

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

~~FILED~~
JACKSONVILLE, FLORIDA

~~OCT 12 2012~~

CLERK, U.S. BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

In Re:

) Chapter 11

TAYLOR, BEAN AND WHITAKER MORTGAGE CORP)
REO SPECIALISTS, LLC, and)
HOME AMERICA MORTGAGE, INC.)

) Case No. 3:09-bk-07047-JAF

) Case No. 3:09-bk-100022-JAF

) Case No. 3:09-bk-10023-JAF

Debtors

) Jointly Administered Under

) Case No. 3:09-bk-07047

APPLICABLE DEBTOR

~~FILED~~
JACKSONVILLE, FLORIDA

OCT 15 2012

CLERK, U.S. BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

TAYLOR, BEAN AND WHITAKER MORTGAGE CORP)
(Case No. 3:09-bk-07047-JAF))
)
)

**(i)CLAIMANTS MICHAEL ELLIOTT AND DIANNA ELLIOTT REQUEST FOR
FEDERAL BANKRUPTCY JUDICIAL RULING CLARIFICATION OF (THE) LETTER
SENT BY ALISA PAIGE MASON (OF BERGER SINGERMEN) ON BEHALF OF NEIL
F. LURIA, PLAN TRUSTEE REGARDING SCHEDULING HEARING ON NOVEMBER
16, 2012 AND (ii) REQUEST TO PROVIDE PERTINENT INFORMATION TO SAID
COURT, AS WELL AS (ANY/ALL) CREDITORS, AFFECTED TAX PAYERS
AND THE PLAN TRUSTEE, NEIL F. LURIA AND NAVIGANT CONSULTING
(ACTING AS AN INVESTIGATIVE FIRM REPRESENTING THE PUBLIC SECTOR)
PERTAINING TO THE ABOVE REFERENCED CASES REGARDING PAUL S.
SINGERMEN AND BERGER SINGERMEN RESPECTUFLY, AND (iii) DEMAND
FOR JUDICIAL EXPLANATION TO QUESTIONS PERTAINING TO SAID
BANKRUPTCY COURT TO CLAIMANTS.**

TO THE HONORABLE JUDGE JERRY A. FUNK, PRESIDING JUDGE IN ABOVE
REFERENCED BANKRUPTCY CASE(S):

WHEREFORE Claimant(s) Michael Elliott and Dianna Elliott hereby files this Pleading of Request For Federal Bankruptcy Ruling Clarification pertaining to a (the) letter mailed on 28 September 2012, by Alisa Paige Mason on behalf of the Plan Trustee, Neil F. Luria pertaining to Scheduling Conference Hearing on November 16, 2012. Attached is **“Exhibit A”** or the Letter sent on behalf of Plan Trustee, Neil F. Luria by his representing firm Berger Singerman, who once was Counsel for the Official Unsecured Creditor’s Committee and now has been place as Legal Counsel on behalf of the Plan Trust, in which one questions by what authority this would be allowed in a Bankruptcy Court with numerous Claimants and Middle-Class Taxpayers who were not represented fairly by the Official Unsecured Creditor’s Committee in said Court, who now represent the Plan Trustee, Neil F. Luria, while Creditors and have been spending time, money and effort to obtain justice pertaining to their “Claim(s)”.

The essence of nomocracy, the rule of law, is limitation of the discretion of officials, and providing a process by which errors or abuse of discretion can be corrected. Some discretion is unavoidable, because law cannot anticipate every eventuality or how to decide which law may apply to a given situation. What guidance the law cannot provide is supposed to be provided by standard principles of justice and due process, reason, and the facts of each case. Ideally, officials should be mutually consistent and interchangeable, making similar decisions in similar cases, so that no one can gain an undue advantage by choosing the official or exercising undue influence on the official or on the process he operates. We trust officials to exercise such discretion as they have with wisdom, justice, and competence.

Within the public sector, discretion can be exercised by legislative, executive, or judicial officials. Within the private sector, discretion may be exercised by private officials, such as

agents, trustees or corporate officers, who are in principle subject to the supervision of the courts. The focus here is on judicial discretion, and the abuse of it. The first major check on the discretion of judges was the jury. A judge, holding office over the course of multiple cases, and selected by appointment or election, is susceptible to undue influence. A jury, chosen by sortition, or lot, for a single case, just before the case, is less likely to be corrupted, and having multiple jurors render verdicts collectively provides a check by each on the others. What they might lack in knowledge of the law is offset by their connection to the nonlegal environment in which most people subject to the law must operate.

