

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of:)
WILLIAM P. DiLORETA)
A Former Senior Vice)
President of Shenandoah)
Federal Savings Bank,)
Martinsburg, West Virginia)

Re: NE94-31

Dated: August 8, 1994

ORDER OF PROHIBITION

WHEREAS, the Office of Thrift Supervision ("OTS") has conducted an examination concerning Shenandoah Federal Savings Bank, Martinsburg, West Virginia ("SHENANDOAH") and, as a result of that examination has determined that:

(a) From February 1988 until January 1992, William P. DiLoreta ("DiLORETA"), the Senior Vice President of SHENANDOAH, was directly responsible for recommending the approval of at least three SHENANDOAH loans to his friend and business associate, Bennie H. Potter. The three loans to Potter totalled \$2,183,444 and consisted of: (1) a \$337,500 acquisition and development loan on 3.2 acres of property located on Mt. Olive Road in Fairfax County, Virginia, known as Que Vive at Confederate Ridge ("Que Vive"); (2) a \$1.8 million acquisition and development loan on a 268.4 acre property located on Route 620 in Spotsylvania County, Virginia, known as the River Junction project; and (3) a \$45,944

second mortgage loan secured by Potter's office condominiums located at 7361 McWhorter Place, Annandale, Virginia. DiLORETA was directly responsible for approving requests for loan draws from the Que Vive and River Junction loans. During this same period of time, DiLORETA failed to inform the Board of Directors of Shenandoah that he and Potter were partners in at least two other real estate projects; and

(b) The Board of Directors of SHENANDOAH authorized the \$337,500 Que Vive loan specifically for the purpose of acquiring the 3.2 acres of land and completing the engineering and site plan approval for the project. However, DiLORETA approved disbursement of \$46,720 in funds from the Que Vive loan for purposes unrelated to Que Vive and without the proper documentation to show the purpose and/or ultimate recipient of the funds. The disbursement by DiLORETA of Que Vive loan proceeds for purposes other than those approved by the Board of Directors constitutes an unsafe and unsound practice. In addition, the disbursements by DiLORETA without proper documentation were in violation of 12 C.F.R. § 563.17-1(c)(1)(vii) (1989); and

(c) Of the \$46,720 improperly disbursed by DiLORETA from the Que Vive loan, \$10,000 was purportedly used to acquire an unrelated piece of real estate and another \$28,720 was diverted to finance the acquisition and rezoning of an 11.2 acre real estate project located on Compton Road in Centreville, Virginia ("Compton Road Project"), in which DiLORETA and Potter were partners.

Pursuant to their agreement, in return for providing funds for the acquisition and rezoning costs of the Compton Road Project, DiLORETA expected to obtain in excess of \$130,000 in future profits from the eventual sale of the Compton Road Project. DiLORETA diverted \$28,720 from the Que Vive loan proceeds to secure the assignment of the purchase contract for the Compton Road property and to begin the necessary rezoning work. By using SHENANDOAH loan proceeds to fund his financial obligations, DiLORETA personally benefited from the \$28,720 he diverted from the Que Vive loan. In addition to engaging in a conflict of interest, DiLORETA breached his fiduciary duty to SHENANDOAH by failing to inform the Board of Directors that he was personally benefitting from the improper disbursement of these Que Vive loan proceeds and that the funds were used for purposes other than those approved by the Board of Directors; and

(d) In these matters, DiLORETA, who was a SHENANDOAH officer and an institution-affiliated party, has directly and/or indirectly violated applicable regulations (including 12 C.F.R. § 563.17-1(c)(1)(vii)(1989)); engaged and participated in unsafe and/or unsound practices in connection with the affairs of SHENANDOAH; and committed and engaged in acts, omissions and practices which constitute a breach of his fiduciary duty. By reason of these violations, practices and breaches, DiLORETA received personal benefits and demonstrated a willful and continuing disregard for the safety and soundness of SHENANDOAH.

WHEREAS, DiLORETA has executed a Stipulation and Consent to Issuance of an Order of Prohibition ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the Director of the OTS, acting by and through the Northeast Regional Director of the OTS; and

WHEREAS, without admitting or denying the statements, determinations, conclusions, and opinions of the OTS contained herein, DiLORETA has consented and agreed in the Stipulation to the issuance of this Order of Prohibition ("Order"); and

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue orders of prohibition where the respondent has consented to the issuance of the orders; and

WHEREAS, based upon the foregoing, the OTS is of the opinion that grounds exist for the issuance of this Order, pursuant to 12 U.S.C. § 1818(e) (Supp. IV 1992).

