

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

In the Matter of)	
)	
PEDRO RAMON LOPEZ, Former Chairman)	
of the Board, Chief Managing)	Re: Case No. AP 92-74
Officer and Stockholder, and)	Dated: July 29, 1992
)	
TERESA SALDISE, Former Director)	OTS Order No. AP 94-23
and Stockholder,)	Dated: May 17, 1994
)	
of GENERAL BANK, a Federal)	OTS Order No. AP 96-9
Savings Bank, Miami, Florida)	Dated: March 25, 1996
)	

SUPPLEMENTAL DECISION AND ORDER

I. INTRODUCTION AND SUMMARY OF CONCLUSIONS

By Final Decision and Order issued May 17, 1994 (OTS Order No. 94-23) ("Final Decision"), the Acting Director found that Respondents Pedro Ramon Lopez and Teresa Saldise ("Lopez and Saldise" or "Respondents") engaged in unsafe and unsound practices, regulatory and statutory violations, and breaches of their fiduciary duties to General Bank, a Federal Savings Bank of Miami, Florida ("GB" or "General Bank"). The Acting Director issued: a Cease and Desist Order requiring Respondents to pay restitution of \$9.1 million and to take other affirmative action;¹ an industry-wide Prohibition Order;² and an Order

¹ 12 U.S.C. § 1464(d)(2)(A) (1982-88) (pre-FIRREA cease and desist authority) and 12 U.S.C. § 1818(b) (Supp. II 1990) (post-FIRREA cease and desist authority).

² 12 U.S.C. § 1464(d)(4) (1982-88) (pre-FIRREA prohibition authority) and 12 U.S.C. § 1818(e) (Supp. II 1990) (post-FIRREA prohibition authority).

requiring Respondents to pay Civil Money Penalties of \$4.9 million.³

The record did not permit the resolution of issues involving an additional \$2 million in restitution for two transactions, an improper dividend by GB to its shareholders principally benefiting Lopez and Saldise, and Respondents' conflict of interest regarding an acquisition of property in Saga Bay, Florida. Therefore, the Acting Director required the parties, within set time frames, to submit further legal argument and additional facts addressing specified issues. Final Decision at 36, 44 and 77. The Enforcement Office of the OTS ("Enforcement") timely filed supplemental information. Respondents did not file a response.

The issuance of a supplemental decision was delayed while Respondents pursued an appeal of the Final Decision in the United States Court of Appeals for the District of Columbia Circuit. The court affirmed the Final Decision on September 19, 1995, and jurisdiction over the case has again vested with the OTS.⁴

³ 12 U.S.C. § 1730(q)(17) (1982), redesignated 12 U.S.C. § 1730(q)(18) (Supp. IV 1986 & 1988) (pre-FIRREA civil money penalty authority under the Change of Control Act); 12 U.S.C. § 1730a(j)(4) (1988) (pre-FIRREA civil money penalty authority under the Holding Company Act); 12 U.S.C. § 1467a(i)(2) (Supp. II 1990) (post-FIRREA civil money penalty authority under the Holding Company Act; and 12 C.F.R. § 563b.9(g)(2) (1982-87) and 12 C.F.R. § 563b.3(i)(9) (1988-89) (civil money penalty authority under applicable regulations governing conversions from mutual to stock form).

⁴ Lopez v. OTS, No. 94-1449, slip op. (D.C. Cir. Sept. 19, 1995).

For the reasons that follow, the Acting Director declines to order additional restitution in connection with the improper dividend transaction. However, the Acting Director concludes that Respondents should be directed to pay an additional \$1 million in restitution in connection with the Saga Bay transaction and will so order.

II. BACKGROUND

On July 29, 1992, Enforcement filed an Amended Notice of Assessment of Civil Money Penalty, Amended Notice of Charges and Hearing to Direct Restitution and Other Appropriate Relief and Amended Notice of Intention to Prohibit Respondents from Participating in the Affairs of Federally-Insured Depository Institutions (OTS Order No. AP 92-74). The Amended Notice consolidated the allegations contained in two prior Notices of Charges against Respondents,⁵ but added new factual allegations and sought additional remedies.

A hearing was held before ALJ Walter Alprin in Miami, Florida on January 5-21, 1993. The ALJ issued a Recommended Decision on September 10, 1993 ("Recommended Decision"). Enforcement and Respondents filed exceptions to the Recommended Decision.

