

{{11-30-91 p.C-650}}

¶10,134] In the Matter of The North Side Bank and Trust Company, Cincinnati, Ohio, Docket No. FDIC-90-238b (11-21-90).

Bank ordered to cease and desist from engaging in hazardous lending and lax collection practices; violating laws and regulations; operating with inadequate loan valuation reserve; operating without adequate internal controls; operating in such a manner as to produce inadequate interest and income; operating with management whose policies are detrimental to the Bank; and operating with a board of directors which provides inadequate direction to management. *(This order was modified by order of the FDIC, dated 8-28-91; see ¶15,318.)*

- [.1] Management—Qualifications—Limitations
- [.2] Management—Limitation on Individuals—Loan Decisions
- [.3] Loan Policy—Minimum Requirements—Review
- [.4] Board of Directors—Committee to Review Loans to Existing Borrowers
- [.5] Risk Position—Reduce—Written Plan—Minimum Requirements
- [.6] Loans—Extensions of Credit—Existing Borrowers—Curtail
- [.7] Loans—Adversely Classified—Eliminate/Reduce
- [.8] Loan Valuation Reserve—Increase—Review
- [.9] Budget and Earnings Forecast—Minimum Requirements
- [.10] Loans—Special Mention—Correct
- [.11] Loans—Concentrations of Credit—Reduce
- [.12] Audit—Internal/External
- [.13] Bank Operations—Internal Routine and Controls—Correct
- [.14] Violations of Law—Eliminate/Correct
- [.15] Dividends—Restricted
- [.16] Board of Directors—Committee to Review Compliance—Establish
- [.17] Shareholders—Disclosure—Cease and Desist Order
- [.18] Compliance—Reports—Frequency

In the Matter of

THE NORTH SIDE BANK AND
TRUST COMPANY
CINCINNATI, OHIO
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST

The North Side Bank and Trust Company, Cincinnati, Ohio ("Bank"), having been advised of its right to 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 charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b) (1989), 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 October 16, 1990, whereby, solely for the purpose of this proceeding and without admitting or denying the 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 and had violated laws and/or regulations. The FDIC, therefore, accepted the CONSENT AGREEMENT, and issued the following:

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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) (1989), and its successors and assigns, cease and desist from the following unsafe or unsound banking practices and violations of law and regulations:

A. Engaging in hazardous lending and lax collection practices, as evidenced by an excessive volume of

adversely classified loans;

B. Violating certain banking laws and regulations, as more specifically described in the FDIC's Report of Examination of the Bank as of January 18, 1990 ("Report of Examination");

C. Operating with an inadequate loan valuation reserve for the volume, kind, and quality of loans held;

D. Operating without adequate internal controls;

E. Operating in such a manner as to result in inadequate net interest margin and net income;

F. Operating with a management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits;

G. Operating with a board of directors which has failed to provide adequate supervision over and direction to the management of the Bank.

IT IS FURTHER ORDERED, that the Bank, its institution-affiliated parties, and any successors and assigns thereof, take affirmative action as follows:

[.1] 1. (a) Within 90 days from the effective date of this ORDER, the Bank shall have, and thereafter retain, management acceptable to the Regional Director, Division of Supervision, Chicago Regional Office of the FDIC ("Regional Director"). Such persons shall be provided, at a minimum, the necessary written authority to perform their assigned duties and to implement the provisions of this ORDER. At a minimum, the management required by this ORDER shall include:

(i) a new chief executive officer with proven ability in managing a bank of comparable size, and experience in handling low-quality loans;

(ii) a qualified chief lending officer with an appropriate level of lending, collection and loan supervision experience for the type and quality of the Bank's loans;

(iii) a qualified loan review officer with experience in credit administration and analysis, who shall be given the responsibility for implementing the Bank's loan review program, but who shall have no lending authority;

(iv) a qualified internal auditor who shall be responsible for implementing a comprehensive internal audit program.

(b) The acceptability of management shall be assessed on its ability to:

(i) Comply with the requirements of this ORDER;

(ii) Operate the Bank in a safe and sound manner;

(iii) Comply with applicable laws and regulations; and

(iv) Restore all aspects of the Bank to a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, and liquidity.

[.2] (c) As of the effective date of this ORDER, Clifford H. Coors and John A. Coors shall not participate, directly or indirectly, in matters involving any loan, including but not limited to loan origination, analysis, approval, collection, or review, other than in their capacities as members of the board of directors; and they shall not serve on any loan committee. Notification of the aforementioned limitations on their authority shall be communicated clearly in writing to Bank personnel. Within 30 days of the effective date of this ORDER, this written notification shall also be provided to the Regional Director for review and opportunity for comment.

