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[¶11,110] **In The Matter of Michael J. Kelly, Nancy L. Kelly, Commercial State Bank, Afton, Iowa, Docket No. FDIC-85-54k (12-27-94).**

FDIC agrees to accept proceeds of sale of commercial building in full satisfaction of civil money penalties.

[{{2-28-95 p.C-3896}}](#)

**In The Matter of
MICHAEL J. KELLY,
NANCY L. KELLY
individually, as directors, officers
and as persons participating in the
conduct of the affairs of
COMMERCIAL STATE BANK
AFTON, IOWA
(Insured State Nonmember Bank—In
Receivership)
ORDER TO ACCEPT COMPROMISE
OF JUDGMENT AND SETTLEMENT
OF CLAIM
FDIC-85-54k**

The Federal Deposit Insurance Corporation ("FDIC"), on March 6, 1985, issued a NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY and NOTICE OF HEARING ("NOTICE") against Michael J. Kelly and Nancy L. Kelly ("Respondents"), assessing a civil money penalty against the Respondent pursuant to former section 18(j) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1828(j)(4)(1978), and former section 8(i)(2) of the Act, 12 U.S.C. § 1818(i) (1978), in the amount of \$20,000.00 and \$2,000.00 respectively for violating section 22(h) of the Federal Reserve Act, 12 U.S.C. § 375b, section 215.4(a) of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. § 215.4(a).

Following the issuance of the NOTICE, the Respondents did not file an answer or request a hearing. On August 10, 1989, the United States District Court for the Northern District of Oklahoma entered default judgments against the Respondents. In January, 1993, the default judgments against the Respondents were entered of record in United States District Court for the Southern District of Iowa.

The Respondents have not had permanent full-time employment for at least four years and there is little prospect of obtaining such employment. The Office of the United States Attorney attempted to garnish Respondent Nancy Kelly's wages but she does not earn a sufficient amount for the garnishment to be effective. The total adjusted gross income on the Respondents' 1993 Federal income tax return was slightly more than \$3,000.

The only asset of the Respondents is a commercial building located at lot numbered twenty-one (21) in the Original Town of Afton, Union County, Iowa, (hereinafter, "Afton, Iowa") which is under contract for sale. The net proceeds from the sale available for payment of the civil money penalty is approximately \$4,292.60. Because a judgment lien of the United States was placed upon the property for the civil money penalties, consummation of the sale is conditioned upon the FDIC accepting this approximate amount as payment in full for the assessment against Respondents.

WHEREFORE, the FDIC hereby determines that the Respondents' only asset and only source of payment available for payment of the civil money penalties assessed against the Respondents is the commercial building located in Afton, Iowa.

WHEREFORE, the FDIC hereby accepts the recommendation of the Office of the United States Attorney dated November 7, 1994, to accept the net proceeds resulting from the sale of the commercial building located in Afton, Iowa, and the ORDER TO ACCEPT COMPROMISE OF JUDGMENT AND SETTLEMENT OF CLAIM hereby states, as follows:

ORDER TO ACCEPT COMPROMISE OF JUDGMENT AND SETTLEMENT OF CLAIM

IT IS HEREBY ORDERED, that the net proceeds remaining after the sale of the commercial building located in Afton, Iowa, including deducting amounts to be paid to the original owner, and the normal

closing expenses such as abstracting, real estate taxes, realtor's commission, transfer tax and attorney fees, in the approximate amount of \$4,292.60 be applied to the civil money penalties assessed against Respondent Michael J. Kelly and Respondent Nancy L. Kelly, pursuant to former section 18(j) of the Act, 12 U.S.C. § 1828(j)(4) (1978) and former section 8(i) of the Act, 12 U.S.C. § 1818(i) (1978) as payment in full satisfaction of the outstanding orders issued by the FDIC against Respondents.

IT IS FURTHER ORDERED, that the Legal Division of the Federal Deposit Insurance Corporation may undertake whatever other actions are necessary to allow the consummation of the sale of said building and to obtain payment of the civil money penalty in accordance with the provisions of this order.

IT IS FURTHER ORDERED, that the penalty shall be paid by the Respondents within ten (10) days from the date of settlement of the sale of the commercial building located in Afton, Iowa.

IT IS FURTHER ORDERED, that this [{{2-28-95 p.C-3897}}](#) ORDER shall be final and fully enforceable upon its issuance.

Dated at Washington, D.C., this 27th day of December, 1994.

Pursuant to delegated authority.