

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

In the Matter of:)
)
OSCAR M. GWIN, JR.)
)
Former Chairman of the Board of)
Directors and Institution-Affiliated)
Party of Eureka Homestead Society)
)
New Orleans, Louisiana)
)

Order No.: DAL-95-32
Dated: September 28, 1995

STIPULATION AND CONSENT TO THE ENTRY OF AN ORDER TO
CEASE AND DESIST FOR REIMBURSEMENT AND OTHER AFFIRMATIVE RELIEF

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Oscar M. Gwin, Jr. ("GWIN"), former chairman of the board of directors of Eureka Homestead Society, New Orleans, Louisiana, OTS No. 03193 ("Eureka Homestead" or the "Institution"), that OTS is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against GWIN pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b)¹; and

WHEREAS, GWIN desires to cooperate with OTS and to avoid the time and expense of such administrative proceeding and, without admitting and specifically disputing the statements and conclusions of the OTS, in accordance with Rule 408 of the Federal Rules of Evidence and without trial or hearing, but admitting the jurisdictional statements and conclusions in paragraph 1 below, hereby stipulates and agrees to the following terms:

1. All references to the U.S.C. are as amended.

1. Jurisdiction.

(a) Eureka Homestead 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) GWIN, as former chairman of the board of directors of Eureka Homestead, is deemed to be an "institution-affiliated party" of the Institution 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 to cease and desist on behalf of the OTS where the respondent has consented to the entry of the order. Therefore, GWIN is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against him pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

2. OTS Findings of Fact. The OTS finds as follows:

(a) By no later than June, 1990, GWIN, as chairman of the board of directors of Eureka Homestead, was aware that the OTS February 13, 1990 Report of Examination had directed the Institution to, among other things, develop a business plan and

investment plan. Eureka Homestead's board of directors ("board") made written representation to OTS that a comprehensive business plan and investment policy were in the process of being formulated.

(b) On or about June 18, 1991, GWIN placed his signature, as a director of Eureka Homestead, on a document prepared by a brokerage firm which, among other things, referenced that the board had undertaken a review of Eureka Homestead's "trading activity to date", including the results, transaction costs and the attendant risks associated with such trading activities. The document further represented that any prior trading activity was ratified by the board and was within the Institution's investment limitations and objectives. None of the board actions referenced in the document executed by GWIN ever took place.

(c) GWIN subsequently became aware that the OTS October 7, 1991 Report of Examination of Eureka Homestead had deemed the Institution's investment policy as deficient and not in compliance with applicable regulations. The Report further reflected that the Institution's management was not complying with board policies and procedures, GAAP and OTS regulations.

(d) GWIN subsequently became aware that the OTS October 26, 1992 Report of Examination of Eureka Homestead had again reflected regulatory deficiencies with the Institution's investment policy and noncompliance with Thrift Bulletin 52. The Report further reflected that despite the prior October 1991 OTS Report of Examination's criticisms of the the Institution's investment policy, the board had apparently not reviewed the policy since July 15, 1991.

(e) On or about January 26, 1993, GWIN again placed his signature, as director of Eureka Homestead, on a document prepared by the same brokerage firm referenced in subparagraph 2(b) above, which, among other things, referenced that a review had been undertaken of Eureka Homestead's "trading activity to date", including the results, transaction costs and the attendant risks associated with such trading activities. The document further represented that any prior trading activity was ratified by the board and was within the Institution's investment limitations and objectives. None of the board actions referenced in the document executed by GWIN ever took place.

(f) During the course of the October 18, 1993 OTS Report of Examination of Eureka Homestead, OTS examiners determined that the Institution's president had engaged in securities trading activities that had resulted in significant unrecognized losses to Eureka Homestead.

(g) OTS further finds that from June 1990 through October 1993, the board failed to adopt sufficient internal controls to ensure that: the Institution was operating in a safe and sound manner; the Institution's books and records were accurate and reliable; and, directives and requests for corrective actions received from financial institution regulatory agencies were being addressed and undertaken by Institution management.

