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UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION

_____)
In the Matter of:)

ROTH, MURPHY, SANFORD & CO.)

Former Independent Auditor)
of Eureka Homestead Society)
New Orleans, Louisiana)
_____)

OTS Order No.: MWR-97-11

Date: June 19, 1997

STIPULATION AND CONSENT TO THE ISSUANCE OF 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 Roth, Murphy, Sanford & Co. ("RMS" or the "Firm"), former independent auditor of Eureka Homestead Society, New Orleans, Louisiana ("Eureka Homestead" or the "Institution"), that grounds exist to initiate an administrative cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b);¹ and

WHEREAS, RMS desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding 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

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

stipulates and agrees to the following:

1. Jurisdiction.

(a) Eureka Homestead 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); and

(b) RMS, an accounting firm that prepared annual audit reports for Eureka Homestead, is an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u) having served in such capacity within 6 years of the date hereof (see 12 U.S.C. § 1818(i)(3)); and

(c) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association or its institution-affiliated parties. Therefore, RMS is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against the Firm pursuant to 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Director of the Midwest Region of the OTS or his designee ("Regional Director"), the authority to issue cease and desist orders where the respondent has consented to the issuance of the order.

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

(a) Beginning with the 1990 annual audit and continuing through the 1993 annual audit of Eureka Homestead, RMS performed each annual audit of the Institution. Roth Murphy's 1990, 1991, and 1992 annual audit reports, which were relied upon by the board of directors ("Board") of Eureka Homestead and the regulators for

accuracy and completeness, included the "unqualified" opinion of the audit firm that the Institution's books and records were true and accurate and without material misrepresentation.

(b) During the course of the OTS examination of Eureka Homestead, which commenced on October 18, 1993, OTS examiners first discovered that Eureka Homestead's president, Paul D. Clayton ("Clayton"), had engaged in unauthorized securities trading activities on behalf of the Institution. OTS examiners determined that Clayton had engaged in unauthorized and undisclosed securities trading activities in every year between 1987 and 1993 which resulted in significant unrecognized losses to Eureka. Clayton's conduct constituted statutory and regulatory violations, unsafe and unsound practices and breaches of his fiduciary duties to the Institution. None of the annual audits performed by RMS had discovered or disclosed Clayton's continuing unauthorized securities trading.

(c) As a direct result of Clayton's unauthorized trading activities, Eureka Homestead was forced to amend its books, records, and thrift financial reports to recognize \$8,200,000 in losses. This recognition of loss substantially impaired the Institution's financial condition and posed an abnormal risk to the financial stability and integrity of the Institution.

(d) OTS further finds that RMS engaged in actions for or toward causing, bringing about, participating in, counseling or aiding or abetting the violations, unsafe and unsound practices and breaches of fiduciary duties by Clayton. These actions include, but are not limited to, the following:

(e) During all times relevant hereto, RMS engaged in a practice of forwarding letters to various brokerage firms ostensibly to independently confirm "all securities held in safekeeping."

(f) During 1993, a brokerage firm forwarded a February 1, 1993 "audit confirm" response to RMS, which reflected that certain securities were being held on margin and that the account balance reflected a negative \$2,552,754.60. Two of the securities were Louisiana Public Facility Authority Class B bonds. This type of security was not approved by the Board as a permissible investment for Eureka Homestead and was not reflected on the Institution's books and records. The letter had been authored and transmitted by the brokerage firm's operations department.

(g) A RMS field auditor contacted Clayton concerning the February 1, 1993 letter. Clayton then contacted the brokerage account representative assigned to the Eureka Homestead account, who subsequently prepared and executed another "audit confirm" letter dated February 5, 1993. The February 5th letter failed to disclose the outstanding margin account's negative balance and further failed to disclose the investments in the local bond issuance. Despite the obvious and material changes made to the letter, RMS accepted the letter, without question, as a sufficient response and disregarded the contents of the February 1st letter from the brokerage firm's operations department.

(h) RMS received other responses to these "confirm letters" which were not responsive to the questions posed by RMS and in several instances, were not signed. In addition to the February

5th response described above, the Firm also received other "audit confirm" responses authored by the account representatives assigned to Eureka Homestead's accounts, rather than the applicable brokerage firm's operations department.

(i) Despite the obvious deficient, nonresponsive and nonindependent nature of the documentation submitted by the various brokerage firms, RMS made no inquiry of any officer or director of Eureka Homestead, or of the responsive brokerage firms, concerning these deficiencies in the documentation which the Firm had requested.

(j) OTS further finds that at all times relevant hereto, RMS failed to modify its annual audit plan concerning Eureka Homestead, notwithstanding the Firm's knowledge of the continual regulatory criticisms of Eureka Homestead's investment activities. Between 1990 and 1993 state and federal regulators conducted at least six separate examinations of Eureka Homestead. These examinations reflected an increasing regulatory concern about the Institution's failure to: develop and maintain acceptable investment policies and strategies; adhere to OTS regulations, policy statements and technical bulletins; properly account for investments; develop or maintain a detailed investment register; develop or maintain a system of internal controls to provide reasonable assurance that the Institution's financial statements were accurate and reliable; develop an internal audit program; and, to perform bank reconciliations in a timely manner.

(k) As part of its annual audit, RMS further failed to review any account statements concerning the investment activities being

engaged in by the various brokerage firms on behalf of Eureka Homestead, and further failed to test and/or sample the investment accounting entries which were performed by Clayton.

3. Consent. RMS consents to the issuance by the OTS of the accompanying Order to Cease and Desist For Affirmative Relief ("Order"). RMS 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 12 U.S.C. § 1818(b). 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. RMS waives the following:

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

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

(c) 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;

(d) 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; and

(e) the right to assert this proceeding, the Firm's consent to

the issuance of the Order, the issuance of the Order, the payment of any monies or the provision of any other financial relief as contemplated by the Order 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.

