

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

In the Matter of)
ALBERT L. HARTSIG, III,)
a former officer of)
Columbia Banking Federal)
Savings & Loan Association,)
Rochester, New York)

Re: OTS Order No. NE95-9
Date: July 6, 1995

STIPULATION AND CONSENT

This Stipulation and Consent is entered into by and between ALBERT L. HARTSIG, III, and the OFFICE OF THRIFT SUPERVISION ("OTS"), an office within the United States Department of the Treasury, whose acceptance of this Stipulation and Consent is indicated by issuance of the accompanying order identified as CONSENT ORDER OF PROHIBITION (the "Order").

R E C I T A L S

WHEREAS, the OTS examined, supervised and regulated COLUMBIA BANKING FEDERAL SAVINGS & LOAN ASSOCIATION, a predecessor to COLUMBIA BANKING, FSA, ("COLUMBIA") which has its home office in Rochester, New York; and

WHEREAS, the OTS, based upon information derived from its formal examination and investigation concerning COLUMBIA (the "Investigation"), which was authorized by OTS Resolution No. PIT 91-15 (October 31, 1991), and other exercises of its regulatory responsibilities, is of the opinion that the grounds exist to commence an administrative proceeding against ALBERT L.

HARTSIG, III for the issuance of an administrative order, pursuant to Sections 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e), and Section 5(d) of the Home Owners' Loan Act ("HOLA"), each as amended by, inter alia, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183; and

WHEREAS, based upon financial disclosure provided by ALBERT L. HARTSIG, III, OTS and ALBERT L. HARTSIG, III, both believe that ALBERT L. HARTSIG'S assets are minimal and likely would be exhausted by contest at a hearing and that the best interests of both would be served by resolving the dispute by terminating the OTS investigation with entry of the Consent Order of Prohibition ("Order").

NOW, THEREFORE, for the purposes of this settlement only, ALBERT L. HARTSIG, III, without either admitting or denying the factual findings and legal conclusions reached by the OTS or that the grounds exist for the aforesaid administrative proceeding, except those set forth in Paragraph 2. Jurisdiction, and Paragraph 4. Finality, below, hereby stipulates and agrees as follows:

1. Consideration. ALBERT L. HARTSIG, III hereby stipulates and agrees to the terms of this Stipulation and Consent and to issuance of the Order in consideration for OTS forever releasing and discharging ALBERT L. HARTSIG, III from all potential claims and charges that have been or might have been asserted by the OTS arising out of facts known to the OTS or discovered by the OTS prior to issuance of the Order as a result of the Investigation, which facts are summarized in the Order.

2. Jurisdiction.

(a) It is stipulated and agreed that: (i) the OTS is the regulatory successor-in-interest to the Federal Home Loan Bank Board, and is an appropriate Federal banking agency authorized to issue the Order pursuant to 12 U.S.C. §§ 1818(e) and 1818(b); and (ii) COLUMBIA is a "Federal savings association," as that term is defined at 12 U.S.C. §§ 1462(5) and 1813(b)(2), and an "insured depository institution," as that term is defined at 12 U.S.C. § 1813(c)(2).

(b) ALBERT L. HARTSIG, III acknowledges that: (i) from January 1985 through November 1990, he served as a vice-president and an officer engaged in commercial real estate at COLUMBIA; and (ii) by virtue of such position he had been an officer of COLUMBIA for purposes of Section 5(d) of the pre-FIRREA HOLA (formerly codified at 12 U.S.C. § 1464(d)), and since the enactment of FIRREA on August 9, 1989, he had been an "institution-affiliated party" of COLUMBIA within the meaning of Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).

(c) ALBERT L. HARTSIG, III further acknowledges that his resignation and separation from COLUMBIA, less than six years ago, has not affected the jurisdiction and authority of the OTS to take administrative action against him under Section 8 of the FDIA, due to the operation of 12 U.S.C. § 1818(i)(3).

3. Consent. ALBERT L. HARTSIG, III consents to the jurisdiction of the OTS and to issuance of the Order. ALBERT L. HARTSIG, III agrees to comply with the terms of the Order, and he stipulates that the Order, which is remedial, complies with all

requirements of law.

