

UNITED STATES OF AMERICA

Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of

James M. Henderson  
Former Senior Vice  
President of  
Citizens Federal Savings and  
Loan Association  
Salisbury, North Carolina

Re: Resolution No. ATL-94-8

Date: June 2, 1994

**CEASE AND DESIST ORDER**

WHEREAS, James M. Henderson ("Henderson") has executed a Stipulation and Consent to Entry of an Order to Cease and Desist ("Stipulation"); and

WHEREAS, Henderson, in the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist ("Order") by the Office of Thrift Supervision ("OTS"), pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b)<sup>1</sup>; and

WHEREAS, the Director of the Office of Thrift Supervision has delegated to the Regional Director of the OTS the authority to issue Orders to Cease and Desist on behalf of the OTS where Henderson has consented to the issuance of the Order.

NOW THEREFORE, IT IS ORDERED that Henderson shall cease and desist from any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling or the aiding or abetting of any unsafe or unsound practice or any violation of:

1. 12 C.F.R. § 571.7.

**IT IS FURTHER ORDERED THAT:**

1. Henderson shall not participate in any manner, in the conduct of the affairs of any "savings association," as that term is defined in Section 3(b)(1) of the FDIA, 12 U.S.C. § 1813(b)(1), or the holding companies or service corporations thereof, unless and until he has received the prior written approval of the OTS, acting through its Regional Director for the Southeast Region.

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

2. Not less than fifteen (15) days prior to accepting employment with any "insured depository institution," as that term is defined in Section 3(c)(2) of the FDIA, 12 U.S.C. § 1813(c)(2), or any "insured credit union," as that term is defined in Section 101(7) of the Federal Credit Union Act, 12 U.S.C. § 1752(7), after receiving approval from the OTS, if applicable, Henderson shall inform such institution of the existence of this Order and shall provide the OTS with written confirmation acceptable to the Regional Director that such notice has been given.

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, as shown in the caption above.

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

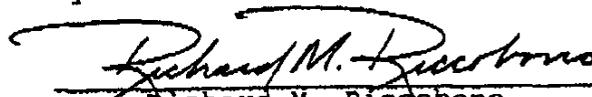
6. Any report or other document required by this Order to be submitted to the OTS shall be filed with the Office of Thrift Supervision, 1475 Peachtree Street N.E., Atlanta, Georgia 30309, Attn: Kathy Haney. All reports and other documents shall be deemed filed when received by the OTS.

7. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided by the provisions of this Order shall, insofar as applicable, have meanings as defined in the rules and regulations adopted by the OTS (including, without limitation, 12 C.F.R. § 500.1 *et seq.*, § 541.1 *et seq.*, and § 561.1 *et seq.* (1991)). Any such technical words or terms used in this Order and undefined in said rules and regulations shall have meanings that accord with the best custom and usage in the thrift industry.

8. 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.

9. This Order shall remain in effect until terminated, modified, or suspended by the OTS, acting by and through the Regional Director or designee. At any time after the effective date of this Order, Henderson may request that the Order be terminated, modified or suspended. Such request shall be made by written application to the Regional Director or his designee and will be given reasonable consideration by the OTS.

THE OFFICE OF THRIFT SUPERVISION  
By:



Richard M. Riccobono  
Acting Regional Director  
Southeast Region

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STIPULATION AND CONSENT TO THE ENTRY OF  
AN ORDER TO CEASE AND DESIST

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed James M. Henderson ("Henderson"), former senior vice president of Citizens Federal Savings and Loan Association, Salisbury, North Carolina, OTS No. 1050 ("Citizens" or "the Association"), that the OTS is of the opinion that the grounds exist to initiate an administrative proceeding against Henderson pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b)<sup>1</sup>; and

WHEREAS, Henderson desires to cooperate with the OTS to avoid the time and expense of such administrative proceeding and, without admitting or denying the facts outlined at subsection 2 below, hereby stipulates and agrees to the following:

1. Jurisdiction.

(a) Citizens was, at all times during Henderson's tenure, 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 was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) Henderson was a former assistant vice president and branch manager of the Association and, having served in such

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

capacity within 6 years of the date hereof, is an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u). see, 12 U.S.C. § 1818(i)(3).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS, acting through its Director, is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such 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 cease and desist orders where the respondent has consented to the issuance of the order. Therefore, Henderson is subject to the authority 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 that:

(a) On February 7, 1985, Henderson was hired by the Association as an assistant vice president and manager of the Association's Statesville Branch.

