

[{{10-31-00 p.C-2481}}](#)

[¶10,582A]In the Matter of Lurner O. Benton, III, Ollie F. Askew, Sr., Ann Fitzpatrick, William Gordon Parrott, III, and Gary B. Vickers, The Farmers Bank, Union Point, Georgia, Docket No. 92-105k (5-27-92).

Respondents agree to pay civil money penalties assessed by the FDIC. This was an uncontested notice and became a final order by operation of law.

**In the Matter of
LURNER O. BENTON, III,
OLLIE F. ASKEW, SR.,
ANN FITZPATRICK,
WILLIAM GORDON PARROTT, III,
and GARY B. VICKERS,
individually, and as institution-affiliated parties of
THE FARMERS BANK
UNION POINT, GEORGIA
(Insured State Nonmember Bank)
NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, FINDINGS OF FACT AND
CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING**

FDIC-92-105k

NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES

The Federal Deposit Insurance Corporation ("FDIC") is of the opinion that Lurner O. Benton, III, Ollie F. Askew, Sr., Ann Fitzpatrick, William Gordon Parrott, III, and Gary B. Vickers, individually, and as institution-affiliated parties ("Respondents") of The Farmers Bank, Union Point, Georgia ("Bank"), have violated: (a) section 22(h) of the Federal Reserve Act, 12 U.S.C. § 375b; (b) Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. Part 215, made applicable to insured State nonmember banks pursuant to section 18(j)(2) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1828(j)(2), and section 337.3 of the FDIC's Rules and Regulations, 12 C.F.R. § 337.3; (c) sections 23A(c) and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c(c) and 371c-1, made applicable to insured State nonmember banks pursuant to section 18(j)(1) of the Act, 12 U.S.C. § 1828(j)(1); (d) section 349.3(a) of the FDIC's Rules and Regulations, 12 C.F.R. § 349.3(a); (e) sections 7-1-286 and 45-8-12 of the Official Code of Georgia Annotated; and (f) sections 80-1-6-.03 and 80-1-2 of the Rules of the State of Georgia Department of Banking and Finance.

Wherefore, the FDIC hereby issues this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING ("NOTICE OF ASSESSMENT") pursuant to sections 8(i)(2) and 18(j)(4) of the Act, 12 U.S.C. §§ 1818(i)(2) and 1828(j)(4), and Part 308 of the FDIC's Rules of Practice and Procedure, 56 Fed. Reg. 37,968 (1991) (to be codified at 12 C.F.R. Part 308). In support thereof, the FDIC finds and concludes as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and General

1. At all times pertinent to the charges herein, the Bank was a corporation existing and doing business under the laws of the State of Georgia and had its principal place of business in Union Point, Georgia. The Bank is and has been at all times pertinent to the charges herein, an insured State nonmember bank subject to the Act, 12 U.S.C. §§ 811-1831t, the FDIC's Rules and Regulations, 12 C.F.R. Chapter III, and the laws of the State of Georgia.

2. At all times pertinent to the charges herein, Respondent Lurner O. Benton, III, was a "director" and an "executive officer" of the Bank within the meaning of sections 215.2(c) and 215.2(d) of Regulation O, 12 C.F.R. §§ 215.2(c) and 215.2(d), and an "institution-affiliated party" of the Bank within the meaning of

sections 3(u), 8(i)(2) and 18(j)(4) of the Act, 12 U.S.C. §§ 1813(u), 1818(i)(2) and 1828(j)(4).

3. At all times pertinent to the charges herein, Respondents Ollie F. Askew, Sr., Ann Fitzpatrick, William Gordon Parrott, III, and Gary B. Vickers were "directors" of the Bank within the meaning of section 215.2(c) of Regulation O, 12 C.F.R. § 215.2(c), and "institution-affiliated parties" of the Bank with the meaning of sections 3(u), 8(i)(2) and 18(j)(4) of the Act, 12 U.S.C. §§ 1813(u), 1818(i)(2) and 1828(j)(4).

4. Putnam-Greene Financial Corporation ("Putnam-Greene") is, and was at all pertinent times, a bank holding company organized and doing business under section 3(a) of the Bank Holding Company Act, 12 U.S.C. § 1842(a), and the laws of the State of Georgia and had its principal place of business in Eatonton, Georgia.

5. At all times pertinent to the charges herein, Putnam-Greene owned and controlled 99.9 percent of the capital stock of the Bank.

