

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

In the Matter of)
)
WILLIAM S. FRIEDMAN,)
)
A Former Officer and Director)
of Southmark Corporation, a)
Savings and Loan Holding Company)
of San Jacinto Savings Association,)
Bellaire, Texas,)
)
and)
)
GALAXY ASSOCIATES,)
a Savings and Loan Holding)
Company of San Jacinto)
Savings Association,)
Bellaire, Texas.)

Re: OTS Order No. AP 94-54

Dated: November 22, 1994

CONSENT ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF
AND AN ORDER OF PROHIBITION

WHEREAS, the Office of Thrift Supervision ("OTS") has
conducted an investigation into the affairs of San Jacinto Savings
Association of Bellaire, Texas ("San Jacinto") pursuant to
sections 4 and 5 of the Home Owners' Loan Act ("HOLA"), as amended
by the Financial Institutions Reform, Recovery, and Enforcement
Act of 1989, P.L. 101-73 (August 9, 1989) ("FIRREA"), pursuant to
Resolution No. DAL-91-03, issued on February 1, 1991, as amended;
and

WHEREAS, on November 22, 1994, pursuant to OTS Order No. AP 94-56, the OTS approved and issued a Notice of Charges and Hearing for Orders of Prohibition, Orders to Cease and Desist to Direct Restitution and other Appropriate Relief against Willliam S. Friedman ("FRIEDMAN") from serving as an institution-affiliated party ("NOTICE");

WHEREAS, the OTS alleges, as detailed in the NOTICE that FRIEDMAN, and GALAXY ASSOCIATES (collectively "RESPONDENTS") engaged in unsafe or unsound practices, or breaches of fiduciary duty, or violations of the Federal Deposit Insurance Act, 12 U.S.C. § 1811 et. seq. (Supp. IV 1992) or regulations that resulted in the defalcation of federally insured funds; and bases this Consent Order to Cease and Desist for Affirmative Relief and an Order of Prohibition ("ORDER") on such conduct and the results thereof;

WHEREAS, RESPONDENTS admit to the jurisdiction of the OTS;

WHEREAS, RESPONDENTS have executed a Stipulation and Consent to Issuance of a Consent Order to Cease and Desist for Affirmative Relief and an Order of Prohibition ("STIPULATION and CONSENT"), which is accepted and approved by the OTS, acting by and through its Acting Director, Jonathan L. Fiechter; and

WHEREAS, RESPONDENTS, in the STIPULATION and CONSENT, have agreed and consented to the issuance of this ORDER pursuant to

sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §§ 1818(b) and (e);

NOW, THEREFORE, IT IS ORDERED that:

ORDER TO CEASE AND DESIST
FOR AFFIRMATIVE RELIEF

1. **RESPONDENTS** shall cease and desist from committing, or aiding and abetting the commitment of, any unsafe or unsound practice, breach of fiduciary duty, or any violation of any law, regulation, rule or condition imposed in writing by a Federal regulatory banking agency in connection with the conduct of the business of any federally insured financial institution.

2.a. Based upon the sworn statements of financial condition and other relevant factors, including a desire and willingness to cooperate with the OTS and to reimburse the Resolution Trust Corporation ("RTC") as the receiver of San Jacinto Savings Association, Bellaire, Texas, **RESPONDENTS** shall pay restitution in the amount of \$20,000,000.00. Payments made by **RESPONDENTS** to the **RTC** in accordance with the terms of that certain **JUDGMENT AGREEMENT** between **FRIEDMAN, et. al.** and the **RTC** dated November 21, 1994, shall apply to the restitution obligation required by the **ORDER**; and full performance by **RESPONDENTS** of all their obligations in accordance with the ~~JUDGMENT AGREEMENT~~, and execution of the appropriate releases by the **RTC** thereunder, shall satisfy the restitution obligation required by the **ORDER**.

b. RESPONDENTS shall secure the payment of the restitution amount recited above by executing such judgments and agreements as required by the RTC.

3. a. Concurrent with RESPONDENTS' execution of the STIPULATION AND CONSENT, RESPONDENTS shall submit an affidavit, executed under oath by RESPONDENTS and subject to the penalties for false statements and perjury under 18 U.S.C. §§ 1001 and 1621, stating, to the best of their knowledge and belief after due inquiry, that the financial statements dated December 31, 1993 and September 30, 1994 were true and correct when made and that as of the date of the STIPULATION AND CONSENT no material change in RESPONDENTS' financial condition has occurred since such statement. A falsely sworn affidavit shall be considered a violation of the ORDER.

b. If the OTS determines that the financial statements submitted by RESPONDENTS as described in paragraph 3(a) materially understate RESPONDENTS' net worth as of the date of this ORDER because of an (i) omission of one or more assets; (ii) undervaluation of one or more listed assets; or (iii) overvaluation of one or more listed liabilities, RESPONDENTS shall (i) forfeit such undisclosed asset to the OTS, or the RTC, or their successors, either by transferring such undisclosed asset to the OTS or RTC or compensating the OTS or RTC for the full value of the undisclosed asset (including interest or other income

generated by the asset) as if such asset had been transferred as of the date of this ORDER; (ii) pay to the OTS or the RTC the cash equivalent of the undervaluation of any undervalued assets; or (iii) pay to the OTS or the RTC the cash equivalent of any overvaluation of the overvalued liability. OTS further reserves its rights to take any administrative or civil action against RESPONDENTS for violation of this paragraph of the ORDER.