(h) OTS further finds that at all times relevant hereto, GWIN was aware that the establishment or maintenance of a securities trading account by Eureka Homestead was not an authorized investment activity. Notwithstanding this knowledge, on

at least the two occasions described above, GWIN, while acting as chairman of the board, executed documentation that facilitated unauthorized securities trading activities on behalf of Eureka Homestead. Based upon the foregoing, the OTS concludes that GWIN engaged in unsafe and unsound practices and breaches of his fiduciary duty of due care.

3. Consent. GWIN consents to the issuance by the OTS of the accompanying Order to Cease and Desist for Reimbursement and Other Affirmative Relief ("Order"). GWIN further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all the requirements of law.

4. Finality. The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). 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(b) and 8(i) of the FDIA, 12 U.S.C. § 1818(b) and (i).

5. Waivers. GWIN 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(b) of the FDIA, 12 U.S.C. § 1818(b);

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

(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.

OTS agrees to refrain from seeking the issuance of additional enforcement orders or civil money penalties against GWIN with respect to any matters reported or otherwise addressed in the OTS Reports of Examination through October 18, 1993; or, discovered by the OTS as a result of its investigative proceeding, commenced pursuant to Midwest Regional Office Resolution No. DAL-94-31.

6. Other Actions Not Affected.

(a) GWIN acknowledges and agrees that his 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 any governmental entity other than the OTS.

(b) GWIN further acknowledges and agrees that his consent to the entry of the Order does not resolve, release, discharge, compromise, settle, dismiss, or in any way affect any claim or proceeding which may be or has been brought by Eureka Homestead, including its successor(s) in interest.

(c) By signing this Stipulation and Consent to the Entry of an Order to Cease and Desist for Reimbursement and Other Affirmative Relief, GWIN agrees that he will not assert this proceeding, his consent to the entry of the Order, the payment of

monies or other affirmative relief provided by 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. The OTS is of the view that the affirmative relief provisions of the Order are remedial and not punitive in nature, and GWIN does not and will not contest this position.

7. Agreement for Continuing Cooperation. GWIN 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 (held at any location at which GWIN could be subpoenaed to appear and/or testify) related to any investigation, litigation or other proceeding maintained by the OTS relating to Eureka Homestead, its holding companies, its subsidiaries and its institution-affiliated parties, except that GWIN does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If GWIN 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. § 6000 et seq., GWIN 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.

8. Indemnification. GWIN shall neither cause nor permit Eureka Homestead (or any successor or subsidiary 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 Eureka Homestead (or any successor or subsidiary thereof) with respect to such amounts. Any payments received by or on behalf of GWIN in connection with this action shall be returned to the Institution.

WHEREFORE, GWIN executes this Stipulation and Consent to the Entry of an Order to Cease and Desist for Reimbursement and Other Affirmative Relief, intending to be legally bound hereby.

Accepted by:
Office of Thrift Supervision

By: *F. R. Casteel*
Frederick R. Casteel
Regional Director
Midwest Regional Office

Oscar M. Gwin, Jr.
Oscar M. Gwin, Jr.

Dated: 9-28-95

Dated: 9/22/95

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In the Matter of:)
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New Orleans, Louisiana)

Order No.: DAL-95-32
Dated: September 28, 1995

ORDER TO CEASE AND DESIST
FOR REIMBURSEMENT AND OTHER AFFIRMATIVE RELIEF

WHEREAS, Oscar M. Gwin, Jr. ("GWIN"), former chairman of the board of Eureka Homestead Society, New Orleans, Louisiana ("Eureka Homestead" or the "Institution") is an "institution-affiliated party" within the meaning of Section 3(u) of the Federal Deposit Insurance Act ("FDIA"), and

WHEREAS, GWIN has executed a Stipulation and Consent to the Entry of an Order to Cease and Desist for Affirmative Relief ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director; and

WHEREAS, GWIN, in the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist for Reimbursement and Other Affirmative Relief ("Order") pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b);¹ and

1. All references to the U.S.C. are as amended.

WHEREAS, the Director of the OTS has delegated to the Regional Director of the OTS the authority to issue orders to cease and desist on behalf of the OTS where a party has consented to the issuance of the order.

