GIBSON in connection with this action, GIBSON agrees promptly to notify the OTS of the receipt of such payments and to return such payments without delay to FSB (or successor institution, holding company, subsidiary or service corporation thereof).

8. Acknowledgment of Criminal Sanctions. GIBSON acknowledges that the Stipulation and Order are subject to the provisions of 12 U.S.C. § 1818(j).

9. 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' predecessors, successors, and assigns.

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

(d) The terms of the 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, acting through its Director, Regional Director or other authorized representative.

WHEREFORE, GIBSON, executes this Stipulation and Consent to the Issuance of Orders of Prohibition, Cease and Desist for Restitution, and Civil Money Penalty Assessment, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION



James F. Gibson

By: 

Frederick R. Casteel

Regional Director

Date: 3-13-97

Date: 4-4-97

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Order no. MWR.-97-03

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ORDER OF PROHIBITION,
ORDER TO CEASE AND DESIST FOR RESTITUTION,
AND ORDER OF CIVIL MONEY PENALTY ASSESSMENT

WHEREAS, JAMES F. GIBSON ("GIBSON") has executed a Stipulation and Consent to Issuance of an Order of Prohibition, Order to Cease and Desist for Affirmative Relief, and Order of Civil Money Penalty Assessment ("Stipulation") which is incorporated by reference herein; and

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

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Directors of the OTS the authority to issue Orders of Prohibition, Orders to Cease and Desist, and Orders of Civil Money Penalty Assessments on behalf of the OTS where the Respondent has consented to the issuance of the orders.

NOW THEREFORE, IT IS ORDERED that:

ORDER OF PROHIBITION

1. GIBSON is prohibited from further participation, in any manner, in the conduct of the affairs of First Savings Bank, F.S.B., Clovis, New Mexico ("FSB" or the "Institution")), and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. GIBSON, except upon the prior written consent of the OTS (acting through its Director or an authorized representative thereof) and any other "appropriate Federal financial institutions regulatory agency," for purposes of 12 U.S.C. § 1818(e)(7)(B)(ii), shall not:

(a) hold any office in, or participate in any manner in the conduct of the affairs of, any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), including, but not limited to:

- (i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, trust companies, and other banking institutions;
- (ii) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3) and 1818(b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings associations;
- (iii) any insured credit union under the Federal Credit

Union Act [12 U.S.C. § 1781 et seq.];

- (iv) any institution chartered under the Farm Credit Act of 1971 [12 U.S.C. § 2001 et seq.];
- (v) any appropriate Federal depository institution regulatory agency, within the meaning of 12 U.S.C. § 1818(e)(7)(A)(v); and
- (vi) the Federal Housing Finance Board and any Federal Home Loan Bank.

(b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in 12 U.S.C. § 1818(e)(7)(A);

(c) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q); or

(d) vote for a director, or serve or act as an "institution-affiliated party," as that term is defined at 12 U.S.C. § 1813(u), e.g., a director, officer, employee, controlling stockholder of, or agent for, an insured depository institution.

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

4. This Order is subject to the provisions of 12 U.S.C. § 1818(j).

5. **GIBSON** shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

IT IS FURTHER ORDERED that:

ORDER TO CEASE AND DESIST FOR RESTITUTION

6. GIBSON shall make payment of restitution to FSB in the amount and in the manner ordered, either in settlement between the parties or ordered by the court ("Gibson Judgment") against GIBSON in First Savings Bank, F.S.B. vs. James F. Gibson, Docket No. CIV 95-0491, U.S. District Court for the District New Mexico ("Civil Action"). If GIBSON prevails on the merits in the Civil Action it will not negate or affect any provision of this Order except the amount of resitution described in this Paragraph.

7. It is understood that the OTS has agreed to accept the amount of restitution described in Paragraph 6 and the amount of the Assessment of Civil Money Penalty described in Paragraph 9 (nine) of this Order based, in part, on GIBSON's representations about his current financial condition as set forth in a written statement of financial condition dated February 14, 1997, ("Statement of Financial Condition"), which has been signed by GIBSON. In the event that any information included in the Statement of Financial Condition is found to be false or misleading with respect to any material fact, or if in connection with the Statement of Financial Condition, GIBSON has omitted to state a material fact concerning any matter addressed in the Statement of Financial Condition, then, without limitation on other remedies available under federal law, the OTS may, in the exercise of its discretion seek any available remedy, including the assessment of civil money penalties.

8. Any subsequent Gibson Judgment, as executed between the parties or entered by the Court, is and shall be incorporated herein by reference and, in addition to any other remedies, shall be enforceable by the OTS as a term of this Order as though fully set forth in this Order. GIBSON shall provide notice of any payments on any Gibson Judgment to the OTS by sending a copy of payment to Gary C. Anderberg, OTS Enforcement Counsel, 122 West John Carpenter Freeway, Suite 600, Irving, Texas 75039-2010.

IT IS FURTHER ORDERED that:

ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

9. Within ten (10) calendar days of the date of this Order, GIBSON shall pay to the OTS the sum of \$5,000, 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 association, to the following address: Controller's Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. A copy of the check or bank draft and the cover letter shall be provided by GIBSON to Gary C. Anderberg at the address indicated in Paragraph 8 of this Order.

10. This Order is and shall become effective on the date it is issued, as shown in the caption thereof. This Order shall remain

in effect until it is terminated, modified or suspended, which may occur only by formal action of the OTS, acting by and through its Director, Regional Director, or other authorized representative.

THE OFFICE OF THRIFT SUPERVISION

By:

F. R. Casteel

Frederick R. Casteel
Midwest Regional Director