

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of:

JOHN ANDERSON
Sole Shareholder of Topa
Equities, Inc., which wholly owns
Topa Savings Bank,
Los Angeles, California

RE: OTS ORDER NO. SF-95-011

DATED: April 26, 1995

STIPULATION AND CONSENT TO ISSUANCE OF
AN ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the West Region ("Regional Director"), and John Anderson ("Anderson"), sole shareholder, director and institution-affiliated party of Topa Savings Bank, Los Angeles, California ("Topa"), hereby stipulate and agree as follows:

The OTS, based on information reported to it, is of the opinion that grounds exist to initiate administrative proceedings against Anderson pursuant to Section 8(i) of the Federal Deposit Insurance Act ("FDIA"), as amended, 12 U.S.C. 1818(i).¹ Anderson desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Without admitting or denying

¹All references to U.S.C. are as amended.

that such grounds exist, except those contained in Paragraph 1 below, which are admitted, Anderson hereby stipulates and agrees to the terms of this Stipulation and Consent ("Stipulation") and to the issuance of the attached Order of Assessment of Civil Money Penalty ("Order").

The OTS, based on available evidence and testimony, has determined that it is appropriate and in the best interest of the public to execute this Stipulation and the attached Order.

This Stipulation and the Order do not compromise, settle, dismiss, resolve, or in any way affect any civil actions, charges against, or liability of Anderson that may be or have been brought by any governmental entity other than the OTS.

1. Jurisdiction.

(a) Topa 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). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. 1813(u).

(b) At all times relevant hereto, Anderson has been a shareholder of Topa, a director of Topa and an institution-affiliated party of Topa, as defined at 12 U.S.C. 1813(u), having served in such capacities within six (6) years prior to the date of this stipulation.

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. 1813(q), OTS is the "appropriate Federal banking agency" to maintain civil money penalty proceedings against institution-affiliated parties of Topa. Anderson is subject to the authority of the OTS to initiate and maintain such proceedings against him, pursuant to Section 8(i) of the FDIA, 12 U.S.C. 1818(i).

2. Consent. Anderson consents to the issuance by the OTS of the Order, a copy of which is attached hereto. Anderson further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all the requirements of law.

3. Finality. The Order is issued under Section 8(i)(2) of the FDIA, 12 U.S.C. 1818(i)(2). Upon issuance, it shall be a final order, effective and fully enforceable by the OTS or its successor under the provisions of Section 8(i) of the FDIA, 12 U.S.C. 1818(i), and subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. 1818(j).

4. Waivers.

(a) Anderson waives his right to a Notice of Assessment of Civil Money Penalty and right to an administrative hearing, as set forth in 12 U.S.C. 1818(i). Anderson further waives any right to seek judicial review of the Order, including 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.

(b) Anderson waives any claim for attorney's fees or expenses under the Equal Access to Justice Act, 5 U.S.C. 504.

5. Indemnification. Anderson shall neither cause nor permit Topa, nor any subsidiary nor parent corporation thereof, to incur, directly or indirectly, any expense for the amount of the civil money penalty assessed under the Order of Assessment of Civil Money Penalty, or any legal or other professional expenses incurred relative to the negotiation and issuance of the Order. Anderson shall not obtain any indemnification or other reimbursement from Topa, or any subsidiary or parent corporation thereof, with respect to such amounts. Any payments received by or on behalf of Anderson in connection with his actions shall be returned to Topa.

6. Other Actions, Proceedings and Parties. This Stipulation and the accompanying Order are issued solely to settle this proceeding. By entering into this Stipulation, Anderson

acknowledges and agrees that:

(a) The assessment or payment of the penalty contemplated as part of the resolution thereof, and Anderson's consent to the entry of the Order, is for the purpose of resolving this enforcement matter only.

(b) Anderson will not assert the assessment or payment of the penalty 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.

(c) Anderson's obligation to pay the civil money penalty shall not be dischargeable in bankruptcy under any circumstances.

WHEREFORE, Anderson executes this Stipulation, intending to be legally bound hereby.

By:

John E. Anderson
John Anderson

Date: Dec. 27, 1994

Accepted by:

John F. Robinson
John F. Robinson
West Regional Director
Office of Thrift Supervision

Date: April 6, 1995

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of:

JOHN ANDERSON
Sole Shareholder of Topa
Equities, Inc. which wholly owns
Topa Savings Bank,
Los Angeles, California

RE: OTS ORDER NO. SF-95-011
DATED: April 26, 1995

ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

WHEREAS, the Office of Thrift Supervision ("OTS") has conducted an investigation pursuant to OTS Resolution WA 91-04, dated September 11, 1991, concerning Topa Savings Bank, Los Angeles, California ("Topa") and, as a result of that investigation, has concluded that:

(a) In early 1990, OTS informed Topa that, as a result of a determination regarding the capital treatment of a Conduit Subordinated Mortgage Pass-Through Certificate, Series 1987-S4 ("S-4 Certificate"), Topa's capital shortfall on December 31, 1989 was greater than previously calculated. If Topa continued to hold the S-4 Certificate, it would fail its minimum risk-based capital requirement on June 30, 1990 and be required to draw against a letter of credit established to ensure Topa's capital compliance.

