

{{5-31-95 p.C-3309}}

[¶10,844] In the Matter of First State Bank, Tahlequah, Oklahoma, Docket No. FDIC-93-151b (7-14-93).

Bank to cease and desist from such unsafe or unsound practices as operating in violation of applicable consumer laws or regulations; and failing to provide adequate supervision over the Bank's consumer affairs. (This order was terminated by order of the FDIC dated 3-17-95; see ¶ 15,982.)

[.1] Consumer Laws—Compliance Officer Required

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[.2] Violations of Law—Eliminate/Correct

[.3] Consumer Laws—Compliance Program—Minimum Requirements

[.4] Appraisals—Fees Charged to Customers—Limited

[.5] Shareholders—Disclosure—Cease and Desist Order

In the Matter of

FIRST STATE BANK

TAHLEQUAH, OKLAHOMA

(Insured State Nonmember Bank)

ORDER TO CEASE AND DESIST

FDIC-93-151b

The First State Bank, Tahlequah, Oklahoma ("Bank"), through its board of directors, having been advised of its right to the issuance and service of a NOTICE OF CHARGES AND OF HEARING detailing the unsafe or unsound banking practices and violations of law and/or regulations alleged to have been committed by the Bank and of its right to a hearing on the alleged charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with counsel for the Federal Deposit Insurance Corporation ("FDIC") dated June 11, 1993, whereby, solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices and violations of law and/or regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC.

The FDIC considered the matter and determined that it had reason to believe that the Bank had engaged in unsafe or unsound banking practices. The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

DEFINITIONS

1. "Compliance program" means the same as the definition contained in the FDIC Manual for Compliance Examinations, including a consciously planned and organized effort to meet the Bank's compliance with consumer laws in a comprehensive manner on an ongoing basis.

2. "Consumer laws" means those laws and regulations referenced in the FDIC Manual for Compliance Examinations, including the laws and regulations referred to in the FDIC's Compliance Report of the Bank as of February 24, 1993.

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Bank, its institution-affiliated parties, as that term is defined in Section 3(u) of the Act, 12 U.S.C. § 1813(u), cease and desist from the following unsafe or unsound banking practices and violations of laws and/or regulations:

1. Engaging in violations of applicable consumer laws and/or regulations; and 2. Failing to provide adequate supervision and direction over the Bank's compliance program to prevent violations of consumer laws and/or regulations.

IT IS FURTHER ORDERED, that the Bank, its institution affiliated parties, take affirmative action as follows:

[.1] 3. a. (i) No more than 60 days from the effective date of this ORDER, the Bank shall have and thereafter retain a qualified compliance officer who shall be given stated written authority by the Bank's board of directors to implement and supervise the Bank's compliance program, including

but not limited to, providing training for the Bank's employees in all consumer laws and regulations, establishing internal controls and procedures reasonably designed to prevent violations of consumer laws, and performing or supervising periodic internal audits to ascertain compliance with consumer laws and regulations and/or the Bank's compliance program. The compliance officer shall report directly to the board of directors.

(ii) The Bank shall promptly notify the Regional Director of the FDIC's Dallas Regional Office ("Regional Director") of the identity of said compliance officer. If the compliance officer is to be added as a director or employed as a senior executive officer of the bank, the Bank shall comply with the requirements of section 32 of the Act, 12 U.S.C. § 1831i, and section 303.14 of the FDIC Rules and Regulations, 12 [9-30-93 p.C-3311](#) C.F.R. § 303.14, prior to the addition of the compliance officer to such position.

b. The assessment of whether the Bank has a qualified compliance officer shall be based upon the officer's conduct with respect to the Bank in: (i) complying with the requirements of this ORDER; and (ii) complying with applicable consumer laws and regulations.

[.2] 4. No more than 60 days from the effective date of this ORDER the Bank shall eliminate and/or correct all violations of laws and regulations committed by the Bank as described on pages 2 through 2-a-7 of the FDIC's Compliance Report of the Bank as of February 24, 1993 ("REPORT").

[.3] 5. a. No more than 60 days from the effective date of this ORDER, the Bank shall develop and implement a written compliance program which, at a minimum, shall expressly provide for:

(i) Adequate training in consumer laws conducted at least once every 12 calendar months for all Bank employees involved in lending, and for any others whose duties and responsibilities include the need to comply with consumer laws and regulations:

(ii) Adequate procedures for monitoring the Bank's compliance with consumer laws, including an internal audit of the Bank's compliance officer each calendar quarter. The compliance officer shall report the results of said audit to the Bank's board of directors, and the Bank's board of directors shall record the results of said audit and any recommendations by the compliance officer and/or the board of directors in the board of directors's minutes:

(iii) Procedures for requesting and retaining data on home loan applicants as required by 12 C.F.R. § 338.7:

(iv) Procedures to ensure that the Bank:

(a) Notifies an applicant that the application received is incomplete as required by 12 C.F.R. § 202.9(c):

(b) Provides to applicants the notifications required by Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681m, and 12 C.F.R. § 202.9(a)(1) and (2) when adverse action is taken; and

