

UNITED STATES OF AMERICA  
 Before the  
 OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

In the Matter of )  
 )  
 ROBERT F. EBERLE, JR., ) OTS Order No. NE95-2  
 )  
 ) Date: March 7, 1995  
 a person who participated in )  
 the conduct of the affairs of )  
 Flushing Savings Bank, F.S.B., )  
 Flushing, New York (No. 11990) )  
 )

CONSENT CEASE-AND-DESIST ORDER  
AND CIVIL MONEY PENALTY ASSESSMENT

WHEREAS, ROBERT F. EBERLE, JR., while a consultant to FLUSHING SAVINGS BANK, F.S.B. ("FLUSHING SAVINGS"), participated in the conduct of the affairs of said institution, which is a federally chartered mutual savings bank that maintains its home office in Flushing, New York; and

WHEREAS, in accordance with the Home Owners' Loan Act, the Office of Thrift Supervision ("OTS") regulates, examines and supervises FLUSHING SAVINGS, the deposits of which are subject to federal deposit insurance pursuant to the Federal Deposit Insurance Act ("FDIA");

WHEREAS, based on OTS formal examination No. NE94-40 and other agency inquiries, the OTS has found, inter alia, that, at various times during 1994, ROBERT F. EBERLE, JR., assisted an officer of FLUSHING SAVINGS in making alterations of information on regulatorily required proxy cards relative to the proposed conversion by FLUSHING SAVINGS from a federal mutual charter to a federal stock charter, and thereby participated in temporarily tainting the integrity of the regulatorily required proxy

solicitation process; and

WHEREAS, based on the above investigative findings, the OTS is of the opinion that ROBERT F. EBERLE, JR. has been an institution-affiliated party of FLUSHING SAVINGS who participated in violations of provisions of 12 C.F.R. Part 563b that constituted unsafe or unsound banking practices; and

WHEREAS, based on the aforesaid findings, the OTS concludes that the grounds exist for it to seek administrative relief against ROBERT F. EBERLE, JR., pursuant to Sections 8(b) and 8(i)(2) of the FDIA, 12 U.S.C. §§ 1818(b) and 1818(i)(2);<sup>1</sup> and

WHEREAS, ROBERT F. EBERLE, JR., while neither admitting nor denying the above findings, conclusions and opinions of the OTS, for purposes of settling with the OTS has consented and agreed to the OTS' issuance of this CONSENT CEASE-AND-DESIST ORDER AND CIVIL MONEY PENALTY ASSESSMENT ("Order"), pursuant to 12 U.S.C. §§ 1818(b) and 1818(i)(2), by executing on March 1, 1995, the accompanying Stipulation and Consent to Issuance of Consent Order ("Stipulation"); and

WHEREAS, the undersigned OTS Regional Director has been duly delegated the authority to cause the OTS to issue consent orders.

NOW THEREFORE, IT IS ORDERED, pursuant to 12 U.S.C.

§§ 1818(b) and 1818(i)(2), that:

1. ROBERT F. EBERLE, JR., shall cease and desist from participating in any conduct at any savings association, any savings association subsidiary or any savings and loan holding

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1. All references to the United States Code (U.S.C.) are as amended, except as otherwise specified.

company that would (i) impair or otherwise adversely affect the proxy rights of the mutual members or stockholders of any such institution, or the exercise of such rights, or (ii) violate or otherwise be contrary to any current or future Federal regulatory requirements for mutual-to-stock conversions of mutual savings associations, which regulatory requirements currently are codified at 12 C.F.R. Part 563b.

2. ROBERT F. EBERLE, JR., prior to December 31, 1999, shall not serve as a consultant or otherwise participate in the conduct of the affairs of FLUSHING SAVINGS without obtaining prior written non-objection from the OTS.

3. ROBERT F. EBERLE, JR. is hereby assessed, pursuant to 12 U.S.C. § 1818(i)(2), a civil money penalty in the amount of Four Thousand Dollars (\$4,000.00), and ROBERT F. EBERLE, JR. shall pay said penalty, within ten (10) days of issuance of this Order, by delivering to the OTS' Controller's Division a certified or cashier's check in said amount payable to the order of the Treasurer of the United States.