NOW THEREFORE, THE OTS ORDERS THAT:

1. DiLORETA is prohibited from further participation, in any manner, in the conduct of the affairs of SHENANDOAH or any of its subsidiaries.

2. Without the prior written approval of the OTS or its

successor and, if appropriate, another Federal financial institutions regulatory agency, DiLORETA may not hold any office in, or participate in any manner in the conduct of the affairs of any institution(s) or other entity as set forth in Section 8(e)(7)(A) of the Federal Deposit Insurance Act, as amended ("FDIA"), 12 U.S.C. § 1818(e)(7)(A) (Supp. IV 1992). Pursuant to Section 8(e)(6) of the FDIA, as amended, 12 U.S.C. § 1818(e)(6) (Supp. IV 1992), conduct prohibited by this Order includes, inter alia, (a) soliciting, procuring, transferring, attempting to transfer, voting, or 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)(Supp. IV 1992); and (b) voting for a director, or serving or acting as an institution-affiliated party.

3. All words or terms used in this Order and the attached Stipulation, for which meanings are not specified or otherwise provided for by the provisions of the Order or Stipulation, shall have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, 12 U.S.C. §§ 1461-70 (Supp. IV 1992), 12 U.S.C. §§ 1811-33(a) (Supp. IV 1992), and any other applicable statute.

4. This Order shall become effective on the date of issuance by the Northeast Regional Director of the OTS.

OFFICE OF THRIFT SUPERVISION

BY: 
Angelo A. Vigna
Northeast Regional Director

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (g) of this section, has been removed or suspended from office in an insured depository institution or prohibited from participating in the conduct of the affairs of an insured depository institution may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

(i) any insured depository institution;

(ii) any institution treated as an insured bank under subsection (b)(3) or (b)(4) of this section, or as a savings association under subsection (b)(8) of this section;

(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 depository institution regulatory agency;

(vi) the Federal Housing Finance Board and any Federal home loan bank; and

(vii) the Resolution Trust Corporation.

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of:

WILLIAM P. DiLORETA

A Former Senior Vice
President of Shenandoah
Federal Savings Bank,
Martinsburg, West Virginia

Re: NE94-31

Dated: August 8, 1994

STIPULATION AND CONSENT TO ISSUANCE OF AN
ORDER OF PROHIBITION

The Office of Thrift Supervision ("OTS"), by and through the Regional Director for the Northeast Regional Office, and William P. DiLoreta ("DiLORETA"), the former Senior Vice President of Shenandoah Federal Savings Bank, Martinsburg, West Virginia ("SHENANDOAH" or the "INSTITUTION"), hereby stipulate and agree as follows:

1. Consideration: The OTS, based on information reported to it, is of the opinion that grounds exist to initiate an administrative prohibition proceeding against DiLORETA pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e) (Supp. IV 1992). DiLORETA desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Without admitting or denying the

statements, determinations, conclusions and opinions of the OTS, except those contained in Paragraph 2 below which are admitted, DiLORETA hereby stipulates and agrees to the terms of this Stipulation and Consent to Issuance of an Order of Prohibition ("Stipulation") and to the issuance of the attached Order of Prohibition ("Order"), in consideration of the agreement of the OTS to forbear from initiating an administrative prohibition proceeding against DiLORETA.

The OTS, based on available evidence, has determined that it is appropriate and in the best interest of the public to execute this Stipulation and the attached Order.

2. Jurisdiction.

(a) SHENANDOAH was a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) (Supp. IV 1992), and Section 2(4) of the Home Owners' Loan Act, as amended ("HOLA"), 12 U.S.C. § 1462(4) (Supp. IV 1992). Accordingly, it was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended, 12 U.S.C. § 1813(c) (Supp. IV 1992).

(b) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB") was the regulatory agency with jurisdiction over SHENANDOAH and the INSTITUTION's officers, including DiLORETA, pursuant to Section 5 of the HOLA, 12 U.S.C. § 1464 (1988), as

amended Aug. 9, 1989, Pub. L. No. 101-73, title III, § 301, 103 Stat. 282 (Supp. IV 1992).

(c) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended, 12 U.S.C. § 1813(q) (Supp. IV 1992), the Director of the OTS succeeded to the interest of the FHLBB with respect to the supervision and regulation of all savings associations.

