

Division and a photocopy of the check shall be sent to Charles H. Fitzpatrick, Esq., Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and Roger L. Bainbridge, Esq., Office of Thrift Supervision, 8500 West 110th Street, Suite 400, Overland Park, Kansas 66210.

OFFICE OF THRIFT SUPERVISION

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

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)
)
LEROY A. SEELE)
Director and Shareholder of)
PROVIDENT BANCSHARES, INC.)
St. Joseph, Missouri)
-and-)
Director and Institution-Affiliated)
Party of)
PROVIDENT SAVINGS BANK, a FSB)
St. Joseph, Missouri)

RE: OTS Order No. KC-94- 07
DATE: August 25, 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 LEROY A. SEELE, a director and shareholder of Provident Bancshares, Inc., St. Joseph, Missouri, OTS No. H-1877 ("PBI"), and a director of Provident Savings Bank, a FSB, 4305 Frederick Boulevard, St. Joseph, Missouri, OTS No. 04498 (the "Institution") that OTS is of the opinion that grounds exist to initiate an administrative civil money penalty assessment proceeding against LEROY A. SEELE pursuant to Section 7(j)(16) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1817(j)(16);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, LEROY A. SEELE desires to cooperate with OTS and to avoid the time and expense of such administrative litigation and, without admitting or denying

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

that such grounds exist, except those allegations set forth in section 1 below, entitled "Jurisdiction", which are admitted, hereby consents to the entry of the attached Order.

1. Jurisdiction.

- (a) PBI is a "savings and loan holding company" within the meaning of Section 10 of the Home Owner's Loan Act ("HOLA"), 12 U.S.C. § 1467a(a)(1)(D).
- (b) 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 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).
- (c) LEROY A. SEELE is a director and shareholder of PBI; a director 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).
- (d) 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 PBI, the Institution, and institution-affiliated parties; including directors and persons participating in the conduct of the affairs of the Institution.
- (e) 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 PBI and the Institution and institution-affiliated parties pursuant to Section 7(j)(16) of the FDIA, 12 U.S.C. § 1817(j)(16).

(f) LEROY A. SEELE is subject to the authority of OTS to initiate and maintain administrative proceedings pursuant to Section 7(j)(16) of the FDIA, 12 U.S.C. § 1817(j)(16).

2. OTS Findings of Fact. As further described below, the OTS finds that Richard D. Carlson, Leroy A. Seele and Scott M. Pugh willfully acted in concert to acquire control of PBI, in violation of the Change in Bank Control Act (the "Control Act"), 12 U.S.C. § 1817(j), the OTS's Acquisition of Control of Savings Associations regulations (the "Control Regulations"), 12 C.F.R. § 574.3(b), and the terms and conditions of the January 29, 1992, OTS approval relating to the voluntary supervisory conversion, resulting in pecuniary gain or other benefit to themselves:

(a) Richard D. Carlson, Leroy A. Seele and Scott M. Pugh Have Engaged in Concerted Activity

Financial Interdependence

On or about March 30, 1992, Richard D. Carlson provided credit to Leroy A. Seele and Scott M. Pugh by engaging in sham real estate purchases with them, which credit enabled Leroy A. Seele and Scott M. Pugh to purchase additional stock in PBI.² The nature and underlying terms of such transactions were not fully disclosed to the OTS.

2. The two real estate purchases by Richard D. Carlson are deemed to constitute a partial financing of the purchase of 95 shares of PBI stock by Leroy A. Seele and Scott M. Pugh and creates a presumption of concerted action between Richard D. Carlson, Leroy A. Seele and Scott M. Pugh pursuant to 12 C.F.R. § 574.4(d)(3)(ii) of the Control Regulations.

Family Relationships

Pursuant to 12 C.F.R. § 574.4(d)(2) of the Control Regulations, Richard D. Carlson, Carl L. Carlson, Leroy A. Seele, Scott M. Pugh and any person with whom their stock is held jointly are each presumed to be acting in concert with members of his or her immediate family, as defined at 12 C.F.R. § 574.2(j) of the Control Regulations.

Other Evidence of Concerted Activity

Richard D. Carlson, Leroy A. Seele and Scott M. Pugh engaged in concerted action during an annual Shareholder Meeting in October 1992, by acting together with each other and with other members of their immediate families to amend the Articles of Incorporation and gain a majority of the number of seats on the Board of Directors and control of PBI. Following the annual meeting, these individuals and members of their immediate families also maintained a pattern of voting together as a bloc on all substantive matters.

(b) Such Concerted Actions Have Resulted in the Acquisition of Control of PBI.

These family relationships and presumptions of concerted action result in the aggregation of stock held individually or jointly by Richard D. Carlson, Carl L. Carlson, Leroy A. Seele and Scott M. Pugh. The aggregate shares owned by such parties total 50.47% of the total outstanding voting stock of PBI. As a result, Richard D. Carlson, Leroy A. Seele, Scott M. Pugh, are deemed to have acquired control of Provident Bancshares, Inc., pursuant to 12 C.F.R. § 574.4(a)(2)(i) of the Control Regulations, as they collectively hold with their immediate families in excess of 25% of the outstanding voting stock of PBI.

3. Consent. LEROY A. SEELE consents to the issuance by the OTS of the accompanying Order. LEROY A. SEELE 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 7(j)(16) of the FDIA, 12 U.S.C. § 1817(j)(16). 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. LEROY A. SEELE waives his right to a notice of Assessment of Civil Money Penalty provided by Section 7(j)(16) of the FDIA, 12 U.S.C. § 1817(j)(16) and the administrative hearing provided by Section 7(j)(16)(F) of the FDIA, 12 U.S.C. § 1817(j)(16)(F), 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. LEROY A. SEELE 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 LEROY A. SEELE in connection with his 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, LEROY A. SEELE acknowledges and agrees explicitly to the following provisions:
- a. LEROY A. SEELE 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 LEROY A. SEELE 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 LEROY A. SEELE 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 LEROY A. SEELE 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. LEROY A. SEELE'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, LEROY A. SEELE executes this Stipulation and Consent to Issuance of an Order of Assessment Civil Money Penalty, intending to be legally bound hereby.

By:

Leroy A. Seele
LEROY A. SEELE

Date: 8-10-94

Accepted by:

OFFICE OF THRIFT SUPERVISION

F. R. Casteel
Frederick R. Casteel
Regional Director
Midwest Region

Date: 8-25-94