4. ROBERT F. EBERLE, JR. shall promptly and appropriately respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

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

6. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. This Order shall remain in effect until it is terminated, modified or suspended, which may occur only by formal written action of the OTS, acting

by and through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By:   
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Angelo A. Vigna  
Regional Director, Northeast Region

(SAR:2.15.95)

UNITED STATES OF AMERICA  
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In the Matter of )  
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ROBERT F. EBERLE, JR., ) Re: OTS Order No. NE95- 2  
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 ) Dated: March 7, 1995  
a person who participated in )  
the conduct of the affairs of )  
Flushing Savings Bank, F.S.B., )  
Flushing, New York (No. 11990))  
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STIPULATION AND CONSENT TO ISSUANCE OF CONSENT ORDER

This Stipulation and Consent to Issuance of Consent Order ("Stipulation"), concerning the accompanying CONSENT CEASE-AND-DESIST ORDER AND CIVIL MONEY PENALTY ASSESSMENT (the "Order"), is made by ROBERT F. EBERLE, JR., a resident of West Long Branch, New Jersey, and is accepted by the OFFICE OF THRIFT SUPERVISION ("OTS"), an office within the United States Department of the Treasury, acting by and through its Regional Director for the Northeast Region.

R E C I T A L S

WHEREAS, the OTS, based upon information derived from the exercise of its regulatory responsibilities, has informed ROBERT F. EBERLE, JR., a former consultant and subcontractor of FLUSHING SAVINGS BANK, F.S.B. ("Flushing Savings") of Flushing, Queens, New York, that the OTS is of the opinion that the grounds exist to initiate an administrative proceeding against ROBERT F. EBERLE, JR. for the issuance of administrative orders, pursuant to provisions of Section 8 of the Federal Deposit Insurance Act

("FDIA"), 12 U.S.C. § 1818;<sup>1</sup> and

WHEREAS, ROBERT F. EBERLE, JR. desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation with the OTS.

NOW, THEREFORE, ROBERT F. EBERLE, JR., without either admitting or denying either that the aforesaid grounds exist or the OTS' factual findings, conclusions and opinions summarized in the preamble of the attached Order (except to the extent otherwise specifically provided in this Stipulation, including but not limited to the admission of jurisdiction set forth in paragraph 2 below), hereby stipulates and agrees as follows:

1. Consideration. ROBERT F. EBERLE, JR., in view of the foregoing premises and for the purposes of this settlement only, hereby voluntarily enters into this Stipulation and consents to issuance of the Order in consideration for OTS forever releasing and discharging him from all potential administrative claims and charges that have been or might have been asserted by the OTS against him based on his actions in 1994 relative to the proxy solicitation by Flushing Savings during 1994, which actions are summarized in the preamble of the Order.

2. Jurisdiction.

(a) Flushing Savings is and at all material times has been 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, 12 U.S.C. § 1462(4)), and an "insured depository

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1. All references to the United States Code ("U.S.C.") in this Stipulation and the Order are to the U.S.C. as amended.

institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) ROBERT F. EBERLE, JR. acknowledges that he served as an independent subcontractor of and consultant to Flushing Savings during 1994, and, for purposes of this settlement only, agrees that he will not dispute the OTS' findings that he participated in the conduct of the affairs of Flushing Savings and is and has been an "institution-affiliated party," as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" to maintain administrative enforcement proceedings against institution-affiliated parties relative to savings associations, and therefore ROBERT F. EBERLE, JR. is subject to the authority of the OTS to initiate and maintain administrative proceedings against him pursuant to Sections 8(b) and 8(i)(2) of the FDIA, 12 U.S.C. §§ 1818(b) and 1818(i)(2).

(d) Due to the operation of Section 8(i)(3) of the FDIA, 12 U.S.C. § 1818(i)(3), the jurisdiction and authority of the OTS to take administrative action against ROBERT F. EBERLE, JR., pursuant to 12 U.S.C. §§ 1818(b) and 1818(i)(2), has not been affected by the termination of his participation in the conduct of the affairs of Flushing Savings, which termination occurred within six years of the date hereof.

3. Consent. ROBERT F. EBERLE, JR. consents to the issuance by the OTS of the Order, and agrees to comply with the terms of the Order. ROBERT F. EBERLE, JR. further stipulates that the

Order (including the OTS' issuance thereof) complies with all requirements of law.