Stare decisis is the doctrine according to which a judge in a current case treats decisions in past similar cases as authoritative precedents, and refuses to make the decision in a way that departs from such precedents, regarding all of them as correctly decided. There is a place for giving weight to precedents, especially in civil cases and matters of equity, and to clarify ambiguities in the black letter law, but it is an abuse of judicial discretion to treat precedents as though they are law, equal or superior to black letter law, especially when that black letter law is a written constitution. Only the edict, the finding and the order, are law in a judicial decision, and only for the parties involved. The opinion concerning how the decision was reached may be persuasive on its merits, and indicative of how the same court might decide a similar case, but it is dictum, or commentary, not law, and it is an abuse of judicial discretion to fail to exhaust textual analysis and legislative history before considering precedent, and making sure that the chain of precedents has not wandered away from the bounds of the black letter law.

Pro se litigants: Instead of accommodating to the lack of legal knowledge of lay persons

who either cannot afford a lawyer, or who don't trust lawyers who are subject to the control of the courts, judges and court personnel systematically discriminate against litigants who appear *pro se* or *in propria persona*, often dismissing their petitions or motions out of hand, regardless of their merits. That is abuse of judicial discretion

A conflict of interest is of no deference to the continued partnerships, interests, relationships outside and inside of said Court or for any possible violation which could be alleged and warrant investigation to allow fair justice for all participants of Court.

On January 7, 2010, Pro Se Creditor, Sandy Smith appeared telephonically to represent herself as well as other Claimants regarding the alleged violations of Lender Processing Services or LPS, The Official Committee for the Unsecured Creditor's Committee Chair. At that time and continuing is an ongoing investigation(s) of LPS and their Company DocX by the Florida Attorney General's Office, as well as, the notorious case involving the death of Tracey L. Lawrence, a former employee of LPS who was found dead on the day she was to testify against the Berger Singerman represented litigant LPS. Wherefore it is apparent the allegations of misconduct and possible illegal actions of the above mentioned individuals has not jeopardized their ability to serve themselves with unimaginable amounts of monetary gain from this Court and Plan Trust..

Pertinent information was provided to said Court and Judge to enable an action to revoke LPS from the Committee, however, notwithstanding, the Court allowed LPS to represent all Unsecured Claimants.

Paul S. Singerman, of Berger Singerman was hired to represent the Official Committee for Unsecured Creditors by Lender Processing Services, prior to being involved with other

alleged bankruptcy misconduct. Attached is **"Exhibit B"** the Office of Thrift Supervision Order No: SE-10-046, whereby on page 2, 3(a) the following statement is made:

"The Association with an ineffective Bank Secrecy Act/Anti-Money Laundering compliance program". The filing of said OTS Order was against Gibraltar Private Bank and Trust Company, "A Financial Wealth Management Corporation", Coral Gables, Florida, OTS Docket No. 08007. The demise of the Gibraltar Bank and Trust Company, fell upon the "Scott Rothstein conviction" for money laundering by his firm Rothstein, Rosenfeldt and Adler, PA, and was a partner in Gibraltar Bank with Mr. Paul S. Singerman, who was also appointed Trustee in the 2010 Bankruptcy case of Scott Rothstein's Company as well as his own self served ownership in The Gibraltar Bank and Trust Company.

This information is given as a good faith effort to provide additional pertinent proof of misconduct for the Honorable Judge Jerry A. Funk, presiding Judge. The following Judicial Questions which are demanded by Creditors to be requested and answered by said Court are as follows:

1. Creditors received notice to appear in said Court on November 16, 2012, however, Plan Trustee, Neil Luria requested a letter to be sent on his behalf by Alisa Paige Mason of Berger Singerman explaining that Creditors do not need to appear period. How can the Plan Trustee override said Court order?

2. How has this Bankruptcy Case been allowed to continue without a U.S. Trustee who oversees the Trust and the amount and approval of the Plan Trustee of Attorney Fees which were paid depleting the Trust leaving the Unsecured Creditors without an opportunity to receive their due amounts of claim(s)?

