

ORIGINAL

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

In the Matter of)
THOMAS D. LOVELY,)
)
formerly an officer of)
FIDELITY NEW YORK, FSB,)
Garden City, New York)

Re: OTS Order No. NE96-3

Dated: January 11, 1996

STIPULATION AND CONSENT TO ISSUANCE OF CONSENT ORDER

This Stipulation and Consent to Issuance of Consent Order ("Stipulation"), concerning the accompanying CONSENT ORDER OF PROHIBITION AND CONSENT CEASE-AND-DESIST ORDER REQUIRING AFFIRMATIVE RELIEF (the "Order"), is made by THOMAS D. LOVELY ("LOVELY"), and is accepted by the OFFICE OF THRIFT SUPERVISION ("OTS"), an office within the United States Department of the Treasury, acting by and through its Regional Director for the Northeast Region.

R E C I T A L S

WHEREAS, until June 1992 LOVELY served as CHIEF EXECUTIVE OFFICER, and until September 1993, as Chairman, of FIDELITY NEW YORK, FSB, Garden City, New York ("FIDELITY NEW YORK"), which was a federally chartered savings association regulated by the OTS prior to its acquisition in January 1995 by Astoria Federal Savings and Loan Association, Lake Success, New York ("ASTORIA FEDERAL SAVINGS"); and

WHEREAS, the OTS concludes that (1) LOVELY breached his fiduciary duties to FIDELITY NEW YORK by entering into personal transactions, during the period from May 2, 1984, to June 21, 1985, with a borrower of FIDELITY NEW YORK that involved LOVELY'S

purchase and sale of certain cooperative units in Glen Oaks Village, Queens, New York; (2) LOVELY received financial gain by reason of the aforesaid breach of his fiduciary duties; and (3) LOVELY failed to disclose his involvement in these transactions to the Board of Directors of FIDELITY NEW YORK; and

WHEREAS, the OTS, based upon information derived from the exercise of its regulatory responsibilities, has informed LOVELY that the OTS is of the opinion that the grounds exist in connection with these transactions to commence an administrative proceeding against LOVELY for the issuance of administrative orders, pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §§ 1818(b), 1818(e), and Section 5(d) of the Home Owners' Loan Act ("HOLA"), each as amended by, inter alia, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183.

NOW, THEREFORE, LOVELY, without admitting or denying that the aforesaid grounds exist for the OTS' conclusions expressed above, and due to his desire to cooperate with the OTS and to avoid the time and expense of administrative litigation with the OTS, hereby stipulates and agrees as follows:

1. Consideration. LOVELY hereby stipulates and agrees to the terms of this Stipulation and Consent and to issuance of the Order in consideration for OTS forever releasing and discharging LOVELY from all potential claims and charges that have been or might have been asserted by the OTS arising out of facts known to the OTS and relating or incident to the transactions involving

cooperative units at Glen Oaks Village, Queens, New York.

2. Jurisdiction.

(a) (i) The OTS is the regulatory successor-in-interest to the Federal Home Loan Bank Board, and is an appropriate Federal banking agency authorized to issue the Order pursuant to 12 U.S.C. §§ 1818(e) and 1818(b); and (ii) FIDELITY NEW YORK was at the time of the transactions herein referred to (1) a "Federal savings association," as that term is defined at 12 U.S.C. §§ 1462(5) and 1813(b)(2), and (2) an "insured depository institution," as that term is defined at 12 U.S.C. § 1813(c)(2).

(b) LOVELY acknowledges that: (i) from 1983 through June 1992, he served as the Chief Executive Officer of FIDELITY NEW YORK; and (ii) from 1983 through September 1993, he served as Chairman of the Board of Directors of FIDELITY NEW YORK; and (iii) by virtue of such positions he had been (1) a director and officer of the FIDELITY NEW YORK for purposes of Section 5(d) of the pre-FIRREA HOLA (formerly codified at 12 U.S.C. § 1464(d)), and (2) since the enactment of FIRREA on August 9, 1989, he had been an "institution-affiliated party" of the FIDELITY NEW YORK, within the meaning of Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).