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(b) During June 1990 Topa negotiated an oral agreement with the securities firm of Bear Stearns, by which Bear Stearns would purchase the S-4 Certificate from Topa. The sale was to be for cash, and was to take place before June 30, 1990.

(c) Sometime between June 26 and 29, 1990, however, Bear Stearns informed Topa that it would not purchase the S-4 Certificate from Topa.

(d) On June 29, 1990, Topa's Chief Executive Officer ("CEO"), arranged for the sale of the S-4 Certificate to the Kayne Trust ("Trust"), a living trust whose trustee was the father of one of Topa's directors.

(e) The terms of the sale of the S-4 Certificate negotiated by Topa's CEO with the Trust provided that Topa would finance the Trust's purchase of the S-4 Certificate through a loan to the Trust, and further provided that Topa Capital Corporation (at that time, the holding company of Topa) would give a sales option to the Trust. The option provided that the Trust could require Topa Capital Corporation to purchase the S-4 Certificate from the Trust after four months. The option also guaranteed a 21 percent annualized rate of return for the Trust upon sale of the S-4 Certificate to Topa Capital Corporation.

(f) At the June 1990 Board of Directors meeting, the directors were asked to ratify Topa's sale of the S-4 Certificate, with financing, to the Trust.

(g) John Anderson ("Anderson"), the sole shareholder of Topa Capital Corporation and a director of Topa, voted at the June 1990 Board meeting to approve the sale of the S-4 Certificate, with financing, to the Trust.

(h) In August 1990, two months later, Topa's CEO arranged for the securities firm of Salomon Brothers Inc. to purchase the S-4 Certificate from the Trust for cash. Because the sale price of the S-4 Certificate to Salomon Brothers was less than the amount the Trust had paid to purchase the S-4 Certificate from Topa two months earlier, Topa's CEO determined that Topa would discount the Trust's loan from Topa by \$119,000 in order to induce the Trust to sell the S-4 Certificate.

(i) The discounting of the Trust's loan from Topa by \$119,000 effectively resulted in Topa absorbing the Trust's losses incurred in the sale of the S-4 Certificate to Salomon Brothers.

(j) Topa's discount of the Trust's loan was an extension of credit, or a guarantee against loss, that resulted in Topa assuming a liability of its holding company, an affiliated entity,

in violation of Section 23B of the Federal Reserve Act, 12 U.S.C. 371c-1 (1988 & Supp. II 1990).

(k) By voting to sell the S-4 to the Trust with financing at the June 1990 board meeting, Anderson aided and abetted in Topa's violation of 12 U.S.C. 371c-1 (1988 & Supp. II 1990) in August 1990; and

WHEREAS, Anderson has executed a Stipulation and Consent to Issuance of an Order for Assessment of Civil Money Penalty ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the OTS, acting by and through its West Regional Director; and

WHEREAS, without admitting or denying the statements, conclusions and opinions of the OTS contained herein, Anderson has consented and agreed in the Stipulation to the issuance of this Order of Assessment of Civil Money Penalty ("Order"); and

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue an order assessing a civil money penalty where the respondent has consented to the issuance of the order;

NOW, THEREFORE, THE OTS ORDERS AS FOLLOWS:

**ORDER OF ASSESSMENT OF
CIVIL MONEY PENALTY**

1. Within ten (10) days of the date of this Order, Anderson shall pay a civil money penalty in the amount of Five Thousand Dollars (\$5000). The amount shall be paid by tendering a certified or cashier's check, payable to the Treasurer of the United States, and sending the check, together with a cover letter stating the name of the savings association, the resolution number and a copy of this Order, to the following address:

Controller's Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

A copy of the cover letter and a copy of the check shall also be sent to Stephen E. Hart, Office of Thrift Supervision, 1700 G Street, N.W., Fifth Floor, Washington, D.C. 20552.

GENERAL PROVISIONS

2. All words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, the Home Owners' Loan Act and the FDIA, as amended.

3. This Order shall become effective on the date of issuance by the West Regional Director of the OTS, and shall remain in effect until the civil money penalty assessed hereby has been received by the OTS.

OFFICE OF THRIFT SUPERVISION

By:



John F. Robinson
West Regional Director
Office of Thrift Supervision

Date:

