

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)
)
KIM M. GRACEY,)
)
Former Teller and)
Institution-Affiliated Party)
of:)
)
Third Federal Savings Bank)
Newtown, PA)
(OTS Docket No. 02966))
)

RE: OTS Order No. NE97-07

Dated: May 9, 1997

STIPULATION AND CONSENT TO ENTRY
OF AN ORDER OF PROHIBITION AND 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 KIM M. GRACEY, former teller and institution-affiliated party of Third Federal Savings Bank, Newtown, PA, OTS No. 02966 ("Third" or the "Institution") that the OTS is of the opinion that grounds exist to initiate administrative cease and desist and prohibition proceedings against KIM M. GRACEY pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b) and 12 U.S.C. § 1818(e).¹

WHEREAS, KIM M. GRACEY desires to cooperate with the OTS to avoid the time and expense of such administrative litigation and,

1. All references in this Stipulation and Consent and the Orders are to the U.S.C. are as amended.

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without admitting or denying that such grounds exist, but admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) Third, at all times relevant hereto, was 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). Accordingly, Third was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) KIM M. GRACEY, as a former teller of Third, is deemed to be an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 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 Section 3(q) of the FDIA, 12 U.S.C. §1813(q), the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an enforcement proceeding against institution-affiliated parties. Therefore, KIM M. GRACEY is subject to the authority of the OTS to initiate and maintain cease and desist and prohibition proceedings against her pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b) and Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

2. OTS Findings of Fact. The OTS has been informed that between July 23 and July 30, 1996 KIM M. GRACEY made four unauthorized withdrawal of funds for her personal use totaling

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\$6,000 from three different customers' savings accounts while employed as a teller at Third's Branch Office located at York and Memphis Streets in Philadelphia, PA. Further, she orally admitted to the misappropriation of \$5,000 of this amount to Assistant Vice President Wayne Bishop. In addition, on August 8, 1996 she signed a note agreeing to repay to Third \$1,000 of these funds that she withdrew without authorization on July 23, 1996. As a result of her actions, KIM M. GRACEY (1) engaged in a violation of the law or breached her fiduciary duty of honesty to Third; and (2) Third suffered a financial loss or she received a financial benefit or other gain; and (3) the violation of law or breach of fiduciary duty demonstrates willful and/or continuing disregard by KIM M. GRACEY for the safety and soundness of Third.

3. Consent. KIM M. GRACEY consents to the issuance by the OTS of the accompanying Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders"). She further agrees to comply with their terms upon issuance and stipulates that the Orders comply with all requirements of law.

4. Finality. The Orders are issued by the OTS under the authority of Section 8(b) of the FDIA, 12 U.S.C. §1818(b) and Section 8(e) of the FDIA, 12 U.S.C. §1818(e). Upon their issuance by the Regional Director or designee for the Northeast Region, OTS, they shall be final orders, 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. KIM M. GRACEY waives the following:

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(a) the right to be served with a written notice of the OTS's charges against her (see Sections 8(b) and 8(e) of the FDIA);

(b) the right to an administrative hearing of the OTS's charges against her (see Sections 8(b) and 8(e) of the FDIA); and

(c) the right to seek judicial review of the Order, including, without limitation, 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.

6. Indemnification. KIM M. GRACEY shall neither cause nor permit Third (or any successor institution, holding company, 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 of Prohibition and Order to Cease and Desist for Affirmative Relief. Nor shall KIM M. GRACEY obtain any indemnification (or other reimbursement) from the Institution (or any successor institution, holding company, subsidiary, or service corporation thereof) with respect to such amounts. Any such payments received by or on behalf of KIM M. GRACEY in connection with this action shall be returned to Third (or the successor institution, holding company, subsidiary, or service corporation thereof).

7. Other Government Actions Not Affected.

(a) KIM M. GRACEY acknowledges and agrees that the consent to the entry of the Orders is for the purpose of resolving these cease and desist and prohibition actions only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any

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way affect any actions, charges against, or liability of KIM M. GRACEY that arise pursuant to these actions or otherwise, and that may be or have been brought by any other government entity other than the OTS.

