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[¶16,361] **In the Matter of Jerry Givens and First State Bank, Abernathy, Texas**, Docket Nos. 03-188ej, 02-131e, 02-133k (11-10-03).

**In the Matter of
JERRY GIVENS
FIRST STATE BANK
ABERNATHY, TEXAS
(Insured State Nonmember Bank)
DECISION AND ORDER APPROVING APPLICATION TO MODIFY ORDER OF
PROHIBITION FROM FURTHER PARTICIPATION AND CIVIL MONEY PENALTY**

FDIC-03-188ej;

FDIC-02-131e and

FDIC-02-133k

STATEMENT OF THE CASE

Introduction

On October 7, 2003, Jerry Givens ("Respondent"), through a letter ("Application")
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addressed to the Division of Supervision and Consumer Protection of the Dallas Regional Office, as amended by a subsequent letter dated October 30, 2003, made application to the Federal Deposit Insurance Corporation ("FDIC") for written consent to allow him to sell his stock in First State Bank, Abernathy, Texas ("Bank"), to sell the Bank stock of his father's estate, and to act as Sellers agent in the performance of pre- and post-Closing activities required by the sales contract. This application arises under section 8(e)(7)(B) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. §1818(e)(7)(B), and section 8(j) of the Act, 12 U.S.C. §1818(j).

Background

Respondent is the former director and President of the Bank, having resigned on June 28, 2002. An Order of Prohibition From Further Participation And Civil Money Penalty ("Order of Prohibition"), based on Respondent's origination of numerous nominee loans, was issued by the FDIC against Respondent on October 1, 2003. During the administrative enforcement process, Respondent confirmed his intention to make full restitution to the Bank on the outstanding nominee loans following the sale of his Bank stock.

All of the shareholders of the Bank have agreed to sell 100% of their Bank stock to a group of buyers ("Buyers") led by Jack Griggs of Abilene, Texas ("Griggs Group"). Two agreements have been negotiated and executed to transfer 100% of the Bank stock to the Griggs Group. Under the first agreement, the Sellers include Respondent, the estate of Respondent's father, and his other family members, covering 2,796 shares of Bank stock out of 5,000 shares outstanding, while the second agreement covers the remaining minority shareholders.

The Stock Purchase Agreement ("Purchase Agreement") with the Givens family was executed prior to the effectiveness of the Order of Prohibition. The sale price of the stock to be paid by the Griggs Group is \$400 per share, subject to certain terms and conditions. A key provision of the Purchase Agreement is that at Closing, full restitution will be paid to the bank on the remaining balance due on the nominee Loans made by Respondent.

FINDINGS OF FACT

In his application, Respondent is not seeking a return to banking. Rather, his request seeks FDIC

consent to the transfer of his Bank stock and the Bank stock of his father's estate, and to act as the agent for the family member Sellers in the performance of pre- and post-Closing activities required by the Purchase Agreement. More specifically, Respondent has set forth the following as the activities he needs authorization to perform in order to transfer his and his family's Bank stock ("Requested Activities"):

Permit Respondent, on behalf of himself and his father's estate, and as agent for the other family Sellers, to;

1. Fulfill all of the pre-Closing duties and obligations of a Seller, as contemplated by the Purchase Agreement, including but not limited to responding to any inquiries of the Buyers and negotiating with them the form of any necessary Closing documents or other certificates or ancillary documentation needed or desirable to be delivered by a Seller at or prior to closing of the Purchase Agreement;
2. Cooperate fully with the Buyers under the Purchase Agreement and to supply all information or documentation which the Buyers request in order to effect the transfer of control of the Bank to the Buyers and to execute and deliver required closing documentation; and
3. Cooperate with the Buyers after the Closing and to exercise all post-Closing rights, and fulfill all post-Closing obligations of a Seller under the Purchase Agreement, or any other documents executed or delivered to the Buyer at Closing.

DECISION AND ORDER

Under section 8(e)(6) of the Act, 12 U.S.C. §1818(e)(6), a person who is subject to an order of prohibition may not engage in certain specific activities. However, section 8(e)(7)(B) of the Act, 12 U.S.C. §1818(e)(7)(B), states in pertinent part:

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured depository institution, such party receives the written consent of—

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(i) the agency that issued the order; and

(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party, subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent.

To obtain the FDIC's consent, Respondent must demonstrate: (1) his fitness to participate directly or indirectly in the conduct of the affairs of an insured depository institution; (2) that his participation would not pose a risk to the institution's safety and soundness; and (3) that his participation would not erode public confidence in the institution. *See In the Matter of Charles E. Floyd*, FDIC ENFORCEMENT DECISIONS AND ORDERS, Para. 5177A-1976 (1992); *In the Matter of Frederick M. Pfeiffer*, FDIC ENFORCEMENT DECISIONS AND ORDERS, Para. 5163A, A-1656 (1991); *Docket No. FDIC-83-153e*, FDIC ENFORCEMENT DECISIONS AND ORDERS Para. 5117, A-1303 (1988).

Upon review of the record as a whole, the FDIC finds that Respondent has presented sufficient evidence to be granted consent under section 8(e)(7)(B) of the Act, 12 U.S.C. §1818(e)(7)(B), to do what has been requested to sell his Bank stock and that of his family, as well as to perform all ancillary obligations necessary under the Purchase Agreement to conclude the sale of this Bank stock. Based upon the foregoing, the FDIC sees no reason to object to Respondent's request to perform the Requested Activities.

Accordingly, the application is hereby approved for Respondent to perform the Requested Activities. The consent granted to Respondent is limited solely to the Requested Activities and is further granted solely for a period of six months from the date of this Decision and Order respecting the pre-Closing and Closing activities specified by paragraphs 1 and 2 of the Requested Activities, and for an additional

period of 24 months from the date of closing respecting the post-Closing activities specified by paragraph 3 of the Requested Activities. This limited consent does not constitute consent to engage in any other conduct not specifically authorized by this Decision and Order which may violate the Order of Prohibition or section 8(e)(7)(A) of the Act, 12 U.S.C. §1818(e)(7)(A).

Pursuant to delegated authority.

Dated at Washington, D.C., this 10th day of November, 2003.

Last Updated 3/7/2004

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