6. At all times pertinent to the charges herein, Putnam-Greene was the "principal shareholder" of the Bank within the meaning of section 215.2(j) of Regulation O, 12 C.F.R. § 215.2(j).

7. At all times pertinent to the charges herein, the Respondents exercised a controlling influence over the management, policies and practices of the Bank.

8. The FDIC has jurisdiction over the Respondents, the Bank, and the subject matter of this proceeding.

B. Violations of Regulation O

9. Pursuant to section 215.4(a)(1) of Regulation O, 12 C.F.R. § 215.4(a)(1), the Bank may not extend credit to any of its executive officers, directors or principal shareholders, or to any related interest of such persons, unless the extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the Bank with other persons that are not covered by Regulation O and who are not employed by the Bank.

a. \$58,000 unsecured interest-free loan to Putnam-Greene

10. On or about April 1, 1990, the Bank sold and transferred to Putnam-Greene the Bank's entire computer system.

11. That transaction between the Bank and Putnam-Greene was not entered on the Bank's books until June 5, 1990, when the Bank entered it as an interest-free unsecured obligation owed to the Bank from Putnam-Greene in the amount of \$58,000.

12. That \$58,000 unsecured interest-free obligation owed to the Bank from Putnam-Greene remained on the Bank's books until November 2, 1990, when Putnam-Greene paid it in full.

13. That \$58,000 unsecured interest-free [{{10-31-00 p.C-2482.1}}](#) transaction between the Bank and Putnam-Greene constituted an "extension of credit" by the Bank to its principal shareholder under section 215.3(a) of Regulation O, 12 C.F.R. § 215.3(a).

14. At the time the Bank entered into the \$58,000 unsecured interest-free transaction with Putnam-Greene, the Bank required persons or entities who were not affiliated with it to: (i) repay extensions of credit at the prevailing market rate of interest, (ii) deliver to the Bank appropriate legal documents and appraisals in connection with the extensions of credit, and (iii) pledge adequate collateral to secure repayment of the loans.

15. The Respondents caused or permitted the Bank to enter into the \$58,000 unsecured interest-free transaction or extension of credit with Putnam-Greene in violation of section 215.4(a)(1) of Regulation O, 12 C.F.R. § 215.4(a)(1), because the extension of credit was not made on substantially the same terms as those prevailing at the time for comparable transactions by the Bank with persons not affiliated with the Bank since the obligation: (a) bore no interest charge, (b) was made without requiring Putnam-Greene to produce appropriate legal documentation and appraisals of collateral securing the loan and (c) did not require Putnam-Greene to pledge collateral to secure its repayment.

b. \$550,000 Benton loan

16. On or about July 3, 1990, the Bank granted two extensions of credit to Nancy T. Benton in the amount of \$550,000 and \$100,000, respectively. Nancy T. Benton transferred the proceeds of the \$550,000 loan to her husband, Respondent Lurner C. Benton, III.

17. That \$550,000 extension of credit to Nancy T. Benton constituted an "extension of credit" by the Bank for the tangible economic benefit of the Bank's president and director, Lurner O. Benton, III, within the meaning of and pursuant to sections 215.3(a) and 215.3(f) of Regulation O, 12 C.F.R. §§ 215.3(a) and 215.3(f).

18. At the time the Bank granted the \$550,000 extension of credit attributable to Lurner O. Benton, III, the Bank required persons and entities who were not affiliated with it to repay similar extensions of credit at an interest rate of 11.25 percent per annum. However, the Bank allowed Nancy T. Benton and Lurner O. Benton, III, to repay the \$550,000 extension of credit at an interest rate of only 10 percent per year, which was 1.25 percent below the prevailing market rate.

19. The Respondents caused or permitted the Bank to grant the \$550,000 extension of credit attributable to Lurner O. Benton, III, in violation of section 215.4(a)(1) of Regulation O, 12 C.F.R. § 215.4(a)(1), because it was not made on substantially the same terms as those prevailing at the time for comparable loans by the Bank with persons and entities who were not affiliated with it due to the below market interest rate.

c. \$109,000 Hudson loan

20. On or about August 4, 1990, the Bank granted an extension of credit to its executive vice president, James D. Hudson, Jr., in the amount of \$109,000.

21. That loan to ____ constituted an "extension of credit" by the Bank to an executive officer within the meaning of section 215.3(a) of Regulation O, 12 C.F.R. § 215.3(a).