4. Finality. The Order is issued by the OTS under the authority of 12 U.S.C. § 1818(e). ALBERT L. HARTSIG, III acknowledges and understands that, upon issuance, the Order will 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). ALBERT L. HARTSIG, III also understands that a violation of the Order could subject him to the sanctions imposed by 12 U.S.C. § 1818(j).

5. Waivers. ALBERT L. HARTSIG, III, following consultation with his counsel, hereby waives the following legal rights:

- (1) the right to be served with a written notice of charges, notice of intention to prohibit or other similar notice pursuant to provisions of Section 8(e) of the FDIA (12 U.S.C. § 1818(e)), and other applicable law;
- (2) the right to an administrative adjudicatory hearing of the OTS' charges against him;
- (3) the right to seek judicial review of the Order, including (but not limited to) 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
- (4) any claims for attorneys' fees or expenses under the Equal Access to Justice Act, 5 U.S.C. § 504.

6. No Effect on Actions by Others.

(a) This Stipulation and Consent and the Order does not release, discharge, compromise, settle, dismiss or resolve, or in any way affect any actions, charges against, or liability of ALBERT L. HARTSIG, III that may be brought by COLUMBIA or any governmental entity other than the OTS, whether arising due to the findings of the OTS or otherwise.

(b) ALBERT L. HARTSIG, III acknowledges and agrees that

this Stipulation and Consent and the OTS' issuance of the Order are not intended to and do not resolve, affect or preclude any other proceedings, civil or otherwise, that may be or have been brought against ALBERT L. HARTSIG, III (i) by the OTS (except as otherwise specifically provided by the release at paragraph 1 hereof) or (ii) any other governmental entity.

7. Representations As To Assets. (a) OTS' decision to enter into this Stipulation has been predicated in part upon representations made by ALBERT L. HARTSIG, III concerning the nature and value of the assets owned by him and certain assets owned and controlled by his wife of which he has use (hereinafter the "Hartsig Assets"). It is understood that ALBERT L. HARTSIG, III, has made a good faith estimate of the current value of the Hartsig Assets, and ALBERT L. HARTSIG, III understands that should OTS discover or learn from any source that the representations made by him about the nature and value of the Hartsig Assets were wrong, including but not limited to the failure to identify and/or value any material asset, OTS reserves the right to take any action authorized by law, including at its sole option to impose civil money penalties under 12 U.S.C. § 1818(i) or to void the settlement reached between OTS and ALBERT L. HARTSIG, III including this Stipulation and the Order, or to take any other legal action.

(b) OTS acknowledges that all financial information submitted by ALBERT L. HARTSIG, III was prepared by ALBERT L. HARTSIG, III based upon his knowledge of his investments and assets and was not prepared by an accountant, nor based upon the

review of any accountant. Further, there were no appraisals performed on any of the properties. ALBERT L. HARTSIG, III asserts that all information supplied by him to OTS was done in good faith and based upon his best knowledge, information, and belief.

8. Communications.

(a) The OTS may send written notices and other communications to ALBERT L. HARTSIG, III, care of his counsel:

Douglas Foss, Esq.
Harris, Beach & Wilcox
130 East Main Street
Rochester, New York 14604

(b) All communications required or permitted to be sent by ALBERT L. HARTSIG, III to the OTS shall be sent to:

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

with a copy also sent to the OTS' enforcement counsel, as follows:

Lance D. Cassak, Esq.
Assistant Regional Counsel
for Enforcement
Office of Thrift Supervision
10 Exchange Place, 18th Floor
Jersey City, New Jersey 07302

9. Miscellaneous.

(a) The construction and validity of this Stipulation and Consent 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 Consent and the Order shall also mean any of the OTS' predecessors, successors, and assigns.

(c) All references to ALBERT L. HARTSIG, III shall also

mean his heirs, successors and assigns.

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

(e) The terms of this Stipulation and Consent and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitutes the sole agreement of the parties with respect to such subject matters. The terms of this Stipulation and Consent and the Order may not be amended except by a written document executed by ALBERT L. HARTSIG, III and the OTS, by and through its Director (or an appropriate designee).

(f) This Stipulation and Consent shall become effective upon acceptance by the OTS, which acceptance shall be indicated by its issuance of the Order.