3. Why, after many diligent requests by the Creditors for a de novo review of said Bankruptcy Case, (and proof that a de novo review was necessary) weren't any of those requests investigated or questioned by The Honorable Judge Jerry Funk or The Judicial Council of the 11th Circuit of the Atlanta, Georgia?

4. Who, by name, was responsible for the Unsecured Creditors demise in said Bankruptcy Court?

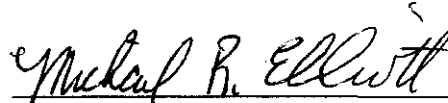
5. Why will said Court not take Claimants statements, motions, requests, concerns, etc. for face value and provide a fair opportunity to come before the said Court to represent evidence pertaining to their Claims?

6. How with the magnitude of fraud that was perpetrated in said Court can the Honorable Judge Jerry A. Funk ignore the fact that Claimants and Middle-Class Homeowners were not in fact injured by these predicate acts and allow Claims to be heard in Court?

In closing, Creditors request and Demand answers to the above questions in which resulted in incestuous relationships and cover-ups by the Plan Trustee in said Court.. Creditors also request that a formal explanation be given in regards to the Scheduling Conference Hearing and conflicting letter sent on September 28, 2012 to Creditors by Plan Trustee Legal Council Representative of Berger Singerman.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served United States Bankruptcy court Bryan Simpson Courthouse 300 North Hogan St Jacksonville FL 32202 mail to: Elena Escamilla, Trial Attorney, Office of the United States Trustee. U.S. Department of Justice Florida Bar No: 898414, 135 W. Central Blvd., Suite 620 Orlando FL. 32801 to: Jeffrey W. Kelly **TROUTMAN AND SANDERS LLP, (Special Counsel to Defendants)** 600 Peachtree Street, Suite 5200, Atlanta, Georgia 30308 Berger Singerman. Berger Singerman 1450 Briskell Avenue, Suite 1900 Miami, Fla. 33131



Michael R. Elliott
133 Elliott Lane
Tollesboro, Ky. 41189
606-798-5968



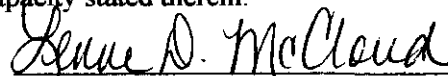
Dianna L. Elliott
133 Elliott Lane
Tollesbor, Ky. 41189
606-798-5968

AFFIDAVIT

STATE OF KENTUCKY §

COUNTY OF FLEMING §

This instrument was acknowledged before me on the 9th day of Oct 2012 by Michael R Elliott & Dianna L. Elliott in the capacity stated therein.



Notary Public, State of Kentucky

Exp: 07-01-15

“EXHIBIT A”

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

Alisa Paige Mason
(305) 714-4345
pmason@bergersingerman.com

September 28, 2012

VIA U.S. MAIL

Michael and Dianna Elliott
133 Elliott Lane
Tollesboro, KY 41189

Re: In re Taylor Bean & Whitaker Mortgage Corp., et al.
Case No.: 3:09-bk-07047-JAF - Claim No. 3497

Dear Mr. and Mrs. Elliott:

My firm represents the Neil F. Luria, the Plan Trustee for the Taylor, Bean & Whitaker Mortgage Plan Trust. We have filed a number of objections to claims presently asserted against the estate of Taylor, Bean & Whitaker Mortgage Corp. (one of the Debtors being jointly administered under Case No. 3:09-bk-07047-JAF). If you are receiving this letter, it is because the Plan Trustee filed an objection to your claim, you filed a response on a *pro se* basis (meaning you are not represented by an attorney), and the Court has set the matter for a Scheduling Conference.

The purpose of this letter is to provide a further explanation to you regarding the upcoming Scheduling Conference on the response you filed to the Plan Trustee's objection to your claim. The purpose of the Scheduling Conference is to discuss setting the matter for a final evidentiary hearing if the matter has not been resolved by you and the Plan Trustee in advance. By now, you will have received a Notice in the mail from the Court or BMC Group (the claims and noticing agent in this bankruptcy case) indicating that your response has been set for a Scheduling Conference. You are not required to appear in person at this Scheduling Conference, but you may appear via telephone if you so desire. If you wish to appear by telephone, please contact Ray Readdick, the Courtroom Administrator for Judge Funk, at 904-301-6566 no later than 3 p.m. (Eastern Standard Time) the day before the date of your Scheduling Conference.

