

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

In the Matter of)	
IRA F. BAILEY,)	Re: OTS Order No. NE96-10
)	Dated: May 30, 1996
formerly an officer and)	
director of Cross County)	
Federal Savings Bank,)	
Middle Village, New York)	

STIPULATION AND CONSENT TO ISSUANCE OF CONSENT ORDER

This Stipulation and Consent to Issuance of Consent Order ("Stipulation"), concerning the accompanying CONSENT CEASE-AND-DESIST ORDER (the "Order"), is made by IRA F. BAILEY, 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 Acting Regional Director for the Northeast Region.

R E C I T A L S

WHEREAS, IRA F. BAILEY served as the President and a director of Cross County Federal Savings Bank, Middle Village, New York, until his resignation from those positions in 1995; and

WHEREAS, Cross County Federal Savings Bank (OTS Docket No. 5066) (the "Savings Bank") is a federally chartered and insured savings association regulated by the OTS; and

WHEREAS, based on information derived from the exercise of its regulatory responsibilities, the OTS finds that at various times during 1986 through 1988 IRA F. BAILEY participated in unsafe or unsound lending practices at the Savings Bank that exposed the Savings Bank to undue risk of loss by participating in causing the bank to grant new extensions of non-residential credit

to certain borrowers notwithstanding the fact that those borrowers previously had defaulted on their outstanding loan obligations to the Savings Bank; and

WHEREAS, the OTS further finds that IRA F. BAILEY engaged in in an unsafe or unsound practice at the Savings Bank by causing the Savings Bank to reimburse him for various expenses without submitting adequate documentation to show that such expenses were related to the Savings Bank's business;¹ and

WHEREAS, the OTS further finds that IRA F. BAILEY engaged in personal transactions with contractors and customers of the Savings Bank in a manner that gave rise or could have given rise to a conflict of interest constituting an unsafe or unsound practice within the meaning of 12 C.F.R. § 571.7; and

WHEREAS, in view of the foregoing, the OTS has informed IRA F. BAILEY that the OTS is of the opinion that the grounds exist to initiate an administrative proceeding against him for the issuance of a cease-and-desist order, pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b);² and

WHEREAS, IRA F. BAILEY wishes to cooperate with the OTS and to avoid the time and expense of administrative litigation with the OTS.

NOW, THEREFORE, IRA F. BAILEY, without admitting or denying

1. Cross County Federal Savings Bank and Mr. Bailey have entered into an agreement pursuant to which the bank will recover undocumented reimbursement payments made to Mr. Bailey by reducing its severance payment to Mr. Bailey by the amount of such payments.

2. All references to the United States Code ("U.S.C.") in this Stipulation and the Order are to the U.S.C. as amended.

the OTS's findings, opinions, and conclusions expressed above (except those as to the OTS's jurisdiction over him, which are admitted in paragraph 2 below) or that the aforesaid statutory grounds exist, hereby stipulates and agrees as follows:

1. Consideration. IRA F. BAILEY, in view of the foregoing premises and for the purposes of this settlement only, hereby voluntarily enters into this Stipulation and consents to issuance of the accompanying Order in consideration for the OTS forever releasing and discharging him from all potential administrative claims and charges that have been or might have been asserted by the OTS against him based on the above-alleged unsafe or unsound practices and any other acts and omissions by IRA F. BAILEY in his capacity as a director or officer of Cross County Federal Savings Bank during the period of 1985 through and including October 1995.

2. Jurisdiction.

(a) Cross County Federal Savings Bank is 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, 12 U.S.C. § 1462(4), and an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) IRA F. BAILEY acknowledges that he was an officer and director of Cross County Federal Savings Bank, and stipulates that with respect to Cross County Federal Savings Bank he is 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 his execution of this Stipulation.

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" to maintain administrative enforcement proceedings against institution-affiliated parties relative to savings associations, and therefore IRA F. BAILEY stipulates that he is subject to the authority of the OTS to initiate and maintain administrative proceedings against him pursuant to provisions of Section 8 of the FDIA, including but not limited to 12 U.S.C. § 1818(b).

3. Consent. IRA F. BAILEY consents to the issuance by the OTS of the Order, and agrees to comply with the terms of the Order. IRA F. BAILEY further stipulates that the Order (including the OTS's issuance thereof) complies with all requirements of law.

4. Finality. The Order is issued by the OTS under the authority of 12 U.S.C. § 1818(b). Upon its issuance by the OTS (by and through its Acting Regional Director for the Northeast Region), the Order shall be a final order that is effective and fully enforceable by the OTS under provisions of federal law, including, but not limited to, 12 U.S.C. § 1818(i).