NOW, THEREFORE, IT IS ORDERED THAT:

REIMBURSEMENT

1. Within 90 days of the effective date of this Order, GWIN shall make reimbursement to Eureka Homestead in the amount of \$39,800.00. This sum shall represent reimbursement of fees received by GWIN for serving as chairman of the board of directors of Eureka Homestead from June 1990, through October 1993.

2. GWIN shall comply with paragraph one (1) of this Order by sending a cashier's check, in the required amount, payable to Eureka Homestead to the attention of:

Scott W. Liggett
Senior Attorney
Office of Thrift Supervision
8500 West 110th St., Suite 400
Overland Park, KS 66210

OTHER AFFIRMATIVE RELIEF

3. GWIN shall not, without the prior written approval of the Regional Director for the Midwest Region of the OTS, seek, accept, or serve as an officer, director or other institution-affiliated party, within the meaning of 12 U.S.C. 1813(u), of Eureka Homestead.

4. In the event GWIN shall become an institution-affiliated party within the meaning of Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), of any "insured depository institution" or "insured credit union" as those terms are defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c), and Section 101(7) of the Federal Credit Union Act, 12 U.S.C. § 1752(7), respectively, or with any holding company, subsidiary, service corporation or affiliate of an insured depository institution or insured credit union, GWIN shall:

a. not engage or participate in any violations of any Federal banking laws or regulations, including, but not limited to, the FDIA, the Home Owners' Loan Act ("HOLA"), and regulations set forth at 12 C.F.R. Parts 500 to 599;

b. ensure that the entity(ies) complies with all directives and requests for corrective action issued by any applicable financial institution regulatory agency;

c. review and verify the truthfulness and accuracy of information contained in any document that he executes or certifies, on behalf of such entity(ies);

d. comply in all respects with the record-keeping regulation(s) applicable to the depository institution at which he may be employed or with which he may be affiliated, including the provisions of 12 C.F.R. § 563.170(c) (if the subject entity is a savings association, including its affiliate(s), subsidiary(ies) and service corporation(s)), and further, comply with all internal record keeping policies and procedures of such entity(ies);

5. Whenever issues arise that cause GWIN to be unsure about statutory and/or regulatory compliance, or compliance with his

obligations under this Order, GWIN shall seek and obtain advice and guidance from competent legal counsel.

6. GWIN shall present a copy of this Order to any entity described in paragraph four (4) above, where he, at any time in the future, seeks employment as an employee, officer or director.

7. From the effective date of this Order, GWIN shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

8. Any report or other document required by this Order to be submitted to the OTS shall be filed with the Office of Thrift Supervision, 122 West John Carpenter Freeway, Suite 600, Irving, Texas 75039-2010, Attn.: Regional Director. All reports and other documents shall be deemed filed when received by the OTS.

9. It is understood that the execution of this Order shall not be construed as an approval of any application or notices that are contemplated by GWIN.

10. In the event any provision of this Order shall be declared invalid, illegal, or unenforceable; the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

11. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, FDIA, or HOLA, or as such definition is amended after the execution of this Order, and any such technical words or terms

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used in this Order and undefined in said Code of Federal Regulations, FDIA, or HOLA, shall have meanings that accord with their best custom and usage in the savings and loan industry.

12. This Order shall be effective upon its issuance by the Regional Director and shall remain in effect until terminated, modified or amended by the OTS.

OFFICE OF THRIFT SUPERVISION

By:

FR Casteel
Frederick R. Casteel
Regional Director
Midwest Regional Office

Dated:

9-28-95