On May 17, 1994, the Acting Director issued a Final Decision and Order. The Acting Director found that Respondents engaged in

⁵ Previously, Enforcement issued a Notice of Intention to Prohibit and Notice of Hearing (OTS ERC Res. No. 90-45 (June 1, 1990)); and a Notice of Assessment of Civil Money Penalty (OTS Order No. AP 91-48 (May 3, 1991)).

various unsafe and unsound practices, committed regulatory and statutory violations and breached their fiduciary duties to General Bank. The Acting Director issued a Cease and Desist Order, an industry-wide Prohibition Order, and an Order requiring Respondents to pay Civil Money Penalties of \$4.9 million. The Cease and Desist Order required Respondents to take various affirmative actions including the payment of \$9.1 million in restitution to GB in receivership.⁶

The record before the Acting Director was insufficient to resolve issues involving an additional \$2 million in restitution regarding two GB transactions, an improper dividend by GB and Respondents' conflict of interest regarding an acquisition of property in Saga Bay, Florida. Accordingly, the Acting Director required the parties to submit further legal argument and additional facts in the form of sworn affidavits by June 30, 1994. Responses to any such submission were due by July 15, 1994. Enforcement timely submitted a supplemental filing. Respondents did not supplement the record and did not respond to Enforcement's submission.

Respondents appealed the Acting Director's Final Decision to the United States Court of Appeals for the District of Columbia Circuit. Lopez v. OTS, No. 94-1449 (D.C. Cir., filed July 15, 1994). This action vested the court with exclusive jurisdiction

⁶ The Final Decision directed Respondents to pay restitution to GB, in receivership, in a form acceptable to the Resolution Trust Corporation (RTC). On December 31, 1995, the Federal Deposit Insurance Corporation (FDIC) succeeded the RTC as receiver. See 12 U.S.C. § 1441a. Accordingly, today's order will refer to the FDIC, rather than the RTC.

over the proceeding upon the OTS's filing of the certified record on August 8, 1994. See 12 U.S.C. § 1818(h)(2).

In order to timely dispose of the remaining matters, the Acting Director filed a motion for temporary remand to permit entry of a supplemental decision. By order filed December 29, 1994, however, the court denied the Acting Director's motion. The court stated:

Pursuant to 12 U.S.C. § 1818(h)(1), [the OTS] was required to render a final decision within ninety (90) days of having "notified the parties that the case had been submitted to it for final decision" The parties were so notified on February 16, 1994, and the OTS issued the order under review, denominated as a "Final Decision and Order," on May 17, 1994, within the statutory period. Issuance of a supplemental order, the purpose for which OTS seeks remand, beyond the statutory period would contravene the express language of the statute. However, if OTS should issue the proposed supplemental order after jurisdiction again vests in the agency upon conclusion of this case, petitioners Lopez and Saldise have waived any challenge to the order as a result of their arguments in opposition to the motion for remand.

On September 19, 1995, the court issued a decision affirming the Final Decision. Lopez v. OTS, No. 94-1449, slip op. (D.C. Cir. Sept. 19, 1995). The court's mandate issued on November 29, 1995. Jurisdiction has now vested in the agency and it is appropriate to issue a supplemental decision.

III. DISCUSSION

A. Improper Dividend

In 1989, Lopez and Saldise, the controlling shareholders of GB, engineered and implemented a complex sham recapitalization purposefully designed to misrepresent GB's capital position to regulators. In connection with this sham recapitalization, Lopez and Saldise caused GB to issue an improper dividend consisting of shares in GB's subsidiary corporations to shareholders, primarily benefitting the Respondents. The improper dividend included all of GB's stock in its wholly owned subsidiary, General Trust Mortgage Corporation ("GTM"). GTM held 100 percent of the stock of First Miami Insurance Company ("FMI"), a property and casualty insurance company. The Acting Director issued a Cease and Desist Order, among other remedies, requiring Respondents to make restitution to GB in the aggregate amount of \$4 million for losses from the transaction.⁷

The issue presently before the Acting Director is the amount of additional restitution, if any, that should be ordered. The ALJ recommended that Respondents be required to pay restitution of \$5 million, including \$4 million to compensate GB for the loss of FMI, and an additional \$1 million to compensate GB for the loss of a commercial property known as the Brickell Bay property. This property was transferred by GB through GTM to FMI in June 1989, prior to the August 1, 1989 recapitalization and dividend.

⁷ These transactions and the Acting Director's findings are described in full in the Final Decision at 14-19, 31-37, 72 and 73-75.

In the Final Decision and Order, the Acting Director required Lopez and Saldise to pay restitution of \$4 million to compensate General Bank for the loss of FMI. The Acting Director did not order separate restitution for the Brickell Bay property because he was concerned that the additional \$1 million recommended by the ALJ could provide a double recovery to GB for this asset. The parties were directed to submit additional facts and arguments on this issue.