If you decide not to appear via telephone or in person at the Scheduling Conference, the objection to your claim and your response shall be set for a final evidentiary hearing. You will receive a Notice of Hearing in the mail providing you with the date of the final evidentiary hearing and other important information related to the hearing. If you are unable to attend the final evidentiary hearing in person, which you are required to do, please advise Mr. Readdick no later than ten days within receipt of the Notice of Hearing and Mr. Readdick will work with you to obtain a new hearing date. Please also review Judge Funk's rules and procedures, which are

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Michael and Dianna Elliott
September 28, 2012
Page 2

easily accessible online at <http://www.flmb.uscourts.gov/funk/>, for all other inquiries relating to final evidentiary hearing.

Please do not hesitate to contact me directly if you have further questions.

Sincerely,

Berger Singerman LLP



Alisa Paige Mason

“EXHIBIT B”

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of)

Order No.: SE-10-046

)
)
)
GIBRALTAR PRIVATE BANK
AND TRUST COMPANY)

Effective Date: October 15, 2010

)
)
)
Coral Gables, Florida)
OTS Docket No. 08007)
_____)

ORDER TO CEASE AND DESIST

WHEREAS, Gibraltar Private Bank and Trust Company, Coral Gables, Florida, OTS Docket No. 08007 (Association), by and through its Board of Directors (Board), has executed a Stipulation and Consent to Issuance of Order to Cease and Desist (Stipulation); and

WHEREAS, the Association, by executing the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist (Order) by the Office of Thrift Supervision (OTS) pursuant to 12 U.S.C. § 1818(b); and

WHEREAS, pursuant to delegated authority, the OTS Regional Director for the Southeast Region (Regional Director) is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order.

NOW, THEREFORE, IT IS ORDERED that:

Cease and Desist.

1. The Association, its institution-affiliated parties,¹ and its successors and assigns, shall cease and desist from any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or aiding and abetting the unsafe or unsound banking practices that resulted in operating:

- (a) the Association with an ineffective Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) compliance program;
- (b) the Association with an excessive level of adversely classified loans or assets, delinquent loans, and nonaccrual loans;
- (c) with an asset liability policy that does not address all requirements of the Interagency Policy Statement on Funding and Liquidity Risk Management contained in CEO Memorandum No. 342 (March 17, 2010); and
- (d) in contravention of supervisory policy statements and other regulatory guidance, including, but not limited to:
 - (i) Interagency Guidelines Establishing Standards for Safety and Soundness;
 - (ii) Interagency Guidelines for Real Estate Lending Policies; and
 - (iii) Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual.

2. The Association, its institution-affiliated parties, and its successors and assigns, shall also cease and desist from any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or aiding and abetting violations of the following laws and regulations:

¹ The term "institution-affiliated party" is defined at 12 U.S.C. § 1813(u).

- (a) 12 C.F.R. § 563.177(c)(1);
- (b) 12 C.F.R. § 563.177(c)(4);
- (c) 12 C.F.R. § 563.180(d)(3)(iv)(C);
- (d) 12 C.F.R. § 563.180(d)(5);
- (e) 12 C.F.R. § 563.180(d)(10); and
- (f) 12 C.F.R. § 563.180(d)(12).

BSA/AML Compliance Program.

3. Within sixty (60) days, the Association shall revise its policies, procedures and systems related to the BSA/AML laws and regulations (BSA/AML Compliance Program) to address all corrective actions set forth in the May 5, 2010 Report of Examination (2010 ROE). The Association's BSA/AML Compliance Program shall comply with all applicable BSA/AML Laws and Regulations² and regulatory guidance, and, at a minimum, provide for:

- (a) a review of the Association's BSA/AML Compliance Program on an annual basis to determine whether changes in such program may be necessary to adjust to changes in:
 - (i) the BSA/AML Laws and Regulations and OFAC Regulations; and (ii) the Association's operations that may impact its compliance with the BSA/AML Laws and Regulations and OFAC Regulations. Within sixty (60) days of completing its annual review of the BSA/AML Compliance Program, the Association shall update its BSA/AML Compliance Program and send a copy of its updated BSA/AML Compliance Program to the Regional Director;

