

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of:

KEVIN SPENCER,

FORMER EMPLOYEE AND  
INSTITUTION-AFFILIATED PARTY  
OF:

PACIFIC SOUTHWEST BANK  
CORPUS CHRISTI, TEXAS

RE: OTS ORDER NO. DAL-96-01

DATED: JANUARY 2, 1996

STIPULATION AND CONSENT TO ENTRY  
OF AN ORDER OF PROHIBITION AND 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 Kevin Spencer ("SPENCER"), former employee and institution-affiliated party of Pacific Southwest Bank, Corpus Christi, Texas, OTS No. 8559 ("Pacific Southwest" or the "Institution") that the OTS is of the opinion that grounds exist to initiate administrative cease and desist and prohibition proceedings against SPENCER pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b) and 12 U.S.C. § 1818(e).<sup>1</sup>

WHEREAS, SPENCER desires to cooperate with the OTS to avoid

1. All references in this Stipulation and Consent and the Orders are to the U.S.C. as amended.

the time and expense of such administrative litigation and, without admitting or denying that such grounds exist, but admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) Pacific Southwest, at all times relevant hereto, was 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 Home Owners' Loan Act ("HOLA"), 12 U.S.C. § 1462(4). Accordingly, Pacific Southwest was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) SPENCER, as a former employee of Pacific Southwest, is deemed to be an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 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 Section 3(q) of the FDIA, 12 U.S.C. §1813(q), the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an enforcement proceeding against institution-affiliated parties. Therefore, SPENCER is subject to the authority of the OTS to initiate and maintain cease and desist and prohibition proceedings against him pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b) and Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

2. OTS Findings of Fact. The OTS finds that during the period from September, 1994, through July, 1995, SPENCER, without

authorization, misapplied \$7,011.69 of the funds of Pacific Southwest to his own use. As a result of his actions, SPENCER (1) engaged in a violation of the law or breached his fiduciary duty of honesty to Pacific Southwest; and (2) Pacific Southwest suffered a financial loss or he received a financial benefit or other gain; and (3) the violation of law or breach of fiduciary duty demonstrates willful and/or continuing disregard by SPENCER for the safety and soundness of Pacific Southwest.

3. Consent. SPENCER consents to the issuance by the OTS of the accompanying Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders"). He further agrees to comply with their terms upon issuance and stipulates that the Orders comply with all requirements of law.

4. Finality. The Orders are issued by the OTS under the authority of Section 8(b) of the FDIA, 12 U.S.C. §1818(b) and Section 8(e) of the FDIA, 12 U.S.C. §1818(e). Upon their issuance by the Regional Director or designee for the Midwest Region, OTS, they shall be final orders, 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. SPENCER waives the following:

- (a) the right to be served with a written notice of the OTS's charges against him (see Sections 8(b) and 8(e) of the FDIA);
- (b) the right to an administrative hearing of the OTS's charges against him (see Sections 8(b) and 8(e) of the FDIA); and
- (c) the 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. SPENCER shall neither cause nor permit Pacific Southwest (or any successor institution, holding company, subsidiary, or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional expenses incurred relative to the negotiation and issuance of the Order of Prohibition and Order to Cease and Desist for Affirmative Relief. Nor shall SPENCER obtain any indemnification (or other reimbursement) from the Institution (or any successor institution, holding company, subsidiary, or service corporation thereof) with respect to such amounts. Any such payments received by or on behalf of SPENCER in connection with this action shall be returned to Pacific Southwest (or the successor institution, holding company, subsidiary, or service corporation thereof).

7. Other Government Actions Not Affected.

(a) SPENCER acknowledges and agrees that the consent to the entry of the Orders is for the purpose of resolving these cease and desist and prohibition actions only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of SPENCER that arise pursuant to these actions or otherwise, and that may be or have been brought by any other government entity other than the OTS.

(b) By signing this Stipulation and Consent to Entry of an

Order of Prohibition and Order to Cease and Desist for Affirmative Relief, SPENCER agrees that he will not assert this proceeding, his consent to the entry of the Orders, and/or the entry of the Orders, 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 Federal or state governmental entity.

8. Acknowledgment of Criminal Sanctions. SPENCER acknowledges that Section 8(j) of the FDIA, 12 U.S.C. §1818(j), sets forth criminal penalties for knowing violations of the Order.

9. Agreement for Continuing Cooperation. SPENCER 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 any investigation, litigation, or other proceeding maintained by the OTS relating to Pacific Southwest, its holding companies, its subsidiaries, and its institution-affiliated parties, except that SPENCER does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If SPENCER invokes a privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to 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. § 6001 et seq., SPENCER 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.

WHEREFORE, SPENCER executes this Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

By:

  
\_\_\_\_\_  
Kevin Spencer

Accepted By:  
Office of Thrift Supervision

  
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Frederick R. Casteel  
Midwest Regional Director

Dated: 12/19/95

Dated: 1-2-96

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of:

KEVIN SPENCER,

FORMER EMPLOYEE AND  
INSTITUTION-AFFILIATED PARTY  
OF:

PACIFIC SOUTHWEST BANK  
CORPUS CHRISTI, TEXAS

RE: OTS ORDER NO. DAL-96-01

DATED: JANUARY 2, 1996

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

WHEREAS, Kevin Spencer ("SPENCER") has executed a Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Stipulation") on December 19, 1995; and

WHEREAS, SPENCER, by his execution of the Stipulation, has consented and agreed to the issuance of this Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders") by the Office of Thrift Supervision ("OTS"), pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §1818(e) and Section 8(b) of the FDIA, 12 U.S.C. §1818(b).

NOW THEREFORE, IT IS ORDERED that:

ORDER OF PROHIBITION

1. SPENCER is prohibited from further participation, in any manner, in the conduct of the affairs of Pacific Southwest Bank, Corpus Christi, Texas, and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. SPENCER 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 Sections 8(e)(6) and 8(e)(7) of the FDIA, 12 U.S.C. §§ 1818(e)(6) and 1818(e)(7), SPENCER, 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 Section 8(e)(7)(B)(ii) of the FDIA, 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 any agency specified in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A) ("Covered Institution"), including:

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

(ii) any institution treated as an insured bank under Sections 8(b)(3) and 8(b)(4) of the FDIA, 12 U.S.C. §§ 1818(b)(3) and 1818(b)(4), or as a savings association under Section 8(b)(9)

of the FDIA, 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, within the meaning of 12 U.S.C. § 1818(e)(7)(A)(v);

(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 Covered Institution;

(C) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of Section 3(q) of the FDIA, 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 Section 3(u) of the FDIA, 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. 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.

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

6. 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.

IT IS FURTHER ORDERED that:

**ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

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

8. SPENCER, within fifteen (15) days of the date of this Order, shall pay restitution to Pacific Southwest Bank, Corpus Christi, Texas, in the amount of \$7,011.69.

9. All payments should be made by certified check or money order made payable to Pacific Southwest Bank and forwarded to the OTS Midwest Regional Enforcement/Litigation Department by U.S. Mail at:

Mr. Gary C. Anderberg  
Enforcement/Litigation  
Office of Thrift Supervision  
Post Office Box 619027  
Dallas/Fort Worth, Texas 75261-9027

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

11. 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.

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

13. 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.

THE OFFICE OF THRIFT SUPERVISION

By:



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Frederick R. Casteel  
Midwest Regional Director