(c) LOVELY further acknowledges that his retirement from FIDELITY NEW YORK, less than six years ago, has not affected the jurisdiction and authority of the OTS to take administrative action against him under Section 8 of the FDIA, due to the operation of 12 U.S.C. § 1818(i)(3).

3. Consent. LOVELY consents to the jurisdiction of the OTS and to issuance of the Order. LOVELY agrees to comply with the

terms of the Order, and he stipulates that the Order (including the issuance thereof), which is remedial, complies with all requirements of law.

4. Finality. The Order is issued by the OTS under the authority of 12 U.S.C. §§ 1818(e) and 1818(b). LOVELY acknowledges and understands that, upon issuance, the Order shall be a final order that is effective and fully enforceable by the OTS under provisions of federal law, including Section 8(i) of the FDIA, 12 U.S.C. § 1818(i). LOVELY also understands that a violation of the Order could subject him to the sanctions imposed by 12 U.S.C. § 1818(j).

5. Waivers. LOVELY, following consultation with his counsel, hereby voluntarily and knowingly waives the following legal rights:

- (1) the right to be served with a written notice of charges, notice of intention to prohibit or other similar notice pursuant to provisions of Sections 8(e) and 8(b) of the FDIA (12 U.S.C. §§ 1818(e) and 1818(b)), and other applicable law;
- (2) the right to an administrative adjudicatory hearing of the OTS' charges against him;
- (3) the right to seek judicial review of the Order, including (but not limited to) 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; and
- (4) any claims for attorneys' fees or expenses under the Equal Access to Justice Act, 5 U.S.C. § 504.

6. No Effect on Actions by Others.

LOVELY acknowledges and agrees that his consent to the OTS' issuance of the Order is intended solely for purposes of settling and resolving the OTS' claims against him, as provided by paragraph 1 hereof, and does not release, discharge, compromise,

settle, dismiss, resolve, or in any way affect or preclude any other actions, claims, charges, proceedings (whether civil or criminal) against, or liability of, LOVELY that may arise in connection with his former relationship with FIDELITY NEW YORK, or that may be brought or have been brought by the OTS or any other government agency or entity.

7. Indemnification. LOVELY shall neither (i) cause or permit FIDELITY NEW YORK (or any subsidiary or other affiliate thereof) to incur, directly or indirectly, any Covered Expenses (as defined below), nor (ii) apply to or obtain any indemnification (or other reimbursement) from FIDELITY NEW YORK (or any subsidiary or other affiliate thereof) with respect to any such Covered Expenses directly or indirectly incurred by him. Any such payments to cover Covered Expenses received by or on behalf of LOVELY shall be returned to FIDELITY NEW YORK. For purposes of this paragraph, "Covered Expenses" refers to any legal or other professional expenses, or the payment of restitution under the Consent Orders, incurred by or on behalf of LOVELY in connection with: (i) the OTS' investigation (No. NE ERC-94-20) concerning FIDELITY NEW YORK; and/or (ii) the negotiation of this settlement concluded by execution of this Stipulation and issuance of the Order.

8. Communications.

(a) The OTS may send written notices and other communications to LOVELY, care of his counsel:

Arthur J. Kremer, Esq.
Rivkin, Radler & Kremer
EAB Plaza
Uniondale, New York 11556-0111

(b) All communications required or permitted to be sent by LOVELY to the OTS shall be sent to:

Angelo A. Vigna, Regional Director
Office of Thrift Supervision
10 Exchange Place, 18th Floor
Jersey City, New Jersey 07302

with a copy also sent to the OTS' enforcement counsel, as follows:

Richard E. Shapiro, Esq.
Special Counsel
Office of Thrift Supervision
10 Exchange Place, 18th Floor
Jersey City, New Jersey 07302

9. Miscellaneous.

(a) The construction and validity of this Stipulation and Consent 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 Consent and the Order shall also mean any of the OTS' predecessors, successors, and assigns due to the operation of Federal banking law, including any amendments thereto.

