

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
JOHN A. GUIDINGER,)
Former Vice President and)
Institution-Affiliated Party of)
METROPOLITAN FEDERAL BANK, fsb,)
FARGO, NORTH DAKOTA)

RE: OTS Order No. KC-94- 02

Date: January 27, 1994

STIPULATION AND CONSENT TO ISSUANCE OF AN
ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed JOHN A. GUIDINGER, former Vice President of Metropolitan Federal Bank, fsb, 215 North Fifth Street, Fargo, North Dakota, OTS No. 01242 (the "Institution"), that OTS is of the opinion that grounds exist to initiate an administrative civil money penalty assessment proceeding against JOHN A. GUIDINGER pursuant to Section 8(i) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(i);¹ and

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue Order of Assessments of Civil Money Penalties where the respondent has consented to the issuance of the Order; and

WHEREAS, JOHN A. GUIDINGER desires to cooperate with OTS and to avoid the time and expense of such administrative litigation and,

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

without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

- (a) METROPOLITAN FEDERAL BANK, fsb, FARGO, NORTH DAKOTA (the "Institution"), 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, 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) JOHN A. GUIDINGER was a Vice President of the Institution and is 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), having served in such capacity within 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 Director of the OTS is the "appropriate Federal Banking agency" with jurisdiction over the Institution and persons participating in the conduct of the affairs thereof.
- (d) The Director of the OTS has the authority to bring an administrative proceeding for a civil money penalty against persons participating in the conduct of the affairs of the Institution and institution-affiliated parties pursuant to Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).
- (e) JOHN A. GUIDINGER is subject to the authority of OTS to initiate and maintain administrative proceedings pursuant to Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

2. OTS Findings of Fact. The OTS finds that during 1991 and 1992, JOHN A. GUIDINGER, in his capacity as a vice president and loan officer of the Institution, knowingly granted a series of unsecured commercial business loans to two individuals which were, in fact, nominee loans for the benefit of an existing troubled borrower. The majority of the loan proceeds were utilized with JOHN A. GUIDINGER's knowledge for the direct or indirect benefit of a construction company and its principal shareholders, who had substantial outstanding and past due loans at the Institution. The subject loans contravened the Institution's stated business strategy and were made without obtaining loan applications from the borrowers, in violation of 12 C.F.R. Section 563.170(c). Moreover, JOHN A. GUIDINGER purposefully concealed and omitted material information concerning these loan transactions from senior management of the Institution for a period in excess of one year in order to grant additional disbursements to the borrowers.

JOHN A. GUIDINGER's actions resulted in numerous violations of regulations relating to loan file documentation, were clearly unsafe and unsound, and constitute a breach of his fiduciary duty to the Institution. His conduct in concealing his actions from the Institution evidences personal dishonesty. JOHN A. GUIDINGER's failure to abide by existing institution business strategy and his determination to continue funding the activities of the construction company, even though it was already delinquent and past due on substantial loans to the

Institution, through unsecured and inadequately documented commercial loans to nominee borrowers demonstrates a willful and continuing disregard for the safety and soundness of the Institution. By reason of such breaches, violations, and unsafe and unsound practices, the Institution has suffered substantial financial loss.

3. Consent. JOHN A. GUIDINGER consents to the issuance by the OTS of the accompanying Order. JOHN A. GUIDINGER further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.
4. Finality. The Order is issued under Section 8(i) of the FDIA, 12 U.S.C. § 1818(i). 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(i) of the FDIA, 12 U.S.C. § 1818(i).
5. Waivers. JOHN A. GUIDINGER waives his right to a notice of Assessment of Civil Money Penalty provided by Section 8(i) of the FDIA, 12 U.S.C. § 1818(i) and the administrative hearing provided by Section 8(i)(2)(H) of the FDIA, 12 U.S.C. § 1818(i)(2)(H), and further waives any 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. JOHN A. GUIDINGER shall neither cause or permit the Institution (or any subsidiary thereof) to incur, directly or indirectly, any expense for the amount of the civil

money penalties assessed under the CMP Order or any legal (or other professional) expenses incurred relative to the negotiation and issuance of the CMP Order, nor obtain any indemnification (or other reimbursement) from the Institution (or any subsidiary thereof) with respect to such amounts. Any payments received by or on behalf of JOHN A. GUIDINGER in connection with this action shall be returned to the Institution.

7. Other Actions, Proceedings and Parties. This Stipulation and the accompanying Order are issued solely to settle this proceeding. By entering into this Stipulation and Consent, JOHN A. GUIDINGER acknowledges and agrees explicitly to the following provisions:

a. JOHN A. GUIDINGER acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated as part of the resolution thereof, and his consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only. By signing this document JOHN A. GUIDINGER agrees that he will not assert the assessment or payment of this penalty 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.

b. This Stipulation, the Order and the payment by JOHN A. GUIDINGER of any monies or providing any other financial relief as contemplated by the Order, does not release discharge, settle, dismiss, resolve, or in any way

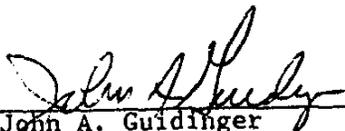
affect any actions, charges against, or liability of JOHN A. GUIDINGER that arise pursuant to this action or otherwise, and that may be or have been brought by any other governmental entity other than the OTS.

- c. JOHN A. GUIDINGER's obligation to pay civil money penalties pursuant to this Stipulation and Consent and the Order shall not be dischargeable in bankruptcy under any circumstances.

WHEREFORE, JOHN A. GUIDINGER executes this Stipulation and Consent to Issuance of an Order of Assessment of Civil Money Penalty, intending to be legally bound hereby.

By:

Accepted by:



John A. Guidinger

OFFICE OF THRIFT SUPERVISION



Frederick R. Casteel
Regional Director
Midwest Region

Date: January 17, 1994

Date: 1-27-94

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of
JOHN A. GUIDINGER,
Former Vice President and
Institution-Affiliated Party of
METROPOLITAN FEDERAL BANK, fsb,
FARGO, NORTH DAKOTA

RE: OTS Order No. KC-94- 02

Date: January 27, 1994

ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

WHEREAS, JOHN A. GUIDINGER has executed a Stipulation and Consent to Issuance of an Order of Assessment of Civil Money Penalty ("Stipulation"); and,

WHEREAS, JOHN A. GUIDINGER, in the Stipulation, has consented to the issuance of this Order of Assessment of Civil Money Penalty pursuant to Section 8(i) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(i).¹

NOW THEREFORE, IT IS ORDERED that within ten (10) days of the effective date of this Order, JOHN A. GUIDINGER shall pay to the OTS the sum of three thousand dollars (\$3,000) by tendering a certified check to the OTS in that amount made payable to the Treasurer of the United States. The check shall be sent, together with a cover letter stating the name of the institution and the resolution number, and a copy of the Order, to the following address: Controller's Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552. A copy

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of the cover letter to the Controller's Division and a photocopy of the check shall be sent to Roger L. Bainbridge, Esq., Office of Thrift Supervision, 8500 West 110th Street, Suite 400, Overland Park, Kansas 66210.

OFFICE OF THRIFT SUPERVISION

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