(d) Nothing in this ORDER relieves the Bank from any obligation under section 32 of the Act, 12 U.S.C. § 1831i.

[.3] 2. (a) Within 90 days from the effective date of this ORDER, and annually thereafter, the board of directors of the Bank shall review the Bank's loan policy and procedures for adequacy and, based upon this review, shall make all appropriate revisions to the policy necessary to strengthen lending procedures and abate additional ~~loan deterioration~~. The minutes of the board of directors' meeting at which such reviews are undertaken shall include the findings of the reviews and a description of any revisions made.

(b) The initial revisions to the Bank's loan policy and procedures required by this paragraph, at a minimum, shall reflect consideration of the criticisms and incorporate the suggestions for improvement included on pages 6-b and 6-b-1 of the Report of Examination.

(c) Within 90 days from the effective date of this ORDER, the Bank shall adopt and implement a written, comprehensive loan review program designed to monitor and ensure compliance with the Bank's loan policy and procedures. The loan review program shall, at a minimum, comply with the guidelines provided in FDIC Bank Letter 27-89 dated June 20, 1989, and shall provide for a loan

grading system which requires annual review of loans or lines of credit of \$100,000 or more. A written report shall be provided to the board of directors at least monthly identifying the loans reviewed and the grades assigned, and outlining the reasons for the grades assigned. The minutes of the board of directors' meetings shall reflect consideration of these reports and describe any action taken as a result thereof.

[.4] 3. (a) Within 15 days from the effective date of this ORDER, the Bank shall establish a Loan Committee which shall meet at least twice monthly. A majority of the Loan Committee members shall be directors who are not officers of the Bank. No committee member shall be indebted to the Bank directly or indirectly, including the indebtedness of any entity in which the individual has a substantial financial interest, in an amount exceeding five percent of the Bank's primary capital. No committee member may be related by blood or marriage to any shareholder owning five percent or more of the stock of the Bank.

(b) The Loan Committee shall review any loan or renewal of an existing loan to any borrower when the aggregate indebtedness of that borrower and that borrower's related financial interests at the Bank exceeds or would exceed \$250,000. Prior approval must be given by the Loan Committee before the Bank may extend or renew credit to any such borrower.

(c) The Loan Committee shall evaluate, grant, and/or approve loans in accordance with the Bank's loan policy. Written minutes of the committee meetings shall be kept and shall include an indication of how each member voted on each loan. Such minutes shall be submitted to the board of directors at the next board meeting following the committee meeting. Consideration of the committee minutes shall be included in the minutes of the meeting of the Bank's board of directors.

(d) At each semimonthly meeting the Loan Committee shall review and monitor the status of repayment and collection of overdue and maturing loans, as well as loans that were classified "Substandard" by the FDIC in the Report of Examination or are identified as warranting the special attention of management.

[.5] 4. Within 90 days from the effective date of this ORDER, the Bank shall formulate, adopt, and submit to the Regional Director for review and comment, a written plan of action to lessen the Bank's risk position in each asset in excess of \$100,000 which is classified "Substandard" in the Report of Examination. Such plan shall include, but not be limited to, the following:

(a) Dollar levels to which the Bank shall take all steps necessary to reduce each asset within 6 and 12 months from the effective date of this ORDER; and

(b) Provisions for the submission of monthly written progress reports to the Bank's board of directors for review and notation in minutes of the meetings of the board of directors.

[.6] 5. (a) As of the effective date of this ORDER, the Bank shall not extend, directly, or indirectly, any additional credit to, or for the benefit of, any borrower who is already obligated in any manner to the Bank on any extensions of credit (including any portion thereof) that has been charged off the books of the Bank so long as such credit remains uncollected.

(b) As of the effective date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower whose loan or other credit has been classified "Substandard" and is uncollected unless the Bank's board of directors has adopted, prior to such extension of credit- [{{11-30-91 p.C-653}}](#) it, a detailed written statement giving the reasons why such extension of credit is in the best interests of the Bank. A copy of the statement shall be placed in the appropriate loan file and shall be included in the minutes of the applicable board of directors' meeting.

(c) As of the effective date of this ORDER, the Bank shall not extend or renew any credit without the full collection, in cash, of interest due.

[.7] 6. Within 30 days from the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" in the Report of Examination. Reduction of these assets with proceeds of other loans made by the Bank is not considered collection for the purpose of this ORDER.

[.8] 7. (a) Within 30 days from the effective date of this ORDER, the Bank shall replenish its loan valuation reserve by an expense entry in an amount equal to those loans required to be charged off by this ORDER.