(b) On April 9, 1987, a longstanding Citizens' borrower obtained a loan from the Association in the amount of \$34,400. Henderson was the loan officer who handled this borrower's loan application although he did not have authority to approve the loan. The proceeds from this loan were used by the borrower to make a loan to Henderson of approximately \$35,000 for the purpose of consolidating Henderson's outstanding debts.

(c) On September 15, 1987, Henderson applied and was subsequently approved for a home mortgage loan from the Association in the amount of \$72,200. The loan application was signed by Henderson; however, the existence of the April 9, 1987 loan from the Citizens' borrower was not disclosed on the mortgage loan application as required. 12 C.F.R. § 571.7 prohibits institution affiliated persons from placing themselves in positions that involve a conflict of interest or create even the appearance of such. Henderson violated 12 C.F.R. § 571.7 and engaged in an unsafe or unsound practice by placing himself in a position involving a clear conflict of interest.

(d) On March 25, 1988, Henderson applied and was approved for an unsecured personal loan from the Association in the amount of \$23,000. As with the September 15, 1987 mortgage loan application, Henderson did not disclose the existence of the April 9, 1987 loan from the borrower on the loan application and, thus, again clearly violated 12 C.F.R. § 571.7 and engaged in an unsafe or unsound practice.

(e) As a result of these actions, Henderson committed or engaged in an omission constituting a breach of his fiduciary duties to the Association and an unsafe or unsound practice. By reason of the foregoing breach, violation, and practice, the Association has suffered financial loss in excess of \$10,000; whereas Henderson has received a gain or benefit. Further, such breach, violation and practice involve personal dishonesty on the part of Henderson and demonstrate a willful or continuing disregard by Henderson for the safety and soundness of the Association.

3. Consent.

Henderson consents to the issuance by the OTS of the accompanying Order to Cease and Desist ("Order"). Henderson 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 by the OTS under the authority of Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director or designee for the Southeast 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.

Henderson waives his right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), 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.

Henderson shall neither cause nor permit Citizens (or any subsidiary thereof) to incur, directly or indirectly, any expense for any legal or other professional expenses incurred in connection with the negotiation and/or issuance of the Order, nor obtain any indemnification or other reimbursement from the Association or any subsidiary thereof with respect to such amounts. Any such payments received by or on behalf of Henderson in connection with this Stipulation and/or the Order shall be returned to the Association within 10 days of the date of the Order.

7. Other Government Actions Not Affected.

Henderson acknowledges and agrees that the consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and does not release, discharge,

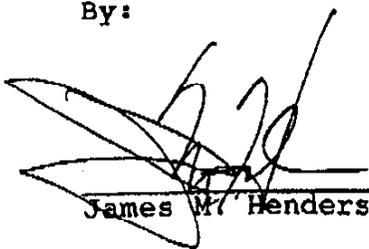
compromise, settle, dismiss, resolve, or in any way affect any other actions, charges against, or liability of Henderson that arise pursuant to this action or otherwise, and that may be or have been brought by the OTS or any other governmental entity.

8. Acknowledgment of Criminal Sanctions.

Henderson acknowledges that Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), sets forth criminal penalties for knowing violations of this Order.

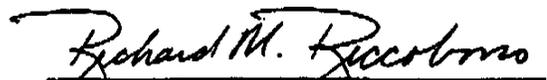
WHEREFORE, Henderson executes this Stipulation and Consent to the Entry of an Order to Cease and Desist, intending to be legally bound hereby.

By:

  
\_\_\_\_\_  
James M. Henderson

Accepted by:

Office of Thrift Supervision

  
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Richard M. Riccobono  
ACTING REGIONAL DIRECTOR  
Southeast Region

Date: May 30, 1994.

Date: 6/2/94