5. Waivers. IRA F. BAILEY voluntarily and knowingly waives: (i) the right to be served with a written notice of the OTS's charges against him, which notice would be issued and served pursuant to 12 U.S.C. § 1818(b) and other applicable law; (ii) the right to an administrative adjudicatory hearing of the OTS's charges against him, which hearing is provided by 12 U.S.C. §§ 1818(b) and 1818(h)(1); (iii) the right to seek judicial review of

the Order, including (but not limited to) any such right provided by 12 U.S.C. § 1818(h)(2), or otherwise to challenge the validity of the Order; and (iv) any and all claims for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

6. Other Government Actions Not Affected. IRA F. BAILEY acknowledges and agrees that his consent to the OTS's issuance of the Order is intended solely for purposes of settling and resolving the OTS's administrative claims against him, as provided by paragraph 1 hereof, and does not release, discharge, compromise, settle, dismiss, resolve, preclude, or in any way affect any other actions, claims, liability of, charges against, or proceedings (whether civil or criminal) against him that may be or have been brought by the OTS or any other government agency or entity.

7. Indemnification Limitations.

(a) IRA F. BAILEY shall neither (i) cause or permit the Savings Bank (or any subsidiary or other affiliate thereof) to incur, directly or indirectly, any Covered Expenses (as defined below at paragraph 7(b)), nor (ii) obtain any indemnification (or other reimbursement) from the Savings Bank (or any subsidiary or other affiliate thereof) with respect to any such Covered Expenses directly or indirectly incurred by him. Any such payments of indemnification or reimbursement received by or on behalf of IRA F. BAILEY in a manner contrary to the limitations of this paragraph 7 shall be promptly returned to the Savings Bank.

(b) For purposes of paragraph 7(a) of this Stipulation,

"Covered Expenses" refers to: (i) any and all legal or other professional expenses incurred by IRA F. BAILEY in connection with this settlement with the OTS relative to the OTS's issuance of the accompanying Order; (ii) any and all amounts withheld by the Savings Bank from its severance payments to IRA F. BAILEY relative to the settlement of the Savings Bank's claims against him concerning questionable business expenses; and/or (iii) any and all legal or other professional expenses incurred by IRA F. BAILEY in connection with OTS formal examination proceeding No. NE92-104 concerning the Savings Bank, except to the extent that IRA F. BAILEY receives (or has received) indemnification for a reasonable amount of such formal examination-related expenses following the Savings Bank's full compliance with the requirements of 12 C.F.R. § 545.121, including but not limited to the regulatory review provisions thereof.

8. Understanding about Financial Condition. It is understood that, as part of the settlement provided by this Stipulation, the OTS has agreed to refrain from including in the accompanying Order any provisions requiring IRA F. BAILEY to make payment of financial relief, pursuant to 12 U.S.C. §§ 1818(b)(6) - (A) and 1818(i)(2), based on the OTS's reliance on IRA F. BAILEY's representations about his financial condition, as set forth in a written statement of financial condition (on OTS Form 1571, the "Statement of Financial Condition"), which has been completed and signed by IRA F. BAILEY. In the event that any information included in the Statement of Financial Condition is found to be false or misleading with respect to any material fact,

or if in connection with the Statement of Financial Condition IRA F. BAILEY shall have omitted to state a material fact concerning any matter addressed in the Statement of Financial Condition, then, notwithstanding the release at paragraph no. 1 of this Stipulation and without limitation on other remedies available under Federal law, the OTS, in the exercise of its discretion, may seek issuance against IRA F. BAILEY of one or more orders, pursuant to 12 U.S.C. §§ 1818(b)(6)(A) and/or 1818(i)(2), in the manner provided by Federal law. In connection with any administrative proceeding or other litigation related to the issuance of such administrative orders, IRA F. BAILEY hereby waives any right he may otherwise have to assert that he should not be deemed an institution-affiliated party subject to the OTS's jurisdiction, but no other waivers by IRA F. BAILEY set forth in this Stipulation shall be applicable in any such administrative proceeding or litigation.

9. Communications. All communications required or permitted to be sent by IRA F. BAILEY to the OTS shall be sent to:

Robert C. Albanese, Acting Regional Director
Office of Thrift Supervision
Northeast Regional Office
10 Exchange Place, 18th Floor
Jersey City, New Jersey 07302

with a copy also sent to Steven A. Rosenberg, the OTS's Senior Enforcement Counsel, at the aforesaid address for the OTS's Northeast Regional Office, or such other addresses as may be the subject of written notice to IRA F. BAILEY by the OTS.

10. 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 due to the operation of Federal banking law, including any amendments thereto.

(c) The terms of this Stipulation 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.

(d) The terms of this Stipulation may not be amended or modified except by formal written agreement of the parties hereto.

