

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of)

THOMAS F. BASTA,)

Former Director and Officer of)
Cross County Savings Bank,)
Middle Village, New York)

Re: Order No. NE98-10

Dated: June 30, 1998

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

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed THOMAS F. BASTA, who at all relevant times was a former director and officer of Cross County Savings Bank, Middle Village, New York ("Cross County"), that grounds exist to initiate administrative cease-and-desist proceedings against him pursuant to 12 U.S.C. §1818(b) and(e);¹ and

WHEREAS, THOMAS F. BASTA desires to cooperate with the OTS and to avoid the time and expense of such administrative proceedings and, without admitting or denying that such grounds exist, or the Findings of Fact or opinions and conclusions of the OTS, except as to Jurisdiction (paragraph 1, below), which is admitted, hereby stipulates and agrees to the following:

¹ All references to the United States Code ("U.S.C.") are as amended, unless otherwise indicated.

1. Jurisdiction.

(a) Cross County is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. §1462(4). Accordingly, it is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c).

(b) THOMAS F. BASTA, as a former director and officer of Cross County, is deemed to be an “institution-affiliated party” as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity **within** six (6) years of the date hereof. See 12 U.S.C. § 1818(i)(3).

(c) Pursuant to 12 U.S.C. §1813(q), the Director **of the** OTS is the “appropriate Federal banking agency” to maintain administrative proceedings against such a savings association or its institution-affiliated parties. Therefore, THOMAS F. BASTA is subject to the jurisdiction of the OTS to initiate and maintain administrative proceedings against him pursuant to 12 U.S.C. §1818. The Director of the OTS has delegated to the Regional Director of the Northeast Region of the OTS or his designee (“Regional Director”) **the** authority to issue orders where the individual subject to the order has consented to its issuance.

2. OTS Findings of Fact. The OTS **finds** that:

Between 1996 and the **beginning** of 1998, THOMAS F. BASTA repeatedly caused Cross County to use institution resources and **funds** to reimburse himself for personal expenses which were not legitimate business expenses of Cross County. In so doing, THOMAS F. BASTA **was** unjustly enriched and acted with willful and continuing disregard for **the** safety and soundness of Cross County. As a result of these expenditures, Cross County **suffered** substantial monetary **losses**.

3. Consent. THOMAS F. BASTA consents to **the** issuance by **the OTS of the** accompanying Consent Order of Prohibition and Order to Cease and **Desist for Affirmative Relief**

("Order"). THOMAS F. BASTA 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 pursuant to 12 U.S.C. § 1818(b) and (e). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. **Waivers.** THOMAS F. BASTA waives the following:

(i) the right to be served with a written notice of the OTS's charges against him as provided by 12 U.S.C. § 1818;

(ii) the right to an administrative hearing of the OTS's charges against him as provided by 12 U.S.C. § 1818;

(iii) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;

(iv) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412.

6. **Indemnification Limitations.** THOMAS F. BASTA represents that he has not received, directly or indirectly, any sums from Cross County for the purpose of indemnifying or reimbursing him for any expenses incurred by him relating to the issuance of the Order. THOMAS F. BASTA shall neither cause nor permit Cross County (or any successor institution, subsidiary or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional

services rendered to THOMAS F. BASTA relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from Cross County (or any successor institution, subsidiary or service corporation thereof) with respect to such expenses. In the event that any such payments are received by or on behalf of THOMAS F. BASTA in connection with this action, THOMAS F. BASTA agrees promptly to notify the OTS of the receipt of such payments and to return such payments without delay to Cross County (or any successor institution, subsidiary or service corporation thereof).

7. Scope of Release: Other Governmental Actions Not Affected.

(a) Upon the OTS's issuance of the accompanying Order, following the OTS's acceptance of this Stipulation executed by THOMAS F. BASTA, the OTS does hereby forever release and discharge THOMAS F. BASTA from all potential claims and charges that have been or might have been asserted by the OTS based on the alleged violations and unsafe or unsound practices summarized in the Findings of Fact set forth at paragraph 2 of this Stipulation and as described below. THOMAS F. BASTA understands that the release provided by this paragraph is limited solely to administrative actions the OTS could take based on the above-alleged violations and unsafe or unsound practices summarized in the above OTS Findings of Fact, or in any findings or conclusions contained in any Report of Examination of Cross County, conducted by the OTS prior to the effective date of this Order. This release shall not preclude or effect any right of the OTS to determine and ensure compliance with the terms and provisions of the Order and this Stipulation.

(b) THOMAS F. BASTA acknowledges and agrees that his consent to the issuance of the Order is solely for the purpose of resolving certain potential OTS administrative enforcement charges as provided by paragraph 7(a) above, and does not otherwise release, discharge,

compromise, settle, dismiss, resolve, or in any way **affect** any actions, charges **against**, or **liability** of THOMAS F. BASTA that arise pursuant to this action or otherwise and that may be or have been brought by another governmental entity.

8. Bankruptcy. THOMAS F. BASTA acknowledges and agrees that pursuant to 11 U.S.C. § 523(a)(11), his restitution obligation under the Order is not a dischargeable debt, and he **waives** any right to seek discharge of such obligation in any bankruptcy proceeding.