4. a. Until such time as the amounts set forth in paragraph 2 above are fully paid and satisfied, RESPONDENTS shall submit, on the anniversary of the issuance of the ORDER, to the OTS, on such terms and conditions as the OTS or its successor may hereafter require from RESPONDENTS, the following additional financial disclosure accompanied by a sworn affidavit under penalty of perjury of the RESPONDENTS stating that the accompanying financial disclosure is true and correct:

b. A current statement of the financial condition, as of the most recent calendar year-end, of the RESPONDENTS, including consolidated statements of the financial condition of RESPONDENTS and other parties and a statement of the financial condition of any entity in which RESPONDENTS held legal, equitable or beneficial title or interest of a 25 percent or greater share;

c. copies of the most recently filed income tax returns of the RESPONDENTS or any nominee of the RESPONDENTS;

d. a statement setting forth all transfers since the date of the previous financial disclosure made to or from the **RESPONDENTS** or any spouse or dependent children from any source that singularly, or when aggregated with other payments from the same source, exceed in market value \$10,000 along with a statement setting forth the nature of each such transfer; and

e. a statement of all assets of any nature whatsoever, including gifts and bequests, received by the **RESPONDENTS** since the date of the previous financial disclosure made by the **RESPONDENTS**, the market value of which exceeds by \$10,000 or more the amount of any consideration paid by the **RESPONDENTS** for the asset. The assets, liabilities and transfers that must be disclosed pursuant to this paragraph shall include all assets, liabilities and transfers of the nature described in paragraph 4.

5. Solely for the purpose of assessing the accuracy of representations made by the **RESPONDENTS** in the financial disclosure required under the **ORDER**, the **RESPONDENTS** shall, upon reasonable notice and without service of a subpoena or other process, permit the **OTS** to inspect and copy all books, records, receipts and documentation of any nature whatsoever that they maintain or are under their control that support, document or in any way relate to such financial disclosure. The **OTS** will not request such inspection more than once a year.

ORDER OF PROHIBITION

6. Pursuant to section 8(e) of the FDIA, 12 U.S.C. § 1818(e), FRIEDMAN is prohibited from participating in the conduct of the affairs of an insured depository institution to the full extent of said section and its subparts (6) and (7) and shall not serve as an institution-affiliated party as that term is defined in the FDIA, 12 U.S.C. §§ 1813(u) and 1818(b)(8), without the prior written approval of the Director of the OTS, or his designee, and, if appropriate, the approval of other Federal financial institutions regulatory agencies. FRIEDMAN may apply to the OTS for the ORDER to be stayed, modified, terminated, or set aside in a manner consistent with 12 U.S.C. § 1818(e). Pursuant to the FDIA, 12 U.S.C. § 1818(e)(6), conduct prohibited by this ORDER includes, inter alia, the solicitation, transfer, or exercise of any voting rights with respect to any securities issued by any insured institution or voting for a director of an insured institution or acting as an institution-affiliated party.

MISCELLANEOUS

7. In any bankruptcy proceeding in which it is or may be contended that RESPONDENTS' obligation to make the payment of restitution pursuant to the STIPULATION AND CONSENT and the ORDER is subject to discharge, RESPONDENTS will in no manner contest OTS's assertions, under 11 U.S.C. § 523(a)(11) or otherwise, that

the obligation is for, and the ORDER arises out of, acts that result in claims not dischargeable in bankruptcy in any circumstances, pursuant to any of the provisions of the United States Bankruptcy Code.

8. All payments by RESPONDENTS required by paragraph 2 of this ORDER shall be delivered to:

Resolution Trust Corporation
550 17th Street, N.W.
Washington, D.C. 20429

or as otherwise directed by the OTS or RTC or its successors in interest.

9. Any financial disclosure by RESPONDENTS required by this ORDER shall be delivered to:

Regional Director
Office of Thrift Supervision
122 W. John Carpenter Freeway
Suite 600 Dallas, Texas 75261

or as otherwise directed by the OTS or its successor in interest.