6. Other Governmental Actions Not Affected. RMS acknowledges and agrees that the consent to the issuance of the Order is for the purpose of resolving this OTS enforcement matter only (i.e. the Firm's preparation of annual audit reports for Eureka Homestead), and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of RMS that arise pursuant to this action or otherwise and that may be or have been brought by the OTS or another governmental entity.

7. 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 this 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, RMS, by its duly authorized partner(s), execute this Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

ROTH, MURPHY, SANFORD & CO.

Accepted by:

Richard J. Roth, Jr.
RICHARD J. ROTH, JR. PARTNER

OFFICE OF THRIFT SUPERVISION

Louis M. Murphy, Jr.
LOUIS M. MURPHY, JR. PARTNER

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

Mahlon D. Sanford
MAHLON D. SANFORD PARTNER

Dated: 5/16/97

Dated: 6-19-97

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Former Independent Auditor)
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OTS Order No.: MWR-97-11

Date: June 19, 1997

CONSENT ORDER TO
CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, Roth, Murphy, Sanford & Co. ("RMS" or "the Firm"), has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief ("Stipulation"); and

WHEREAS, RMS, by their execution of the Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist for Affirmative Relief ("Order") pursuant to 12 U.S.C. § 1818(b);¹ 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 to Cease and Desist on behalf of the OTS where the respondent has consented to the issuance of the Order.

NOW, THEREFORE, IT IS ORDERED THAT:

1. RMS shall make payment of restitution to Eureka Homestead

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

in the amount of \$300,000, in the manner negotiated between the parties in the Receipt, Release and Settlement Agreement arising from the civil action captioned Eureka Homestead Society versus Roth, Murphy, Sanford and Co., a Louisiana Partnership, and Mahlon D. Sanford, No. 94-3106 in the Civil District Court for the Parish of Orleans, State of Louisiana, dated March 5, 1997 ("Settlement Agreement"). The Settlement 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.

2. RMS shall include the following requirements in the Firm's accounting and auditing policies, and shall maintain strict adherence to each of these requirements:

- a. Each partner and staff assigned to all future RMS audits of insured depository institutions shall possess the requisite credentials, technical training and proficiency to conduct or participate in the preparation of audits of those institutions. Minimum requirements for the satisfaction of this requirement shall include, but are not limited to:
 - (i) Each partner, manager and senior field auditor assigned to an audit engagement of an insured depository institution must be a certified public accountant ("CPA") licensed to practice by and in good standing with the State of Louisiana Board of Accountancy; and
 - (ii) Each staff member assigned to an audit engagement

of an insured depository institution must have successfully completed basic audit course(s) of at least 16 hours of professional training regarding insured depository institutions.

3. RMS shall prepare and perform all audits of insured depository institutions in accordance with generally accepted auditing standards ("GAAS"), as promulgated and codified by the American Institute of Certified Public Accountants ("AICPA"), including, but not limited to, the:

- a. exercise of due professional care;
- b. ensurance of adequate planning and supervision of the audits;
- c. obtainment of competent evidential material to support the facts underlying the financial statements;
- d. assessment and consideration of adverse regulatory reports which include noncompliance with regulatory requirements; and
- e. maintenance of the proper degree of independent mental attitude and professional skepticism in the conduct of the audit, including an independent review and evaluation of the insured depository institution's internal control structure and the institution's maintenance of any investment and securities ledgers and account statements. This evaluation should include conducting the appropriate amount of testing/sampling to determine the operating effectiveness of the controls and/or the

investment/securities recordkeeping of the institution.

4. RMS shall, during the preparation and performance of any audit of an insured depository institution which includes the confirmation of investments and/or securities held by a party other than the institution, obtain, at a minimum, the following information:

- a. name and description of the investment/security;
- b. serial number;
- c. principal amount and number of shares;
- d. in whose name the investment/security is registered;
- e. names of persons authorized to engage in transactions concerning the investment/security; and
- f. details of any pledge, assignment or collateralization of the insured depository institution's interest and rights to the investment/security.

5. When, during the course of the preparation and performance of any audit of an insured depository institution, an employee of RMS becomes aware of information which is adverse and/or not in conformity with the books and records of the institution, that employee shall advise the appropriate RMS partner, manager or field auditor of such information. The Firm shall inform a responsible executive officer of the institution of such information. If the responsible executive officer fails to resolve the discovered information discrepancy to the satisfaction of the Firm or is in fact not a disinterested officer of the institution as it pertains to the specific matter, such information shall be reported by the

Firm to the audit committee of the institution's board of directors.

6. RMS shall require each partner, manager and senior field auditor at the time they are assigned to an audit of an insured depository institution to read this Order and acknowledge in writing that they have done so.

7. For a period of five (5) years from the effective date of this Order, RMS shall provide to OTS, on or before the first day of June in each year, a written report setting forth the manner and form in which it has complied with this Order during the previous calendar year.

8. This Order constitutes the final disposition of all penalties, monetary and non-monetary administrative relief that could have been brought by the OTS against RMS, or any of its present or former partners, in connection with the performance of any audit or accounting services for Eureka Homestead Society, New Orleans, Louisiana.

9. For purposes of this Order, the phrase "insured depository institution" is defined to include savings and loan associations, commercial banks, credit unions and other similar entities that hold federally insured deposits, and their non-diversified holding companies.

10. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations or as such definition is amended after the execution of

this Order, and any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, shall have meanings that accord with their best custom and usage in the savings and loan industry.

11. 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.

12. RMS shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

13. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The 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.

OFFICE OF THRIFT SUPERVISION

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