(b) By signing this Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief, KIM M. GRACEY agrees that she will not assert this proceeding, her consent to the entry of the Orders, and/or the entry of the Orders, 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.

8. Acknowledgment of Criminal Sanctions. KIM M. GRACEY acknowledges that Section 8(j) of the FDIA, 12 U.S.C. §1818(j), sets forth criminal penalties for knowing violations of the Order.

9. Agreement for Continuing Cooperation. KIM M. GRACEY agrees that, at the OTS's request, on reasonable notice and without service of a subpoena, she will provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to any investigation, litigation, or other proceeding maintained by the OTS relating to Third, its holding companies, its subsidiaries, and its institution-affiliated parties, except that KIM M. GRACEY does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If KIM M. GRACEY invokes a privilege against self-incrimination under the Fifth Amendment of the United States

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Constitution with respect to any matter about which the OTS inquires or the production of any document requested by the OTS and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., KIM M. GRACEY agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial, administrative, or investigative proceeding on the matter for which immunity is given.

WHEREFORE, KIM M. GRACEY executes this Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

By:

Kim M. Gracey
Kim M. Gracey

Accepted By:
Office of Thrift Supervision

Robert C. Albanese
Robert C. Albanese
Northeast Regional Director

Dated: May 7, 1997

Dated: 5/9/97

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In the Matter of:)
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KIM M. GRACEY,)
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Third Federal Savings Bank)
Newtown, PA)
(OTS Docket No. 02966))

RE: OTS Order No. NE97-07

Dated: May 9, 1997

ORDER OF PROHIBITION
AND
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, KIM M. GRACEY has executed a Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Stipulation"); and

WHEREAS, KIM M. GRACEY, by her execution of the Stipulation, has consented and agreed to the issuance of this Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders") by the Office of Thrift Supervision ("OTS"), pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §1818(e) and Section 8(b) of the FDIA, 12 U.S.C. §1818(b).

NOW THEREFORE, IT IS ORDERED that:

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ORDER OF PROHIBITION

1. KIM M. GRACEY is prohibited from further participation, in any manner, in the conduct of the affairs of Third Federal Savings Bank, Newtown, PA, and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. KIM M. GRACEY is and shall be subject to the statutory prohibitions provided by Section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Due to and without limitation on the operation of Sections 8(e)(6) and 8(e)(7) of the FDIA, 12 U.S.C. §§ 1818(e)(6) and 1818(e)(7), KIM M. GRACEY, 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 Section 8(e)(7)(B)(ii) of the FDIA, 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 any agency specified in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A) ("Covered Institution"), including:

(i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, state banks, trust companies, and other banking institutions;

(ii) any institution treated as an insured bank under Sections 8(b)(3) and 8(b)(4) of the FDIA, 12 U.S.C. §§ 1818(b)(3).

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and 1818(b)(4), or as a savings association under Section 8(b)(9) of the FDIA, 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 Covered Institution;

(C) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of Section 3(q) of the FDIA, 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 Section 3(u) of the FDIA, 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 Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), and shall become effective on the

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date it is issued.

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

6. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

IT IS FURTHER ORDERED that:

ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

7. KIM M. GRACEY is and shall be subject to the statutory requirements provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

8. KIM M. GRACEY shall continue to make payment of restitution to Third Federal Savings Bank, Newtown, PA in the amount of \$1,000 in accordance with the terms of a Note, dated August 8, 1996, in which the first payment was made on August 8, 1996. This Note 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 the Order.

9. All payments should be made directly to Third Federal

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Savings Bank.

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

11. This Order is subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. §1818(j), and shall become effective on the date it is issued.

12. KIM M. GRACEY shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

13. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

THE OFFICE OF THRIFT SUPERVISION

By:



Robert C. Albanese
Northeast Regional Director

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