WHEREFORE, on this 22 day of May 1996, IRA F. BAILEY executes this Stipulation, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION



IRA F. BAILEY

By: 

Robert C. Albanese
Acting Regional Director,
Northeast Region

Date: May 30, 1996

Doc # 5066

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In the Matter of)	
)	OTS Order No. NE96-10
IRA F. BAILEY,)	
)	Dated: May 30, 1996
formerly an officer and)	
director of Cross County)	
Federal Savings Bank,)	
Middle Village, New York)	

CONSENT CEASE-AND-DESIST ORDER

WHEREAS, IRA F. BAILEY had served as the President and as a director of Cross County Federal Savings Bank, Middle Village, New York, which is a federally chartered and insured savings association regulated by the Office of Thrift Supervision ("OTS"); and

WHEREAS, IRA F. BAILEY has executed the accompanying Stipulation and Consent to Issuance of Consent Order ("Stipulation"); and

WHEREAS, IRA F. BAILEY, in the Stipulation, has consented and agreed to the OTS's issuance of this CONSENT CEASE-AND-DESIST ORDER ("Order"); and

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

NOW THEREFORE, IT IS ORDERED pursuant to section 8(b) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(b),¹ that: "

1. Fiduciary Duties.

(a) Whenever IRA F. BAILEY is a director, officer or other institution-affiliated party (within the meaning of 12

1. All references to the United States Code (U.S.C.) are as amended as of the date of this Order, except as otherwise specifically provided.

U.S.C. § 1813(u)) of a Banking Institution (as defined below and including but not limited to any insured depository institution), he shall fulfill his fiduciary duties to such institution, including but not limited to his fiduciary duties of loyalty, candor and care.

(b) Whenever IRA F. BAILEY is a director, officer or other institution-affiliated party of any Banking Institution, he shall not personally engage (directly, indirectly or through other persons or entities acting on his behalf) in one or more Material Transactions (as defined below) with any persons or entities he knows to be customers and/or contractors of such institution, except where the Board of Directors of said Banking Institution previously has adopted a resolution stating that it has no objection to the proposed Material Transaction involving IRA F. BAILEY, provided that: (i) such resolution is adopted at a duly called and held meeting of said Board of Directors, at which a quorum was present; (ii) such resolution appears in the minutes of said meeting; and (iii) IRA F. BAILEY shall have previously made full and accurate disclosure to the Board of Directors about the proposed Material Transaction.

2. Regulatory Compliance. Whenever IRA F. BAILEY is a director, officer or other institution-affiliated party of any Banking Institution, he shall not engage or participate in any violations of any federal banking laws or regulations, as now in effect or as they may be hereafter amended or superseded, including, but not limited to, the Home Owners' Loan Act, the Federal Deposit Insurance Act, the Federal Reserve Act, the Bank Holding Company Act, and the regulations of the federal banking

agencies codified at Title 12 of the Code of Federal Regulations.

3. Safe and Sound Lending. Whenever IRA F. BAILEY is a director, officer or other institution-affiliated party of any Banking Institution, and in such capacity has responsibilities related to the underwriting and/or origination of loans by such institution, he shall: (i) comply with such institution's written policies and procedures applicable to lending activities; (ii) conduct his lending-related activities on behalf of the Banking Institution in a manner that is consistent with prudent banking practices; and (iii) shall not perform his lending-related activities in a manner that exposes or is likely to expose the Banking Institution to an abnormal risk of loss or harm.

4. Expense Reimbursement.

(a) Whenever IRA F. BAILEY is a director, officer or other institution-affiliated party of any Banking Institution, he shall not seek or obtain reimbursement from such institution for expenses he has incurred unless: (i) he appropriately demonstrates that each such expense properly relates to the business of such institution; and (ii) he has submitted receipts and/or other appropriate documentation in support of each amount for which he seeks reimbursement.

(b) Whenever IRA F. BAILEY is a director, officer or other institution-affiliated party of any Banking Institution, he shall comply with such institution's written policies and procedures pertaining to its reimbursement of business expenses incurred by directors, officers and/or employees.

5. Responses to Requests. IRA F. BAILEY shall promptly and appropriately respond to any request from the OTS for documents

that the OTS reasonably requests to demonstrate compliance with this Order.

6. Definitions. For purposes of this Order --

(1) "Banking Institution" refers to any and all of the following: any "insured depository institution" as that term is defined at 12 U.S.C. § 1813(c) (including but not limited to banks and savings associations); any direct or indirect subsidiary of an insured depository institution, whether wholly or partly owned; any "insured credit union" within the meaning of 12 U.S.C. § 1752(7); any "savings and loan holding company" within the meaning of 12 U.S.C. § 1467a(a)(1); any "bank holding company" within the meaning of 12 U.S.C. § 1841; and any direct or indirect subsidiary of any such holding companies, whether wholly or partly owned;

(2) "Material Transaction" refers to any transaction or series of related transactions (including but not limited to one or more transactions providing goods and/or services to IRA F. BAILEY without payment of monetary consideration or at a discount) that provides IRA F. BAILEY with a benefit of \$50 or more;

(3) Any terms used herein that are defined in other paragraphs of this Order (including the Stipulation incorporated herein) shall have the meanings ascribed to them in such paragraphs; and

(4) Except as otherwise expressly provided in this Order, any terms used herein that are defined in the Home Owners' Loan Act or the Federal Deposit Insurance Act shall have the

meanings ascribed to them in said statutes. See, e.g., 12 U.S.C. § 1813.

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

8. Effectiveness of Order. This Order is and shall become effective on the date 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: Robert Albanese
Robert C. Albanese
Acting Regional Director,
Northeast Region