WHEREFORE, ALBERT L. HARTSIG, III on this 21th day of June, 1995, duly signs this Stipulation and Consent.


ALBERT L. HARTSIG, III

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

In the Matter of)
ALBERT L. HARTSIG, III)
a former officer of)
of Columbia Banking Federal)
Savings & Loan Association)
Rochester, New York)

OTS Order No. NE95-9
Date: July 6, 1995

CONSENT ORDER OF PROHIBITION

WHEREAS, in accordance with the Home Owners' Loan Act ("HOLA"), the Office of Thrift Supervision ("OTS") regulated and supervised COLUMBIA BANKING FEDERAL SAVINGS & LOAN ASSOCIATION, a predecessor to COLUMBIA BANKING, FSA, ("COLUMBIA"), having its home office in Rochester, New York, a mutual savings association whose deposit accounts have been subject to federal deposit insurance; and

WHEREAS, prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183 (Aug. 9, 1989), COLUMBIA had been regulated by the OTS' predecessor, the Federal Home Loan Bank Board ("FHLBB"); and

WHEREAS, ALBERT L. HARTSIG, III, from January 1985 through November 1990 served as Vice President and an officer engaged in commercial real estate at COLUMBIA; and

WHEREAS, the OTS has conducted an investigation pursuant to OTS Resolution PIT 91-15 dated October 31, 1991 (the "Investiga-

tion") concerning the affairs of COLUMBIA; and

WHEREAS, as a result of the Investigation, the OTS is of the opinion that, from at least 1987 through 1990, ALBERT L. HARTSIG, III, in administering certain large commercial real estate loans on a number of occasions engaged in conduct not in accordance with reasonable and prudent banking practices, including, inter alia, disbursing funds without adequate safeguards and other than as called for by the terms of agreements with certain borrowers and failed to obtain accurate information in connection with loan applications, causing COLUMBIA to suffer substantial losses; and

WHEREAS, OTS is of the opinion that ALBERT L. HARTSIG, III, committed unsafe and unsound practices, acted with continuing disregard for the safety and soundness of the business of COLUMBIA, and caused COLUMBIA to suffer losses in connection with those loans; and

WHEREAS, the OTS is of the opinion that the grounds exist for it to seek administrative relief against ALBERT L. HARTSIG, III pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e) and other applicable federal law; and

WHEREAS, ALBERT L. HARTSIG, III, has executed a Stipulation and Consent to entry of an Order of Prohibition on

June 21, 1995, which is accepted and approved by the Director of the Office of Thrift Supervision ("OTS"), acting through the OTS Regional Director for the Northeast Region, and

WHEREAS, ALBERT L. HARTSIG, III, by his execution of the Stipulation and Consent, has consented and agreed to the issuance

of this Order of Prohibition by the OTS, pursuant to 12 U.S.C. § 1818(c).

NOW THEREFORE, it is ORDERED that:

1. HARTSIG is prohibited from further participation, in any manner, in the conduct of the affairs of COLUMBIA and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. HARTSIG shall not hold any office in, or participate in any manner in the conduct of the affairs of any Federally regulated depository institution or any of the other entities that are described in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. §1818(e)(7)(A), without the prior written approval of OTS (acting through its Director or an authorized representative thereof) and, the "appropriate Federal financial institutions regulatory agency" for the Federally regulated depository institution which is involved. Due to the operation of Section 8(e)(6) of the FDIA, 12 U.S.C. §1818(e)(6), conduct prohibited by this Order, without the said prior written approval of the OTS and the "appropriate Federal banking agency", also includes, without limitation: (1) soliciting, procuring, transferring, attempting to transfer, voting, or the attempting to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. §1818(e)(7)(A); and (2) voting for a director, or serving as an institution-affiliated party.

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

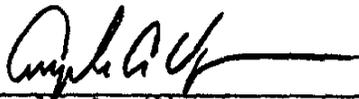
4. This Order is subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. §1818(j).

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

6. This Order shall be and is effective upon service on counsel for ALBERT L. HARTSIG, III.

SO ORDERED on this 6th day of July, 1995.

OFFICE OF THRIFT SUPERVISION

By: 

Angelo A. Vigna
Regional Director, Northeast Region