22. At the time the Bank granted that loan to ____ the Bank required persons and entities who were not affiliated with it to repay similar extensions of credit at an interest rate of 11.25 percent per annum. However, the Bank required ____ to repay the aforementioned extension of credit at the rate of only 10 percent per year, which was 1.25 percent below the prevailing market rate.

23. The Respondents caused or permitted the Bank to grant the \$109,000 extension of credit to ____ in violation of section 215.4(a)(1) of Regulation O, 12 C.F.R. § 215.4(a)(1), because the extension of credit was not made on substantially the same terms as those prevailing at the time for comparable transactions by the Bank with persons not affiliated with the Bank due to its below market interest rate.

d. Bank records - failure to list related interests

24. Section 215.7 of Regulation O, 12 C.F.R. § 215.7, requires the Bank to maintain records necessary to comply with Regulation O which: (a) identify all executive officers, directors, and [\[10-31-00 p.C-2482.2\]](#) principal shareholders of the Bank and the related interests of each of those persons and (b) state the amount and terms of each extension of credit by the Bank to its executive officers, directors and principal shareholders and to their respective related interests. The Bank is also required to request at least annually that each of its executive officers, directors and principal shareholders identify their respective related interests.

25. For the year 1990, the Bank failed to: (a) require its executive officers, directors and principal shareholder to identify their related interests and (b) maintain records which specified the amount and terms of any extensions of credit by the Bank to any such related interests.

26. The Respondents caused or permitted the Bank to violate section 215.7 of Regulation O, 12 C.F.R. § 215.7, by failing to require the Bank to maintain records which identified the related interests of each executive officer, director and principal shareholder of the Bank and which specified the amount and terms of any extensions of credit by the Bank to their respective related interests for 1990.

C. Sections 23A and 23B of the Federal Reserve Act Violations

27. Section 23A(c)(1) of the Federal Reserve Act, 12 U.S.C. § 371(c)(1), provides in pertinent part that each loan or extension of credit to an affiliate of the Bank must be secured at the time of the transaction by collateral having a market value equal to 130 percent of the amount of the loan or extension of credit if

the collateral is composed of stock, leases, or other real or personal property.

28. Putnam-Greene is an "affiliate" of the Bank within the meaning of section 23A(b) (1)(A) of the Federal Reserve Act, 12 U.S.C. § 371c(b)(1)(A), so that the \$58,000 unsecured interest-free transaction between the Bank and Putnam-Greene cited above is a "loan or extension of credit" by the Bank to an affiliate under section 23A(c)(1) of the Federal Reserve Act, 12 U.S.C. § 371c(c)(1).

29. The Respondents caused or permitted the Bank to grant the \$58,000 unsecured interest-free extension of credit to Putnam-Greene in violation of section 23A(c)(1) of the Federal Reserve Act, 12 U.S.C. § 371c (c)(1), because the extension of credit was not secured by collateral having a market value equal to at least 130 percent of the amount of the extension of credit.

30. Section 23B(a) of the Federal Reserve Act, 12 U.S.C. § 371c-1(a), provides in pertinent part that the Bank may engage in a "covered transaction", as defined in sections 23A(b)(7) and 23B(d)(3) of the Federal Reserve Act, 12 U.S.C. §§ 371c(b)(7) and 371c-1(d)(3), with an affiliate only on terms and under circumstances, including credit standards, that are: (i) substantially that are the same or at least as favorable to the Bank as those prevailing at the time in the Bank's comparable transactions with or involving nonaffiliated entities or (ii) in the absence of comparable transactions, on terms and under circumstances, including credit standards, that the Bank in good faith would offer or would apply to nonaffiliated entities.

31. Putnam-Greene is an "affiliate" of the Bank within the meaning of sections 23A(a)(1) and 23B(d)(1) of the Federal Reserve Act, 12 U.S.C. §§ 371c(b)(1) and 371c-1(d)(1), so that the \$58,000 unsecured interest-free transaction between the Bank and Putnam-Greene is a "covered transaction" under section 23B of the Federal Reserve Act, 12 U.S.C. § 371c-1.

32. The Respondents caused or permitted the Bank to enter into the \$58,000 unsecured interest-free "covered transaction" with Putnam-Greene in violation of section 23B(a) of the Federal Reserve Act, 12 U.S.C. § 371c-1(a), because the extension of credit was not made on substantially the same terms as those prevailing at the time for comparable transactions with or involving entities that were not affiliated with the Bank or was not made on terms that the Bank in good faith would offer to an entity that was not affiliated with it since the obligation: (a) bore no interest charge, (2) was made without requiring Putnam-Greene to produce appropriate legal documentation and appraisals and (3) did not require Putnam-Greene to pledge collateral to secure its repayment.