(c) All references to LOVELY shall also mean his heirs, successors and assigns.

(d) The section and paragraph headings in this Stipulation and Consent and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation and Consent and the Order.

(e) The terms of this Stipulation and Consent 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.

(f) This Stipulation and Consent shall become effective upon acceptance by the OTS, which acceptance shall be indicated by its issuance of the Order.

(g) The terms of this Stipulation and Consent and the Order may not be amended except by formal written action of the OTS.

WHEREFORE, on this 4 day of January 1996, THOMAS D. LOVELY executes this Stipulation, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION

By:

Angelo A. Vigna
Angelo A. Vigna
Regional Director, Northeast Region

Date: 1/11/96, ~~1995~~

Thomas D. Lovely
THOMAS D. LOVELY

§§ 1818(b) and 1818(e); and

WHEREAS, THOMAS D. LOVELY has executed the accompanying Stipulation and Consent to Issuance of Consent Orders ("Stipulation"); and

WHEREAS, THOMAS D. LOVELY, in the Stipulation, has consented and agreed to the OTS' issuance of this CONSENT ORDER OF PROHIBITION AND CONSENT CEASE-AND-DESIST ORDER REQUIRING AFFIRMATIVE RELIEF ("Orders") pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §§ 1818(b) and 8(e); and

WHEREAS, the undersigned OTS Regional Director has been duly delegated the authority to cause the OTS to issue consent orders.

NOW THEREFORE, IT IS ORDERED that:

ORDER OF PROHIBITION

1. THOMAS D. LOVELY is hereby prohibited from participating in any manner in the conduct of the affairs of any insured depository institution, or any subsidiaries, service corporation or other affiliates thereof; and THOMAS D. LOVELY thereby is and shall be subject to the statutory prohibitions provided by section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Due to and without limitation on the operation of 12 U.S.C. §§ 1818(e)(6) and 1818(e)(7), THOMAS D. LOVELY, 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) (the "Paragraph (7)(A) Institutions"), including, but not limited to:

- (i) any insured depository institution, e.g., savings and loan associations, savings 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), (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 associations;
- (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;
- (vi) the Federal Housing Finance Board and any Federal Home Loan Bank; and
- (vii) the Resolution Trust Corporation.

(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 Paragraph (7)(A) Institution;

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

(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.

CEASE-AND-DESIST ORDER

2. THOMAS D. LOVELY, for the purpose of making restitution and providing reimbursement pursuant to 12 U.S.C. § 1818(b)(6), shall pay One Hundred Thousand Dollars (\$100,000.00) to ASTORIA FEDERAL SAVINGS, the successor-in-interest to FIDELITY NEW YORK, no later than ten (10) days from the effective date of this Order. THOMAS D. LOVELY shall make said payment by delivering to Angelo Vigna, Regional Director, Northeast Region, Office of Thrift Supervision, 10 Exchange Place, Jersey City, New Jersey 07302, a certified check or cashier's check in the aforesaid amount payable to the order of Astoria Federal Savings and Loan Association, accompanied by a letter explaining that the payment is being made in accordance with the requirements of this Order.

3. THOMAS D. LOVELY shall promptly and appropriately respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

4. Due to issuance of this Order, THOMAS D. LOVELY is a person "subject to an order in effect under subsection (e)" of FDIA section 8 for purposes of section 8(j) of the FDIA, 12 U.S.C. § 1818(j).

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

6. This Order is and shall become effective on the date it

it is issued, as shown in the caption hereof. This Order shall remain in effect until it is terminated, modified or suspended, which may occur only by formal written action of the OTS, acting by and through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: 
Angelo A. Vigna
Regional Director, Northeast Region