(c) Complies with the requirements set forth in 12 C.F.R. § 202.5 concerning the taking of applications for extensions of credit:

(v) Procedures to ensure that, for all extensions of credit secured by improved real estate or a mobile home, the Bank maintains sufficient records to indicate the method used by the Bank to determine whether the extensions of credit fall within the provisions of 12 C.F.R. § 339.3 or 339.4, including, but not limited to,

(a) the date and complete panel number of the Federal Emergency Management Agency map used:

(b) the date flood maps were reviewed, and

(c) insuring that flood insurance coverage is obtained when required:

(vi) Procedures to ensure that, monitoring and independent testing for compliance with the provisions of the Bank Secrecy Act, 12 C.F.R. § 326, Subpart B, is conducted by bank personnel or by an outside party:

(vii) Training for appropriate personnel as required by 12 C.F.R. § 326.8(c)(4):

(viii) Procedures to ensure that the Bank does not pay interest on any demand deposit as required in 12 C.F.R. Part 329:

(ix) Procedures to ensure:

(a) disclosure of the availability of funds:

(b) disclosure of the Bank's funds availability policies as required by 12 C.F.R. § 229, Subpart B, to all applicable customers; and

(c) that copies of the Bank's funds availability policies are provided to each employee who performs duties subject to the requirements of this subpart with a statement of the procedures

applicable to that employee:

(x) Procedures to ensure that the Bank provides to applicable credit applicants the Special Information Booklet, Good Faith Estimate of Closing Costs, Mortgage Servicing Disclosures, and requires the use of the Uniform Settlement Statement (Form HUD-1) in all transactions covered by the Real Estate [{{9-30-93 p.C-3312}}](#) Settlement Procedures Act (RESPA) 12 U.S.C. § 2601 et seq., section 3500 of the Department of Housing and Urban Development, Regulation X, 24 C.F.R. Part 3500; and

(xi) Procedures for recording each exemption granted under Treasury Department regulation for financial recordkeeping pursuant to 31 C.F.R. Part 103, including but not limited to reports of currency transactions as described in 31 C.F.R. § 103.22(b), and the reason therefor in a centralized list as required by 31 C.F.R. § 103.22(f).

(a) The board of directors shall approve the written compliance program and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution affiliated parties, and its successors and assigns shall follow the written compliance program and/or any subsequent modification thereto.

[.4] 6. a. Effective the date of this ORDER, as provided in section 8 of RESPA, 12 U.S.C. § 2607, and in 24 C.F.R. § 3500.14, the Bank shall not charge any customers for real estate appraisals in excess of the cost actually incurred or for services actually performed.

b. For the purposes of this ORDER, the violation of 12 U.S.C. § 2607 and 24 C.F.R. § 3500.14, described on pages 2, 2-a, and 2-a-1 of the REPORT, shall be considered corrected if within 60 days of the effective date of this ORDER, the bank:

(i) Identifies all loans made since May 15, 1992, which are covered by RESPA and which involve charges for real estate appraisals:

(ii) Identifies the amount of overcharge to each applicable customer, and records a list of such loans in the minutes of the meeting of the Bank's Board of Directors:

(iii) Provides each borrower with a written disclosure of the cost of the appraisal, the fact that an excessive appraisal fee was charged, and that the excess of the appraisal fee is not required by the Bank in order to retain the extension of credit:

(iv) Submits to the Regional Director a copy of the form of the letter to be sent to affected borrowers for review, and incorporates changes to the transmittal letter indicated by the FDIC prior to transmission by the Bank to the affected borrower:

(v) After receiving the disclosure described in paragraph 6(b)(iii), (A) the borrower provides a written affirmative statement that the Bank may retain the excess of the appraisal fee, in which case the fee shall continue as bank income, or (B) the borrower provides a written affirmative request that the Bank reimburse the excess of the appraisal fee, in which case the Bank shall make restitution:

(vi) Retain in the credit file for each affected borrower all requests, statements, copies of reimbursements, and correspondence sent and received as required by this paragraph 6.

[.5] 7. Following the effective date of this ORDER, the Bank shall send to its shareholders a description of this ORDER, (a) in conjunction with the Bank's next shareholder communication, and also (b) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Registration and Disclosure Unit, 550 17th Street N.W., Washington, D.C. 20429-9990 for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

8. Within 30 days after the end of the first calendar quarter following the effective date of this ORDER, and within 30 days after the end of each successive calendar quarter, the Bank shall furnish written progress reports to the Regional Director and the State Bank Commissioner (Commissioner) detailing the form and manner of any action taken to secure compliance with this ORDER and the results thereof. All progress reports and other written responses to this ORDER shall be reviewed by the board of directors of the Bank and made a part of the minutes of the board meeting. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the [{{2-28-94 p.C-3313}}](#) Regional Director and the Commissioner have released the Bank in writing from making additional reports.

The effective date of this ORDER shall be 10 days after the date of its issuance.

The provisions of this ORDER shall be binding upon the Bank and its institution-affiliated parties.

The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

Dated at Dallas, Texas, this 14th day of July, 1993.

Pursuant to delegated authority.

Last Updated 6/6/2003

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