(b) Not later than October 31, 1990, the Bank shall make a provision to the loan valuation reserve which, after careful review and consideration by the board of directors, reflects the potential for further losses in the loans classified "Substandard" and all other loans in its portfolio, as well as gives consideration to the Bank's historical loan loss experience. The results of the board of directors' review

and consideration of the adequacy of the loan valuation reserve shall be clearly documented and recorded in the minutes of the board of directors' meeting at which the matter is considered.

(c) Prior to the submission or publication of all Reports of Condition and Reports of Income required by the FDIC after the effective date of this ORDER, the board of directors of the Bank's loan valuation reserve and accurately report the same. The minutes of the board meeting at which such review is undertaken shall indicate the results of the review, the amount of increase in the reserve recommended, if any, and the basis for determination of the amount of reserve provided.

[.9] 8. (a) Within 120 days from the effective date of this ORDER, and annually thereafter, the Bank shall formulate and fully implement a written plan and a realistic, comprehensive budget for all categories of income and expense. The plan required by this paragraph shall contain formal goals and strategies, consistent with sound banking practices, to increase the yield on total loans, reduce the interest expense to average earning assets, and improve the Bank's overall earnings, and shall contain a description of the underlying assumptions that form the bases for major projected income and expense components.

(b) The plan and budget required by this paragraph, upon completion, shall be submitted to the Regional Director for review and opportunity for comment.

(c) Prior to the end of each calendar quarter, the Bank's board of directors shall evaluate the Bank's actual performance in relation to the plan and budget required by this paragraph and record the results of the evaluation, and any actions taken by the Bank, in the minutes of the board of directors meeting at which such evaluation is undertaken.

[.10] 9. Within 90 days from the effective date of this ORDER, the Bank shall correct the deficiencies noted on the loans listed for Special Mention on page 2-c of the Report of Examination.

[.11] 10. Within 60 days from the effective date of this ORDER, the Bank shall formulate a plan to reduce within 12 months of the effective date of this ORDER, the concentration captioned Loans to Related Borrowers as described on page 2-b of the Report of Examination to less than 25 percent of the Bank's equity capital and reserves.

[.12] 11. Within 90 days from the effective date of this ORDER, the Bank's board of directors shall adopt a comprehensive written audit program. The Bank shall thereafter implement and enforce an effective system of internal and external audit. The internal auditor shall make written monthly reports of audit findings directly to the Bank's board of directors. The minutes of the meeting of the board of directors shall reflect consideration of these reports and describe any action taken as a result thereof.

[.13] 12. Within 90 days from the effective date of this ORDER, the Bank shall conduct a comprehensive review and assess- ~~{{11-30-91 p.C-654}}~~ment of all internal routines and controls. Within 150 days from the effective date of this ORDER, the Bank shall correct any deficiencies discovered in such review and all deficiencies discussed on pages 6-d and 6-d-1 of the Report of Examination. The board shall provide reasonable justification, included in the minutes of the board meeting, for any deficiency which is not corrected.

[.14] 13. Within 90 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and regulation which are listed on pages 6-c, 6-c-1, and 6-c-2 in the Report of Examination. In addition, the Bank shall devise and implement procedures to ensure future compliance with all applicable laws and regulations.

[.15] 14. As of the effective date of this ORDER, the Bank shall not declare or pay any cash dividends without the prior written consent of the Regional Director. Requests for the consent of the Regional Director shall be provided at least 30 days prior to the date of the proposed dividend declaration. Such consent, if so given, may subsequently be rescinded for any as yet undeclared dividend if there shall have occurred in the interim any material negative developments affecting the Bank.

[.16] 15. Within 30 days from the effective date of this ORDER, the Bank shall establish a compliance committee comprised of at least three directors who are not officers of the Bank. Such compliance committee shall exclude Clifford H. Coors and John A. Coors. The committee shall monitor compliance with this ORDER, and within 60 days from the effective date of this ORDER, and every 60 days thereafter, shall submit to the board of directors a written report detailing the Bank's compliance with this ORDER and with its written loan, investment, and asset/liability management policies. The bimonthly compliance report shall be included in the minutes of the meeting of the Bank's board of directors.

[.17] 16. Following the effective date of this ORDER, the Bank shall send to its shareholders or

otherwise furnish a description of this ORDER: (1) in conjunction with the Bank's next shareholder communication; and (2) in conjunction with its notice of 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 at Washington, D.C. 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.

[.18] 17. Within 15 days of the end of each calendar quarter, the Bank shall furnish written progress reports to the Regional Director signed by each member of the Bank's board of directors detailing the form and manner of any actions taken to secure compliance with the ORDER and the results thereof. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director has in writing released the Bank from making further reports.

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

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

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

Dated: November 21, 1990.

Pursuant to delegated authority.