

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of:  
  
GEORGE MILBURN:  
former Vice President, and  
Institution-Affiliated Party  
of:  
  
FIRST SAVINGS BANK, FSB  
CLOVIS, NEW MEXICO

RE: OTS Order No. DAL-95-13

Dated: April 20, 1995

STIPULATION AND CONSENT TO THE ENTRY OF  
AN ORDER OF PROHIBITION

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed George Milburn ("MILBURN"), former Vice President and institution-affiliated party of FIRST SAVINGS BANK, FSB, Clovis, New Mexico, OTS Docket No. 03193, ("FSB" or the "Institution") that the OTS is of the opinion that grounds exist to initiate an administrative prohibition proceeding against MILBURN pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e);<sup>1</sup> and

WHEREAS, MILBURN desires to cooperate with the OTS to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist or the statements and

<sup>1</sup> All references in this Stipulation and Consent and the Order of Removal and Prohibition to the U.S.C. are as amended.

4-17-95

conclusions of the OTS, but admitting the statements and conclusions of Paragraph 1 below, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

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

(b) MILBURN, as former Vice President and employee of FSB, 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).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against a savings association and/or its institution-affiliated parties. The Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue orders of removal and prohibition on behalf of the OTS where the respondent has consented to the entry of the order. Therefore, MILBURN is subject to the jurisdiction of the OTS to initiate and maintain a removal and prohibition proceeding against him pursuant to Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

2. OTS Findings of Fact. The OTS finds that from 1984 until April 1991 MILBURN, while acting as Vice President of the Institution, and at the express instruction(s) and/or direction(s) of former FSB President and CEO, James F. Gibson ("GIBSON")

repeatedly and routinely undertook actions with regard to large commercial loans which demonstrated a plain indifference to the known or perceived risks to the safe and sound operation of FSB. The OTS further finds that the actions that MILBURN undertook at GIBSON's instruction(s) and/or direction(s) which demonstrate plain indifference 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")<sup>2</sup>:

(a) On or after April 23, 1986, MILBURN 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. MILBURN knew or should have known these facts because on or after April 23, 1986, he received a copy of a letter addressed to GIBSON disclosing this information;

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

(c) On or about September 29, 1986, MILBURN, without any authorization from the BOD executed a modification to the

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<sup>2</sup> The POSTAL BUILDING LOAN was a \$3.1 Million loan in which FSB recognized a loss of principal in the amount of \$2,903,726.

Postal Building Loan promissory note, materially altering the terms and conditions of liability upon default of the borrowers on the POSTAL BUILDING LOAN.

3. Consent. MILBURN consents to the issuance by the OTS of the accompanying Order of Prohibition ("Order"). He 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 under Section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Upon its issuance by the Regional Director or designee for the Midwest Region, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(e) and (i) of the FDIA, 12 U.S.C. § 1818(e) and (i).

5. Waivers. MILBURN waives the following:

(a) the right to be served with a written notice of the OTS's charges against him as provided by Section 8(e) of the FDIA, 12 U.S.C. § 1818(e);

(b) the right to an administrative hearing of the OTS's charges against him as provided by Section 8(e) of the FDIA, 12 U.S.C. § 1818(e);

(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; 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 arising under common law or under

the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

6. Other Government Actions Not Affected.

(a) MILBURN acknowledges and agrees that the consent to the entry of the Order is for the purpose of resolving this OTS enforcement matter only, and does not resolve, release, discharge, compromise, settle, dismiss, or in any way affect any other civil or criminal proceeding which may be or has been brought by the OTS or another governmental entity.

(b) By signing this Stipulation and Consent to the Entry of an Order of Prohibition, MILBURN agrees that he will not assert this proceeding, his consent to the entry of the Order, and/or the entry 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. Acknowledgment of Criminal Sanctions. MILBURN acknowledges that Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), sets forth criminal penalties for knowing violations of the Order.

8. Agreement for Continuing Cooperation. MILBURN agrees that, at the OTS's request, on reasonable notice and without service of a subpoena, he 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 FSB, its holding companies, its subsidiaries and its institution-affiliated parties,

except that MILBURN does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If MILBURN invokes a privilege against self-incrimination under the Fifth Amendment of the United States 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. § 600 et seq., MILBURN 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.

9. Indemnification. MILBURN shall neither cause nor permit FSB (or any successor institution, holding company, subsidiary or service corporation thereof) to incur, directly or indirectly, any expense (including but not limited to, 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, holding company, subsidiary or service corporation thereof) with respect to such amounts. Any such payments received by or on behalf of MILBURN in connection with this action shall be returned to FSB (or the successor institution, holding company, subsidiary or service corporation thereof).

WHEREFORE, MILBURN executes this Stipulation and Consent to the Entry of an Order of Prohibition, intending to be legally bound hereby.

By:

Accepted by:  
Office of Thrift Supervision

George Milburn  
George Milburn

Frederick R. Casteel  
Frederick R. Casteel  
Midwest Regional Director

Dated: 4-19-95

Dated: 4-20-95

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of: )  
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GEORGE MILBURN: )  
former Vice President, and )  
Institution-Affiliated Party )  
of: )  
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FIRST SAVINGS BANK, FSB )  
CLOVIS, NEW MEXICO )

RE: OTS Order No. DAL-95-13

Dated: April 20, 1995

ORDER OF PROHIBITION

WHEREAS, George Milburn ("MILBURN") has executed a Stipulation and Consent to Entry of an Order of Prohibition ("Stipulation") on April 17, 1995; and

WHEREAS, MILBURN by his execution of the Stipulation, has consented and agreed to the issuance of this Order of Prohibition ("Order") 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).

NOW THEREFORE, IT IS ORDERED that:

1. MILBURN is prohibited from further participation, in any manner, in the conduct of the affairs of First Savings Bank FSB, Clovis, New Mexico, and any successor institution, holding company, subsidiary, and/or service corporation thereof.

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2. MILBURN 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), MILBURN, 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 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, 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) 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. §§ 1751 et seq.;

(iv) any institution chartered under the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 et seq.;

(v) any appropriate Federal financial institutions regulatory agency, within the meaning of Section 8(e)(7)(D) of the FDIA, 12 U.S.C. §§ 1818(e)(7)(D);

(vi) the Federal Housing Finance Board and any Federal Home Loan Bank; and

(vii) the Resolution Trust Corporation.

(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 date it is issued.

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

4-17-95

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.

7. A copy of this Order shall be served upon MILBURN by OTS Enforcement Counsel.

THE OFFICE OF THRIFT SUPERVISION  
By:

  
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Frederick R. Casteel  
Midwest Regional Director

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