D. Violations of Georgia State Law and Regulations

a. Failure to secure governmental entity's deposits

33. Section 45-8-12 of the Official Code of Georgia Annotated provides that banks doing business in the State of Georgia must provide a surety bond and/or pledge assets to secure funds deposited by governmental entities in excess of 10 days. The surety bond and/or assets pledged must equal at least 110 percent of the amount of the governmental deposits being secured, after deducting the \$100,000 FDIC insurance on the governmental deposit.

[{{10-31-00 p.C-2482.3}}](#)

34. On or about December 1, 1990, the Bank accepted a deposit of \$140,665 from the Greene County, Georgia Board of Commissioners, a governmental body.

35. At the time the Bank accepted the deposit from the Greene County Board of Commissioners, and continuing for more than 10 days thereafter, the Bank failed to provide a surety bond/or pledge assets equal to at least 110 percent of that deposit, after deducting the \$100,000 FDIC insurance on that deposit.

36. The Respondents caused or permitted the Bank to accept that deposit from the Greene County Board of Commissioners in violation of section 45-8-12 of the Official Code of Georgia Annotated because the Bank failed to secure the deposit with a surety bond and/or pledge of assets equal to at least 110 percent of the deposit, after deducting the \$100,000 FDIC insurance on that deposit.

b. Excessive regularly amortizing real estate loan

37. Section 7-1-286 of the Official Code of Georgia Annotated provides in pertinent part that banks doing business in the State of Georgia may make a regularly amortizing extension of credit secured by

improved or unimproved real estate only if the extension of credit does not exceed 90 percent of the current fair market value of the real estate that secures repayment of such loans.

38. On April 13, 1990, the Bank made a regularly amortizing extension of credit to ____ of \$200,240 even though the then-current fair market value of the real estate equaled \$150,000, so that the maximum amount that the Bank could have lent was only \$135,000 or 90 percent of \$150,000.

39. The Respondents caused or permitted the Bank to grant the \$200,240 extension of credit to ____ in violation of section 7-1-286 of the Official Code of Georgia Annotated because the extension of credit exceeded 90 percent of the then-current fair market value of the real estate securing repayment of the loan.

c. Failure to secure and retain financial statements

40. Chapter 80-1-6 of the Rules of the State of Georgia Department of Banking and Finance ("Chapter 80-1-6") provides in pertinent part that each director of a bank doing business in the State of Georgia shall maintain a complete and accurate financial statement on file with the chief executive officer of the bank.

41. For the years 1987, 1988, 1989 and/or 1990, Director Ann Fitzpatrick submitted annual financial statements to the Bank pursuant to Chapter 80-1-6 which were incomplete and did not fully disclose her financial net worth.

42. Director Ann Fitzpatrick violated Chapter 80-1-6 by failing to submit to the Bank a complete and accurate financial statement.

d. Unapproved bank-service contract with Putnam-Greene

43. Chapter 80-1-2 of the Rules of the Georgia Department of Banking and Finance ("Chapter 80-1-2") provides in pertinent part that the Bank must submit an application to the State of Georgia Department of Banking and Finance for approval of all contracts for bank services that any bank service corporation or other entity wishes to render to the Bank. Section 80-1-2-.01(2) of the Rules of the State of Georgia Department of Banking and Finance defines "bank services" as including: (a) check and deposit sorting and posting, (b) computation and posting of interest and other credits and charges, (c) preparation and marking of checks, statements, notices and similar items or (d) other clerical, bookkeeping, accounting, statistical or similar functions performed by a bank.

44. On or about April 1, 1990, the Bank entered into an agreement with Putnam-Greene under which Putnam-Greene would provide "bank services" to or for the Bank. However, the Bank did not submit an application to the State of Georgia Department of Banking and Finance for approval of that bank service contract.

45. The Respondents caused or permitted the Bank to enter into the bank service agreement with Putnam-Greene Financial Corporation in violation of Chapter 80-1-2 because the Bank failed to submit an application to the State of Georgia Department of Banking and Finance for approval of the bank service agreement.

E. Violation of FDIC Regulation - Correspondent Bank Debt

46. Section 349.3(a) of the FDIC's Rules and Regulations, 12 C.F.R. § 349.3(a), re-
[{{10-31-00 p.C-2482.4}}](#)quires the Bank's principal shareholder to make a written report to the Bank's board of directors at any time during a calendar year if the principal shareholder has an extension of credit outstanding from a correspondent bank of the Bank.