² BSA/AML Laws and Regulations include, but are not limited to, the Currency and Foreign Transactions Reporting Act, as amended by the USA PATRIOT Act and other laws (the Bank Secrecy Act or BSA), 31 USC §§ 5311 *et seq.*, and the related regulations issued and/or administered by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), 31 CFR §§ 103.11 *et seq.*, the related BSA regulations issued by OTS, 12 CFR §§ 563.177 and 563.180 (collectively the BSA Laws and Regulations), and the Office of Foreign Assets Control (OFAC) regulations set forth at 31 CFR Part 500 (the OFAC Regulations).

- (b) a full-time officer or employee who shall: (i) be designated as the Association's BSA/AML Compliance Officer; (ii) report to the Audit Committee of the Board, and (iii) actively manage, coordinate and monitor the Association's day-to-day compliance with the BSA/AML Laws and Regulations and OFAC Regulations and the Association's BSA/AML Compliance Program. The BSA/AML Compliance Officer shall have sufficient authority, expertise, competency, and resources to perform his or her assigned BSA/AML responsibilities;
- (c) annual BSA/AML training for all Association personnel whose duties require knowledge of the BSA/AML Laws and Regulations and OFAC Regulations that is appropriate to their duties and responsibilities. Further, the Association shall provide BSA/AML training for the Board that, at a minimum, covers the importance of the BSA/AML Laws and Regulations and OFAC Regulations, the ramifications of noncompliance with such laws and regulations, and the risks posed to the Association by noncompliance. The Association shall maintain documentation of all BSA/AML training, including but not limited to, materials sufficient to identify the dates the training was conducted, the topics covered and the attendees;
- (d) implementation of a system that allows for the effective daily aggregation of multiple transactions and the proper filing of a Currency Transaction Report (CTR) pursuant to 31 C.F.R. § 103.22(c)(2) and 12 C.F.R. § 563.177(c)(1);
- (e) a Customer Identification Policy (CIP Policy) that has adequate customer due diligence (CDD) policies, procedures and processes to identify customers with heightened BSA/AML risk, including, but not limited to, non-U.S. resident accounts, commercial and business accounts, customers with significant wire transfer activity, and

customers generating CTRs within any 12-month period (Higher Risk Customers). The Association shall maintain current customer profiles for Higher Risk Customers and engage in enhanced due diligence and monitoring of Higher Risk Customer accounts and transactions;

(f) a CIP Policy that complies with all applicable laws, regulations, and regulatory guidance including, but not limited to, 31 C.F.R. § 103.121 and 12 C.F.R. 563.177(b).

The Association shall timely obtain and maintain appropriate customer documentation as required by all applicable laws, regulations and regulatory guidance;

(g) an annual independent test of its BSA/AML Compliance Program by a qualified independent employee or independent third party, to ensure the Association's compliance with all applicable BSA/AML Laws and Regulations and OFAC Regulations (BSA Independent Testing). BSA Independent Testing must be: (i) performed with an appropriate level of frequency per applicable regulations; (ii) fully documented; and (iii) conducted with an appropriate segregation of duties;

(h) a system of internal controls to comply with the BSA/AML Laws and Regulations and the OFAC Regulations. Such internal controls must include written policies, procedures, and processes to monitor all transactions: (i) for full compliance with the BSA/AML Laws and Regulations and the OFAC Regulations; and (ii) to timely report any suspicious transactions and activity;

(i) a thorough assessment of the Association's BSA/AML risk exposure (the BSA/AML Risk Assessment), based upon the specific products, services, customers, entities, and geographic locations of the Association that may expose it to money laundering, terrorism financing, or other illegal activities, taking into consideration

information collected from the Association's CIP Policy and CDD, in accordance with the BSA/AML matrix set forth in Appendix J of the FinCEN BSA/AML Examination Manual. The BSA/AML Risk Assessment shall identify the number of accounts that are potentially medium or high risk, and describe the basis for such determination; and

(j) a system to ensure that transactions are monitored and that all suspicious transactions and activity are reported to FinCEN in compliance with 31 C.F.R. § 103.18 and 12 C.F.R. § 563.180(d). The Association shall monitor, assess, and review the effectiveness of its investigative procedures related to suspicious transactions and activity and its rationale to file, or not file, a Suspicious Activity Report (SAR). The Association shall maintain supporting documentation for all filed SARs and decisions made to not file a SAR.