10. RESPONDENTS' obligations to make restitution under paragraph 2 of this ORDER are joint and several and will not be reduced by payments made to any entity other than the RTC or its successor by or on behalf of the RESPONDENTS, and will not be reduced or subject to an off-set as a result of any payment made by or on behalf of any person or entity other than one of the RESPONDENTS, except in accordance with the terms of the JUDGMENT AGREEMENT.

11. This ORDER is subject to the provisions of section 8(j) of the FDIA, 12 U.S.C. § 1818(j).

12. This ORDER shall become effective on the date it is issued.

Date: November 22, 1994

THE OFFICE OF THRIFT SUPERVISION

BY: Jonathan L. Fiechter
JONATHAN L. FIECHTER
ACTING DIRECTOR
OFFICE OF THRIFT SUPERVISION

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Before The
OFFICE OF THRIFT SUPERVISION
OF THE DEPARTMENT OF THE TREASURY

In the Matter of)
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WILLIAM S. FRIEDMAN,)
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GALAXY ASSOCIATES,)
a Savings and Loan Holding)
Company of San Jacinto)
Savings Association,)
Bellaire, Texas.)
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Re: OTS Order No. AP 94-54
Dated: November 22, 1994

STIPULATION AND CONSENT TO ISSUANCE OF CONSENT ORDER
TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF AND AN
ORDER OF PROHIBITION

The Office of Thrift Supervision ("OTS"), by and through its Acting Director, Jonathan L. Fiechter; and William S. Friedman ("FRIEDMAN"), and Galaxy Associates (collectively "RESPONDENTS") hereby stipulate and agree as follows:

1. The OTS, based upon an investigation into the affairs of San Jacinto Savings Association of Bellaire, Texas ("SAN JACINTO"), ~~has determined that grounds exist for the issuance of a Notice of Charges ("NOTICE") pursuant to sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), as amended by the~~

Financial Institutions Reform, Recovery, and Enforcement Act, P.L. 101-73 (Aug. 9, 1989) ("FIRREA"), 12 U.S.C. §§ 1818(b) and (e). **RESPONDENTS** desire to avoid the time and expense of defending administrative enforcement proceedings commenced by the OTS pursuant to the **NOTICE**. Therefore, solely for the purposes of settling this administrative proceeding, and without admitting or denying the allegations set forth in the **NOTICE** except as to jurisdiction, **RESPONDENTS** hereby, without further notice, stipulate and consent to the entry of the Order to Cease and Desist for Affirmative Relief and Order of Prohibition ("**ORDER**") in the form attached herewith, pursuant to **FDIA** sections 8(b) and (e), 12 U.S.C. §§ 1818(b) and (e).

JURISDICTION

2. **SAN JACINTO** was a "savings association" within the meaning of section 3 of the **FDIA**, 12 U.S.C. § 1813(b), and section 2 of the Home Owners' Loan Act ("**HOLA**"), 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).

3. **FRIEDMAN**, as a former officer, director, and controlling person of **SAN JACINTO** and/or its holding companies, was a "person participating in the conduct of the affairs" of **SAN JACINTO** as that term is used by 12 U.S.C. §§ 1464(d)(2)(A)(C) and was an "institution-affiliated party", as that term is used by 12 U.S.C.

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§§ 1813(u) and 1818(b)(8).

4. Galaxy Associates was a savings and loan holding company within the meaning of 12 U.S.C. § 1730(a)(1)(D) that acted in concert with FRIEDMAN and Gene E. Phillips and related entities as controlling persons of SAN JACINTO and/or its holding companies, and are subject to the cease and desist authority of the OTS pursuant to 12 U.S.C. §1818(b)(9).

5. Pursuant to section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" to maintain enforcement proceedings against such a savings association, its holding companies, or its institution-affiliated parties. Therefore, RESPONDENTS are subject to the authority of the OTS to initiate and maintain administrative cease and desist proceedings against RESPONDENTS, pursuant to section 5(d)(1)(A) of the HOLA, 12 U.S.C. § 1464(d)(1)(A), and section 8(b) of the FDIA, 12 U.S.C. §§ 1818(b). FRIEDMAN is subject to the authority of the OTS to initiate and maintain an administrative prohibition action pursuant to section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

CONSENT

6. RESPONDENTS consent to the issuance by the OTS of the accompanying ORDER. Further, RESPONDENTS agree to comply with the terms, provisions, and conditions of the ORDER upon its issuance.