4. Finality. The Order is issued by the OTS under the authority of Sections 8(b) and 8(i)(2) of the FDIA, 12 U.S.C. §§ 1818(b) and 1818(i)(2). Upon its issuance by the OTS (by and through its Regional Director for the Northeast Region), the Order shall be a final order that is effective and fully enforceable by the OTS under provisions of federal law, including Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. Waivers. ROBERT F. EBERLE, JR., following consultation with his counsel, voluntarily and knowingly waives:

(a) the right to be served with a written notice of the OTS' charges against him (including but not limited to a Notice of Charges and Hearing), which notice would be issued and served pursuant to 12 U.S.C. §§ 1818(b), 1818(i)(2) and other applicable law;

(b) the right to an administrative adjudicatory hearing of the OTS' charges against him, which hearing is provided by 12 U.S.C. §§ 1818(b), 1818(i)(2), and 1818(h)(1); and

(c) the right to seek judicial review of the Order, including (but not limited to) any such right provided by Section 8(h)(2) of the FDIA, 12 U.S.C. § 1818(h)(2), or otherwise to challenge the validity of the Order.

6. Indemnification. ROBERT F. EBERLE, JR. shall neither (i) cause or permit Flushing Savings (or any subsidiary 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 (ii) apply to or obtain any indemnification (or other reimbursement) from Flushing Savings (or any subsidiary thereof) with respect to any such expenses directly or indirectly incurred by him. Any such payments received by or on behalf of ROBERT F. EBERLE, JR. in connection with this action shall be returned to Flushing Savings.

7. Other Government Actions Not Affected; No Discharge.

(a) ROBERT F. EBERLE, JR.'s consent to the issuance by the OTS of the Order is intended solely for purposes of settling and resolving the OTS' claims against him, as provided by Paragraph 1 hereof, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, claims, charges against, or liability of ROBERT F. EBERLE, JR. that arise in connection with his former relationship with Flushing Savings, and that may be or have been brought by any government agency or entity other than the OTS.

(b) By signing this Stipulation, ROBERT F. EBERLE, JR. agrees he will not assert any of the OTS' actions concerning him 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. Without limitation on the foregoing, none of the following shall serve as the basis for a claim of double jeopardy by ROBERT F. EBERLE, JR.: the OTS' issuance of the Order; any provision of the Order (including Paragraph 3 thereof) requiring the payment of a civil money penalty (or any other monies); or ROBERT F. EBERLE, JR.'s payment of any moneys or providing any other financial relief as

contemplated by the Order (including Paragraph 3 thereof).

(c) In any bankruptcy proceeding in which it is or may be contended that the financial obligation of ROBERT F. EBERLE, JR. pursuant to the Order is subject to discharge, ROBERT F. EBERLE, JR. will in no manner contest any assertions by OTS that said financial obligation, established under 12 U.S.C. § 1818(i)(2), is: (i) a penalty payable to and for the benefit of a governmental unit that is not dischargeable due to the operation of 11 U.S.C. § 523(a)(7), and (ii) arises out of facts that result in claims not dischargeable in bankruptcy due to the operation of 11 U.S.C. § 523(a)(11).

8. Communications and Payment Procedures.

(a) ROBERT F. EBERLE, JR. shall make his payment of the civil money penalty, which is required by paragraph 3 of the Order, by cashier's check, bank check or money order made payable to the order of the Treasurer of the United States, and he shall submit such payment, under the cover of a letter, sent by Certified Mail (Return Receipt Requested) addressed to the OTS' Controller as follows:

Ms. Elisabeth M. Gustafson  
Controller  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, D.C. 20552

with a copy sent to the OTS' enforcement counsel identified below. The cover letter accompanying the payment by ROBERT F. EBERLE, JR. shall refer to the OTS' Order by its number, which is referenced at the caption on the first page of this Stipulation.

(b) The OTS may send written notices to ROBERT F. EBERLE, JR. care of his counsel:

Edward C. Stokes, Esq.  
Stokes & Throckmorton  
545 Bath Avenue  
Long Branch, New Jersey 07740

(c) Except as otherwise provided by subparagraph (a) hereof, all communications required or permitted to be sent by ROBERT F. EBERLE, JR. to the OTS shall be sent to:

Angelo A. Vigna, Regional Director  
Office of Thrift Supervision  
Northeast Regional Office  
10 Exchange Place, 18th Floor  
Jersey City, New Jersey 07302

with a copy also sent to the OTS' Regional Counsel for Enforcement at the aforesaid address for the OTS' Northeast Regional Office, or such other addresses as may be the subject of written notice to ROBERT F. EBERLE, JR. by the OTS.

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 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) The terms of this Stipulation and of the Order may not be amended or modified except by formal written action of the OTS.

WHEREFORE, on this 1st day of March, 1995, ROBERT F. EBERLE, JR. executes this Stipulation, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION

  
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ROBERT F. EBERLE, JR.

By:   
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Angelo A. Vigna  
Regional Director, Northeast Region

Date: March 7, 1995

(SAR:2.15.95)