Enforcement submitted further argument addressing this issue, but did not supplement the record with additional facts. In the absence of additional facts clarifying this issue, Enforcement's arguments are insufficient to permit the Acting Director to conclude that the \$4 million in restitution ordered in the Final Decision does not fully compensate GB for the loss of FMI. Accordingly, the Acting Director will not direct Respondents to pay restitution in addition to the \$4 million required by the May 17, 1994 Final Decision.

B. Saga Bay Transaction

In 1984, Lopez and Saldise exploited their positions of trust with General Bank to cause it to make a loan to H.G. Land Development Company, Inc. This loan facilitated a related transaction in which Respondents had a personal interest. As a result of this related transaction, Lopez and Saldise acquired a 50 percent interest in a property with a fair market value of \$2 million (Saga Bay property). Respondents' business associate, Anthony Estevez, and his wife acquired the remaining 50 percent interest. Based on these transactions, the Acting Director

issued a Cease and Desist Order requiring Respondents to make restitution to GB.

In the Final Decision, the Acting Director determined that, in the absence of any showing of loss to GB, restitution may be computed based upon the amount of an unjust gain to Respondents. Final Decision at 43-44. While the ALJ found that Respondents were unjustly enriched by \$1 million,⁸ the Acting Director was concerned that this amount did not consider costs that may have been incurred by Respondents to acquire their interest in the Saga Bay property. At issue are \$65,000 incurred by Respondents and/or Estevez to acquire a purchase option for the Saga Bay property and \$200,000 in closing costs for the purchase of the property.⁹

Enforcement submitted additional facts including an affidavit signed by Estevez stating that Lopez and Saldise did not pay any costs in connection with the acquisition of the Saga Bay property. Estevez attests that he was the source of funds for the \$65,000 purchase option, and asserts that all closing costs for the Saga Bay property were either non-cash credits against the purchase price, or were funded by GB loan proceeds, Estevez or others.

In light of the uncontested statements by the co-owner of the Saga Bay property, the Acting Director finds that Lopez and

⁸ I.e., 50 percent of the total value of the Saga Bay property.

⁹ The Saga Bay transaction and the Acting Director's findings are described in full in the Final Decision at 21-24, 42-45, 72 and 73-75.

Saldise did not bear any costs in connection with their acquisition of the Saga Bay property, and that Lopez and Saldise were unjustly enriched in the amount of \$1 million. Accordingly, the Acting Director will order Respondents to pay restitution to GB in this amount.

ORDER

Upon consideration of the entire record in this matter including Enforcement's Supplemental Filing, and for the reasons set forth in the Final Decision and this Supplemental Decision, the Acting Director makes the following findings in addition to the findings made in the Final Decision: (a) Restitution in the amount of \$4 million ordered in the Final Decision will fully compensate General Bank for the loss of First Miami Insurance Company, including the commercial property known as the Brickell Bay property, and (b) Respondents Lopez and Saldise did not bear any costs and were unjustly enriched in the amount of \$1 million in connection with their acquisition of the Saga Bay property. Lopez and Saldise will not be required to make additional restitution for the 1989 improper dividend. They will be required to pay \$1 million in restitution for the Saga Bay transaction.

IT IS, THEREFORE, HEREBY ORDERED that:

(1) The Final Decision and Order issued in this proceeding on May 17, 1994 (OTS Order No. 94-23), aff'd per curiam, Lopez v. OTS, No. 94-1449, slip op. (D.C. Cir. Sept. 19, 1995), is amended to require Lopez and Saldise to make additional restitution as set forth in paragraph (2) below. This restitution is in addition to the \$9,144,341 previously ordered against Lopez and/or Saldise;

(2) Within ten (10) business days after the effective date of this Supplemental Decision and Order, Lopez and Saldise shall jointly and severally pay additional restitution in the amount of \$1,000,000. The money shall be paid to General Bank, in

receivership, in a form acceptable to the Federal Deposit Insurance Corporation (FDIC) as receiver;

(3) The FDIC's failure, for any reason, to approve the form of restitution by Lopez and/or Saldise shall not relieve Respondents of their obligation to pay restitution to General Bank pursuant to this Supplemental Decision and Order or the Final Decision and Order issued in this proceeding on May 17, 1994;

(4) The provisions of this Supplemental Decision and Order apply separately to each of Lopez and Saldise and are effective as to each individual upon the expiration of thirty (30) days after the date of service of this Supplemental Decision and Order upon Respondents.

Dated: March 25, 1996

OFFICE OF THRIFT SUPERVISION

By:


Jonathan L. Fiechter
Acting Director