(d) DiLORETA served as an officer of SHENANDOAH from October 1984 to January 10, 1992. DiLORETA, as a former officer of SHENANDOAH is deemed to be an "institution-affiliated party" of SHENANDOAH, as that term is defined in Section 3(u) of the FDIA, as amended, 12 U.S.C. § 1813(u) (Supp. IV 1992), having served in such capacities within the six (6) years prior to the date of this Stipulation (see 12 U.S.C. § 1818(i)(3)) (Supp. IV 1992)).

(e) Pursuant to Section 3(q) of the FDIA, as amended, 12 U.S.C. 1813(q) (Supp. IV 1992), the Director of the OTS is the "appropriate Federal banking agency" to maintain a prohibition proceeding against institution-affiliated parties of SHENANDOAH. The Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue orders of prohibition where the respondent has consented to the issuance of the orders. Therefore, DiLORETA is subject to the authority of the Director of the OTS (acting through his delegated representative, the Regional Director of the Northeast Region) to initiate and maintain such a

proceeding against DiLORETA, pursuant to Section 8(e) of the FDIA, as amended, 12 U.S.C. § 1818(e) (Supp. IV 1992).

(f) DiLORETA admits the jurisdiction of the OTS over him and other subject matter of this action, pursuant to Section 8(e) of the FDIA, as amended, 12 U.S.C. § 1818(e) (Supp. IV 1992).

3. Consent. DiLORETA consents to the issuance by the OTS of the Order, a copy of which is attached hereto. DiLORETA 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(e) of the FDIA, as amended, 12 U.S.C. § 1818(e) (Supp. IV 1992). Upon issuance, it shall be a final order, effective and fully enforceable by the OTS or its successor under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i) (Supp. IV 1992), and subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. § 1818(j) (Supp. IV 1992).

5. Waivers.

(a) DiLORETA waives his right to be served with a ~~written notice of the OTS's intention to prohibit him, which contains a statement of the facts constituting grounds for the action, and to the administrative hearing thereon, as provided by~~

Section 8(e)(4) of the FDIA, 12 U.S.C. § 1818(e)(4) (Supp. IV 1992), 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) (Supp. IV 1992), or otherwise to challenge the validity of the Order.

(b) DiLORETA waives any claim for attorney's fees or expenses under the Equal Access to Justice Act, 5 U.S.C. § 504 (Supp. IV 1992).

6. Indemnification. DiLORETA shall neither cause nor permit SHENANDOAH (or any subsidiary thereof) to incur, directly or indirectly, any expense for any legal (or other professional) expenses incurred relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from SHENANDOAH (or any subsidiary thereof) with respect to such amounts. Any such payment received by or on behalf of DiLORETA in connection with this action shall be returned to the Resolution Trust Corporation, the receiver for SHENANDOAH.

7. Other Government Actions Not Affected. DiLORETA acknowledges and agrees that the consent to the entry of the Order is for the purpose of resolving this OTS prohibition action only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any other actions, charges against, or liability of DiLORETA that arise pursuant to this action or

otherwise, and that may be or have been brought by any government entity.

8. Cooperation. DiLORETA agrees to cooperate with the OTS, to the extent consistent with his rights under the Fifth Amendment of the United States Constitution, by providing truthful and complete information to the OTS, upon request, concerning matters relating to its examination of SHENANDOAH. This agreement to provide continued cooperation is binding only upon the OTS and DiLORETA, and specifically does not bar, compromise, or affect in any way any agreement DiLORETA makes or has made with any other governmental agency.

WHEREFORE, DiLORETA executes this Stipulation and Consent to Issuance of an Order of Prohibition, intending to be legally bound hereby, and the Regional Director of the Northeast Region (or his designee), on behalf of the Director of the OTS, hereby executes and accepts this Stipulation.

OFFICE OF THRIFT SUPERVISION

By: Angelo A. Vigna
Angelo A. Vigna
Northeast Regional Director

By: William P. DiLoreta
William P. DiLoreta

Date: July 25, 1994

* * * * *

ACKNOWLEDGMENT:

State of Virginia)
County of Fairfax)

On this 25th day of July, 1994, before me the undersigned notary public, personally appeared William P. DiLoreta and acknowledged his execution of the foregoing Stipulation and Consent to Issuance of an Order of Prohibition.

Allen M. [Signature]
Notary Public

My commission expires:
10/30/96