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[¶5221A**] In the Matter of John H. Hamby, Clinton Savings Bank, Clinton, Mass., FDIC Docket No. 94-173jj (3-30-95)**

FDIC dismisses as moot a proceeding to determine the Section 32 standing of a prospective bank president/chief executive officer because the bank has identified another candidate to fill the position.

[.1**] Officers—Section 32 Proceeding—Mootness**

To the extent that the position which the candidate seeks is no longer available, there is no purpose in deciding issues relating to the candidate's standing under Section 32 of the Federal Deposit Insurance Act.

In the Matter of
JOHN H. HAMBYCLINTON SAVINGS BANK
CLINTON, MASSACHUSETTS
(Insured State Nonmember Bank)
DECISION AND ORDER
FDIC-94-173jj

BACKGROUND

On October 3, 1994, Clinton Savings Bank, Clinton, Massachusetts ("Bank"), and John H. Hamby submitted a Notification of Addition of a Director or Employment of a Senior Executive Officer ("Notification") under section 32 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831i ("Section 32"), seeking approval to employ Mr. Hamby as president and chief executive officer and/or appoint Mr. Hamby as a director. On October 31, 1994, the Regional Director (Supervision) of the Boston Regional Office ("Regional Director") of the Federal Deposit Insurance Corporation ("FDIC") issued a Notice of Disapproval of the Notification ("Notice of Disapproval"). On November 4, 1994, Mr. Hamby filed a Request for Review of the Notice of Disapproval ("Re- {{7-31-95 p.A-2515}}quest"). After consideration of relevant data, the Associate Director, Division of Supervision, denied the Request in a Notice of Denial of Request for Review of Notice of Disapproval and Notice of Hearing ("Notice of Denial of Request") dated December 2, 1994. A hearing, which was scheduled for January 12, 1995, was cancelled pursuant to Mr. Hamby's subsequent request that the matter be resolved by written submissions.

The Bank has identified another candidate to fill the position that had earlier been extended to Mr. Hamby. In a January 19, 1995, letter, the Regional Director advised the Bank that the FDIC had no objection to the Bank's Section 32 Notification offering to employ the other candidate to fill the position. Accordingly, FDIC Enforcement Counsel moved to dismiss Mr. Hamby's appeal on the ground of mootness, citing two cases establishing that a Section 32 appeal is moot when the bank terminates the relationship with the candidate and/or the position in issue is no longer available. *See In the Matter of Robert C. Wilkins, New River Bank, Oakland Park, Florida*, Docket No. FDIC-93-9jj, 1 P-H FDIC Enf. Dec. ¶5201 at A-2290 (1993) and *In the Matter of Donald E. Thompson, Bank of Bellevue, Bellevue, Nebraska*, Docket No. FDIC-91-246jj, 1 P-H FDIC Enf. Dec. ¶5183 at A-2079 (1992).

DISCUSSION

[.1**]** The record in this proceeding establishes that the Bank has selected a person other than Mr. Hamby for chief executive officer. To the extent that the position which the candidate seeks is no longer available, there is no purpose in deciding issues relating to the candidate's Section 32 standing. *See Wilkins* (bank's termination of relationship with person it had earlier supported makes moot the proceeding to determine a person's fitness to serve) and *Thompson* (once the position is no longer available, further proceedings to determine competency would be expensive, time consuming, and meaningless).

Accordingly, the Notice of Disapproval is rescinded, and this proceeding under Section 32 is dismissed as moot.

ORDER

For the reasons set forth above, it is hereby ORDERED that the proceeding to determine the candidate's Section 32 standing is moot because the position to which he aspired is no longer available and, therefore, the proceeding is dismissed.

IT IS FURTHER ORDERED, that the October 31, 1994, Notice of Disapproval and the December 2, 1994, Notice of Denial of Request be and hereby are rescinded.

IT IS FURTHER ORDERED, that the Executive Secretary, or his designee, is instructed to execute and serve copies of this Decision and Order on all parties, and on the Presiding Officer.

Dated at Washington, D.C., this 30th day of March, 1995.

By direction of the Board of Directors.

/s/ Robert E. Feldman
Acting Executive Secretary