9. Miscellaneous.

(a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America,

(b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns;

(c) The section and paragraph headings in &Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order;

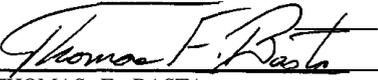
(d) The terms of this Stipulation and the Order represent the **final** written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters; and

(e) This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

WHEREFORE, on the 5TH day of June 1998, THOMAS F. BASTA executes this

Stipulation, intending to be legally bound hereby.

Accepted on the date of the Order by:
OFFICE OF THRIFT SUPERVISION



THOMAS F. BASTA

By: 

Robert C. Albanese
Regional Director, Northeast Region

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of)	Re: Order No. NE98-10
THOMAS F. BASTA,)	Date: June 30, 1998
)	
Former Director and Officer of)	
Cross County Federal Savings Bank,)	
Middle Village, New York)	

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

WHEREAS, THOMAS F. BASTA (“BASTA”), an institution-affiliated party of Cross County Federal Savings Bank, Middle Village, New York (“Cross County”), has executed a Stipulation and Consent To the Issuance of an Order of Prohibition and an Order To Cease and Desist For **Affirmative** Relief (“Stipulation”); and

WHEREAS, BASTA, by his execution of the accompanying Stipulation, has consented and agreed to the issuance of this Consent Order of Prohibition and Order To Cease and **Desist** For **Affirmative** Relief (“Order”), pursuant to Sections **8(b)** and (e) of the Federal Deposit Insurance Act (“FDIA”), 12 U.S.C. §§ **1818(b)** and (e); and

WHEREAS, the Director of the Office of Thrift Supervision (“OTS”) has delegated to the Regional **Directors** of the OTS the authority to issue Orders of Prohibition and Cease and Desist Orders on behalf of the OTS where respondents have consented to the **issuance** of the **Orders**;

NOW, THEREFORE, IT IS ORDERED that:

ORDER OF PROHIBITION

1. BASTA is prohibited from further participation, in any manner, in the conduct of the affairs of Cross County and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. BASTA is and shall be subject to the statutory prohibitions provided by 12 U.S.C. § 1818(e) and, except upon the prior written consent of the OTS (acting through its Director or an authorized representative thereof) and any other “appropriate Federal financial institutions regulatory agency,” for purposes of 12 U.S.C. § 1818(e)(7)(B)(ii) shall not:

(a) hold any office in or participate in any manner in the conduct of the affairs of, any institution or agency specified in 12 U. S. C. § 1818(e)(7)(A), including but not limited to:

(i) any insured depository institution, e.g., savings and loan associations, saving banks, national banks, trust companies, and other banking institutions;

(ii) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3) and 1818(b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings association%

(iii) any insured credit union under the Federal Credit Union Act [12 U.S.C. § 1781 *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, **within** the meaning of 12 U.S.C. § 1818(e)(7)(a)(V); and

(vi) the Federal Housing Finance Board and any Federal Home Loan Bank.

(b) solicit, procure, transfer, attempt to transfer, vote or attempt to vote any **proxy, consent, or authorization** with respect to any voting rights in any institution described in 12 U.S.C. § 1818(e)(7)(A);

(c) violate any voting agreement previously approved by the “appropriate Federal banking agency” within the meaning of 12 U.S.C. § 1813(q);

(d) vote for a director, or serve or act as an “**institution-affiliated party**” as that term is defined at 12 U.S.C. § 1813(u), *e.g.*, a director, officer, employee, controlling stockholder of, or agent for, an insured depository institution.

3. The Stipulation is made a part hereof and is incorporated herein by this reference.

4. BASTA shall promptly respond to any request **from** the OTS for information or documents that the OTS reasonably requests to demonstrate compliance with this Order.

5. 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. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their **successors** in interest.

6. **This** Order is and shall become effective on the date it is issued as shown in the caption hereof. The Stipulation and Order shall remain in effect until terminated, modified or suspended in **writing by the OTS, acting through** its Director, Regional **Director** or other authorized **representative**.

IT IS FURTHER ORDERED that:

ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

7. BASTA is and shall be subject to the statutory requirements provided by Section 8 (b) of the FDIA, 12 U.S.C. § 1818 (b).

8. BASTA shall comply fully with, including but not limited to making payment of restitution to Cross County in the amount of **\$52,707.39** required under a Severance and Release Agreement entered into between him and Cross County dated June 15, 1998. The Severance and Release Agreement is and shall be incorporated herein by reference and, in addition to any other remedies, shall be enforceable by the OTS as a term of this Order as though fully set forth in this Order. All payments by BASTA under the Severance and Release Agreement should be made directly to Cross County.

9. BASTA shall promptly respond to any request from the OTS for information or documents that the OTS reasonably requests to demonstrate compliance with this Order.

10. This Order is and shall become effective on the date it is issued as shown in the caption hereof. The Stipulation and Order shall remain in effect until terminated, modified or suspended in writing by the OTS, acting through its Director, Regional Director or other authorized representative.

11. The Stipulation is made a part hereof and is incorporated herein by this reference.

12. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

OFFICE OF THRIFT SUPERVISION

By: 
Robert C. Albanese
Regional Director, Northeast Region