

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of: )  
 )  
MITCHELL, JOANN, )  
 )  
Former Employee and )  
Institution-Affiliated Party )  
of: )  
 )  
BANK UNITED OF TEXAS, FSB )  
HOUSTON, TEXAS )

RE: OTS Order No. DAL-94-22

Dated: June 1, 1994

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

WHEREAS, Joann Mitchell ("MITCHELL") has executed a Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Stipulation") on May 16<sup>th</sup>, 1994; and

WHEREAS, MITCHELL by her 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. MITCHELL is prohibited from further participation, in any manner, in the conduct of the affairs of Bank United of Texas, FSB, Houston, Texas, and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. MITCHELL shall not hold any office in, or participate in any manner in the conduct of the affairs of any Federally regulated depository institution or any of the other entities that are described in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. §1818(e)(7)(A), without the prior written approval of OTS (acting through its Director or an authorized representative thereof) and, the "appropriate Federal financial institutions regulatory agency" for the Federally regulated depository institution which is involved. Due to the operation of Section 8(e)(6) of the FDIA, 12 U.S.C. §1818(e)(6), conduct prohibited by this Order, without the said prior written approval of the OTS and the "appropriate Federal banking agency", also includes, without limitation: (1) soliciting, procuring, transferring, attempting to transfer, voting, or the attempting to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. §1818(e)(7)(A); and (2) voting for a director, or serving as an institution-affiliated party.

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, as shown in the caption above.

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

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

6. MITCHELL shall pay restitution to Bank United of Texas, FSB, Houston, Texas, in the amount of \$1,690.55.

7. All payments should be made by certified check or money order made payable to Bank United of Texas, FSB, and forwarded directly to the OTS Midwest Regional Director 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

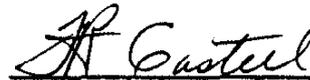
8. The Stipulation is made a part hereof and is incorporated herein by this reference.

9. 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, as shown in the caption above.

Joann Mitchell  
Order of Prohibition  
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10. MITCHELL shall promptly respond to any request from the  
OTS for documents that the OTS reasonably requests to demonstrate  
compliance with this Order.

THE OFFICE OF THRIFT SUPERVISION  
By:



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Frederick R. Casteel  
Midwest Regional Director

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of: )  
MITCHELL, JOANN, )  
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BANK UNITED OF TEXAS, FSB )  
HOUSTON, TEXAS )

RE: OTS Order No. DAL-94-22

Dated: June 1, 1994

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 Joann Mitchell ("MITCHELL"), former employee and institution-affiliated party of Bank United of Texas, FSB, Houston, Texas ("Bank United" or the "Institution") that the OTS is of the opinion that grounds exist to initiate administrative cease and desist and prohibition proceedings against MITCHELL 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, MITCHELL desires to cooperate with the OTS to avoid the time and expense of such administrative litigation

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

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) Bank United, 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, Bank United was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) MITCHELL, as a former employee of Bank United, 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, MITCHELL is subject to the authority of the OTS to initiate and maintain cease and desist and prohibitions proceeding against her pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b)(6)(A)(i) and Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

2. OTS Findings of Fact. The OTS finds that on or about June 2, 1993, June 7, 1993, and June 15, 1993, MITCHELL, without authorization, misapplied \$1,690.55 of the funds of Bank United to her own use. As a result of her actions, MITCHELL (1) engaged in a violation of the law or breached her fiduciary duty of honesty to Bank United ; and (2) Bank United

suffered a financial loss or she received a financial benefit or other gain; an (3) the violation of law or breach of fiduciary duty involved personal dishonesty on her part.

3. Consent. MITCHELL consents to the issuance by the OTS of the accompanying Order of Prohibition and Order to ease and Desist for Affirmative Relief ("Orders"). She 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)(6)(A)(i) 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 it 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. MITCHELL waives the following:

(a) the right to be served with a written notice of the OTS's charges against her (see Sections 8(b) and 8(e) of the FDIA);

(b) the right to an administrative hearing of the OTS's charges against her (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. MITCHELL shall neither cause nor permit Bank United (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 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 MITCHELL in connection with this action shall be returned to Bank United (or the successor institution, holding company, subsidiary or service corporation thereof).

**7. Other Government Actions Not Affected.**

(a) MITCHELL acknowledges and agrees that the consent to the entry of the Orders is for the purpose of resolving these cease and desist prohibition actions only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of MITCHELL 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, MITCHELL agrees that she will not assert this proceeding, her 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. MITCHELL**

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

WHEREFORE, MITCHELL 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:

Accepted by:  
Office of Thrift Supervision

Joann Mitchell  
Joann Mitchell

Frederick R. Casteel  
Frederick R. Casteel  
Midwest Regional Director

Dated: 5/19/94

Dated: 6-1-94

\* \* \* \* \*

ACKNOWLEDGEMENT

State of Texas )  
County of Harris )

On this 24th day of MAY, 1994, before me, the undersigned notary public, personally appeared Joann Mitchell and acknowledged her execution of the foregoing STIPULATION AND CONSENT TO ENTRY OF AN ORDER OF PROHIBITION AND CEASE AND DESIST ORDER FOR AFFIRMATIVE RELIEF.

Belinda Stevens  
Notary Public

My Commission expires:

November 1, 1996