FINALITY

7. The ORDER is issued pursuant to sections 8(b) and 8(e) of the FDIA, 12 U.S.C. §§ 1818(b) and (e). Upon its issuance by the OTS,

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the ORDER shall be a final order, effective and fully enforceable by the OTS, its successor(s), or an appropriate Federal banking agency pursuant to the provisions of section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

WAIVERS

8. **RESPONDENTS** waive any rights to the administrative hearing provided by sections 8(b) and 8(e) of the FDIA, 12 U.S.C. §§ 1818(b) and (e), with respect to the NOTICE. Further, **RESPONDENTS** agree not to challenge the validity of this Stipulation and Consent to Issuance of Order to Cease and Desist and Order of Prohibition ("STIPULATION and CONSENT") or the ORDER. Additionally, **RESPONDENTS** waive any right to seek judicial review of this STIPULATION and CONSENT or the ORDER, including any such right provided by section 8(h) of the FDIA, 12 U.S.C. § 1818(h).

9. **FRIEDMAN** 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 related to the NOTICE and in any investigation, litigation or other proceeding maintained by the OTS relating to **SAN JACINTO**, its holding companies, its subsidiaries and its institution-affiliated parties, except that **FRIEDMAN** does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If **FRIEDMAN** invokes a privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to

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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. § 600 et seq., FRIEDMAN 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.

OTHER ACTIONS, PROCEEDING AND PARTIES

10. This STIPULATION and CONSENT, the ORDER, and the required payment of restitution by RESPONDENTS pursuant to the ORDER, RESPONDENTS' compliance with the ORDER, and the forbearance of the OTS to initiate and maintain administrative proceedings against RESPONDENTS settle only the charges set forth in the NOTICE, as they pertain to RESPONDENTS, and any potential charges that the OTS could bring against RESPONDENTS' based upon, or arising from, RESPONDENTS' conduct in connection with the business affairs of SAN JACINTO and/or its holding companies with respect to their ownership and control of San Jacinto.

11. Notwithstanding this provision or any other provision of the Stipulation and this Order, FRIEDMAN acknowledges and agrees explicitly to the following:

FRIEDMAN acknowledges and agrees that this proceeding, including the possible forfeiture of assets as a resolution thereof, and his consent to the entry of the Order are for the

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purposes of resolving this OTS enforcement matter only. By signing this document FRIEDMAN agrees that he will not assert the Order, including any forfeiture pursuant thereto, 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.

12. This STIPULATION and CONSENT, the ORDER, and RESPONDENTS' compliance with the ORDER, do not compromise, settle, dismiss, resolve, or in any way affect:

- a. any charges or potential actions based upon or arising from the transactions described in the NOTICE, or any other transactions, as they might pertain to any entity or person other than RESPONDENTS, against whom the OTS expressly reserves its rights to initiate and maintain administrative proceedings;
- b. any civil or criminal claims, actions, or charges against or liability of RESPONDENTS or any other individual or entity asserted by any governmental entity other than the OTS;
- c. any claims or action that may be brought against ~~RESPONDENTS~~ by any individual or entity other than the OTS, or any claims or actions that may be

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brought against RESPONDENTS by an individual or entity named as a party, respondent, or defendant in an action brought by any governmental entity.

13. In any bankruptcy proceeding in which it is or may be contended that RESPONDENTS' obligation to make the payment of restitution pursuant to the STIPULATION AND CONSENT and the ORDER is subject to discharge, RESPONDENTS will in no manner contest OTS's assertions, under 11 U.S.C. § 523(a)(11) or otherwise, that the obligation is for, and the ORDER arises out of, acts that result in claims not dischargeable in bankruptcy in any circumstances, pursuant to any of the provisions of the United States Bankruptcy Code.

14. RESPONDENTS acknowledge that this STIPULATION AND CONSENT and the accompanying ORDER are entered into and executed by OTS in reliance on the financial statements dated December 31, 1993 and September 30, 1994 made by RESPONDENTS. Concurrent with the execution of this STIPULATION AND CONSENT, RESPONDENTS shall submit an affidavit, executed under oath by RESPONDENTS and subject to the penalties for false statement and perjury under 18 U.S.C. §§ 1001 and 1621, stating, to the best of his knowledge and belief after due inquiry, that the financial statements dated December 31, 1993 and September 30, 1994 were true and correct when made and that as of the date of this STIPULATION AND CONSENT ~~no material change in RESPONDENTS' financial condition has~~ occurred since these disclosures. RESPONDENTS acknowledge that a

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falsely sworn affidavit constitutes a violation of the ORDER.

WHEREFORE, in consideration of the foregoing and intending to be legally bound hereby, the OFFICE OF THRIFT SUPERVISION, by and through its Acting Director, Jonathan L. Fiechter and RESPONDENTS intentionally and knowingly execute this STIPULATION and CONSENT.

William S. Friedman
William S. Friedman

William S. Friedman, General Partner
Galaxy Associates
RESPONDENTS

Signed this 17th day of November, 1994

Accepted by: OFFICE OF THRIFT SUPERVISION

BY: *Jonathan L. Fiechter*
Jonathan L. Fiechter,
Acting Director

Signed this 22nd day of November, 1994

William S. Friedman
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