47. Continuously since July of 1988, the Bank has had a correspondent banking relationship with Bank South, National Association, Atlanta, Georgia 9 ("Bank South"), within the meaning of section 349.3(a) of the FDIC's Rules and Regulations.

48. During 1989 and 1990, Putnam-Greene was a principal shareholder of the Bank and had an extension of credit of about \$4,000,000 outstanding at Bank South.

49. The Respondents failed to require the Bank to obtain from Putnam-Greene a written report concerning that approximately \$4,000,000 extension of credit for the year 1990, in violation of section

DEFINITION OF "VIOLATION"

50. Pursuant to section 3(v) of the Act, 12 U.S.C. § 1813(v), the term "violation" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

ORDER TO PAY

By reason of the violations set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that civil money penalties should be assessed against the Respondents pursuant to sections 8(i)(2) and/or 18(j)(4) of the Act, 12 U.S.C. §§ 1818(i)(2) and/or 1828(j)(4) (1989). After taking into account the appropriateness of the penalties with respect to the size of financial resources and the good faith of each Respondent, the gravity of the violations, the history of previous violations, and such other matters as justice may require, it is:

ORDERED, that by reason of the violations set forth above, that a penalty of \$5,000 be, and hereby is, assessed against Lurner O. Benton, III; a penalty of \$1,000 be, and hereby is, assessed against Ollie F. Askew, Sr.; a penalty of \$1,000 be, and hereby is, assessed against Ann Fitzpatrick; a penalty of \$1,000 be, and hereby is, assessed against William Gordon Parrott, III; and a penalty of \$1,000 be, and hereby is, assessed against Gary B. Vickers, pursuant to sections 8(i)(2) and/or 18(j)(4) of the Act, 12 U.S.C. §§ 1818(i)(2) and/or 1828(j)(4) (1989).

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed with respect to each Respondent until 20 days after the date of receipt of the NOTICE OF ASSESSMENT by the Respondents, during which time each Respondent may file an answer and request a hearing pursuant to section 8(i)(2)(H) of the Act, 12 U.S.C. § 1818(i)(2)(H), and section 308.19 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19. The original and one copy of the answer, any such request for a hearing, and all other documents in this proceeding must be filed with the Office of Financial Institution Adjudication, 1700 G Street, N.W., Washington, D.C. 20552. Also, copies of all papers filed in this proceeding shall be served upon the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; Arthur L. Beamon, Associate General Counsel, Compliance and Enforcement, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; and John J. Rubin, Regional Counsel (Supervision), Federal Deposit Insurance Corporation, 245 Peachtree Center Avenue, N.E., Suite 1200, Atlanta, Georgia 30303.

If any Respondent fails to file a request for a hearing within 20 days from the date of receipt of this NOTICE OF ASSESSMENT, the penalty assessed against that Respondent, pursuant to this ORDER TO PAY, will be final and shall be paid within 60 days after the date of receipt of this NOTICE OF ASSESSMENT.

NOTICE OF HEARING

IT IS FURTHER ORDERED that, if any Respondent requests a hearing with respect to the charges alleged in the NOTICE OF ASSESSMENT, the hearing shall commence 120 days from the date of receipt of this NOTICE OF ASSESSMENT at Union Point, Georgia, or at such other date or place upon which the parties to this proceeding and the Administrative Law Judge mutually agree.

The hearing will be public and shall be conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831t, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC's Rules of Practice and Procedure, 12 C.F.R. Part 308. The hearing [{{10-31-00 p.C-2482.5}}](#) will be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The exact time and location of the hearing will be determined by the Administrative Law Judge.

In the event that any Respondent requests a hearing, each such Respondent shall also file an answer to the charges in this NOTICE OF ASSESSMENT within 20 days after the date of receipt of the NOTICE OF HEARING in accordance with section 308.19 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19.

Failure of any Respondent to request a hearing shall render the civil money penalty assessed in this NOTICE OF ASSESSMENT final and unappealable as to that Respondent pursuant to section 8(i)(2)(E)

(ii) of the Act, 12 U.S.C. § 1818(i)(2)(E)(ii), and section 308.19(c)(2) of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19(c)(2).

Pursuant to delegated authority.

Dated at Washington, D.C., this 27th day of May, 1992.

Last Updated 6/6/2003

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