4. Within thirty (30) days, the Association shall engage a qualified independent third party (Consultant), acceptable to the Regional Director, to conduct a review of all account and/or customer relationships established on or after January 1, 2009 (Relevant Relationships) for compliance with the BSA/AML Laws and Regulations and OFAC Regulations (BSA Account Review). The Consultant shall identify all Relevant Relationships that are in violation of the BSA/AML Laws and Regulations and OFAC Regulations and, within ninety (90) days after the Effective Date of this Order, prepare a written report (Look Back Report) that, at a minimum:

- (a) identifies and provides details for all Relevant Relationships that were or are not in compliance with the BSA/AML Laws and Regulations and OFAC Regulations; and
- (b) sets forth corrective actions with respect to each Relevant Relationship identified.

5. Within thirty (30) days after receipt of the Look Back Report, the Association shall implement corrective actions to ensure that all Relevant Relationships noted in the Look Back

Report comply with the BSA/AML Laws and Regulations and OFAC Laws and Regulations. A copy of the BSA/AML and OFAC Look Back Report, including the status of any corrective actions taken, shall be provided to the Regional Director within ten (10) days of its completion.

6. Within sixty (60) days, the Board shall submit its revised BSA/AML Compliance Program to the Regional Director for review and non-objection. Within thirty (30) days of receipt written notification of non-objection from the Regional Director, the Board shall adopt and ensure that the Association implements and adheres to the revised BSA/AML Compliance Program.

7. Within sixty (60) days, the BSA Officer shall submit a written report to the Board that discusses the adequacy of the Association's BSA resources and staff given the Association's risk profile and the volume and nature of transactions (BSA Report). The BSA Report shall set forth the BSA Officer's finding and recommendations, including identification of additional staff or resource needs. A copy of the BSA Report shall be provided to the Regional Director within ten (10) days after completion.

Problem Assets.

8. Within sixty (60) days, the Association shall develop a detailed, written plan with specific strategies, targets and timeframes to reduce³ the Association's level of problem assets⁴ (Problem Asset Reduction Plan). The Problem Asset Reduction Plan, at a minimum, shall include:

- (a) quarterly targets for the level of problem assets as a percentage of Tier 1 (Core) capital plus allowance for loan and lease losses (ALLL);

³ For purposes of this Paragraph, "reduce" means to collect, sell, charge off, or improve the quality of an asset sufficient to warrant its removal from adverse criticism or classification.

⁴ The term "problem assets" shall include all classified assets, assets designated special mention, and nonperforming assets.

(b) a description of the methods for reducing the Association's level of problem assets to the established targets; and

(c) all relevant assumptions and projections.

9. Within seventy (70) days, the Association shall submit its Problem Asset Reduction Plan to the Regional Director for review and non-objection. Upon receipt of written non-objection from the Regional Director, the Association shall implement and adhere to the Problem Asset Reduction Plan.

10. Within sixty (60) days, the Association shall develop individual written specific workout plans for each problem asset or group of loans to any one borrower or loan relationship of One Million Dollars (\$1,000,000.00) or greater (Asset Workout Plans).

11. Within sixty (60) days after the end of each quarter, beginning with the quarter ending December 31, 2010, the Association shall submit a quarterly written asset status report (Quarterly Asset Report) to the Board. The Board's review of the Quarterly Asset Report shall be documented in the Board meeting minutes. The Quarterly Asset Report shall include, at a minimum:

(a) the current status of all Asset Workout Plans;

(b) a comparison of problem assets to Tier 1 (Core) capital plus ALLL and Total Risk-Based capital;

(c) a comparison of problem assets at the current quarter end with the preceding quarter;

(d) a breakdown of problem assets by type and risk factor;

(e) an assessment of the Association's compliance with the Problem Asset Reduction Plan;

(f) a discussion of the actions taken during the preceding quarter to reduce the Association's level of problem assets; and

(g) any recommended revisions or updates to the Problem Asset Reduction Plan.

12. Within sixty (60) days after the end of each quarter, beginning with the quarter ending December 31, 2010, a copy of the Quarterly Asset Report shall be provided to the Regional Director.

Internal Asset Review and Classification.

13. Within sixty (60) days, the Association shall revise its written internal asset review and classification program (IAR Program) to address all corrective actions set forth in the 2010 ROE relating to internal asset review, loan portfolio monitoring and asset classification. The IAR Program shall comply with all applicable laws, regulations and regulatory guidance and at a minimum, shall:

(a) provide for a more detailed stratification analysis of the homogeneous loan portfolios to include performance measures such as delinquency and charge off information; and

(b) provide for the monitoring of trends in the various risk layers (i.e.; vintage, occupancy, geographic location, etc.).

Liquidity Management.

14. Within sixty (60) days, the Association shall revise its liquidity and funds management policy (Liquidity Management Policy) to ensure the Liquidity Management Policy includes a Contingency Funding Plan and complies with all applicable laws, regulations and regulatory guidance including, but not limited to, the Interagency Policy Statement on Funding and Liquidity Risk Management contained in CEO Memorandum No. 342 (March 17, 2010).

15. Within sixty (60) days, the Association shall submit its Liquidity Management Policy to the Regional Director for review and comment. Upon receipt of written non-objection from the Regional Director, the Association shall implement and adhere to the Liquidity Management Policy. The Board's review of the Liquidity Management Policy shall be documented in the Board meeting minutes. A copy of the Liquidity Management Policy shall be provided to the Regional Director within ten (10) days of adoption by the Board.

Growth.

16. Effective immediately, the Association shall not increase its total average assets during any quarter in excess of an amount equal to net interest credited on deposit liabilities during the prior quarter without the prior written notice of non-objection of the Regional Director.

Brokered Deposits.

17. Effective immediately, the Association shall comply with the requirements of 12 C.F.R. § 337.6(b).

18. Within thirty (30) days, the Association shall submit a detailed brokered deposit reduction plan (Brokered Deposit Plan) to the Regional Director for review and non-objection.

At a minimum, the Brokered Deposit Plan shall include:

- (a) a detailed description of the current level and composition of the Association's brokered deposits, including the source of each deposit and its maturity date;
- (b) comprehensive cash flow and brokered deposit projections forecasting funding needs and sources for each calendar quarter covered by the Brokered Deposit Plan; and
- (c) detailed strategies to reduce the current level of brokered deposits, which shall include target dates and amounts and monthly reports to the Board regarding the Association's compliance with established target dates and amounts.

19. Upon receipt of written non-objection from the Regional Director, the Association shall implement and adhere to the Brokered Deposit Plan.

20. Any modifications to the Brokered Deposit Plan must receive the prior written non-objection of the Regional Director. The Association shall submit any proposed modifications to the Regional Director at least forty-five (45) days prior to implementation of any modifications.

21. Within forty-five (45) days after the close of each quarter, beginning with the quarter ending December 31, 2010, the Board shall review quarterly variance reports on the Association's compliance with the Brokered Deposit Plan (Brokered Variance Reports). A copy of the Brokered Variance Reports shall be provided to the Regional Director within ten (10) days after the Board meeting.

Directorate and Management Changes.

22. Effective immediately, the Association shall comply with the prior notification requirements for Changes in Directors and Senior Executive Officers⁵ set forth in 12 C.F.R. Part 563, Subpart H.

Dividends and Other Capital Distributions.

23. Effective immediately, the Association shall not declare or pay dividends or make any other capital distributions, as that term is defined in 12 C.F.R. § 563.141, without receiving the prior written approval of the Regional Director in accordance with applicable regulations and regulatory guidance. The Association's written request for approval shall be submitted to the Regional Director at least forty-five (45) days prior to the anticipated date of the proposed declaration, dividend payment or distribution of capital.

⁵ The term "Senior Executive Officer" is defined at 12 C.F.R. § 563.555.

Employment Contracts and Compensation Arrangements.

24. Effective immediately, the Association shall not enter into, renew, extend or revise any contractual arrangement relating to compensation or benefits for any Senior Executive Officer or director of the Association, unless it first provides the Regional Director with not less than thirty (30) days prior written notice of the proposed transaction. The notice to the Regional Director shall include a copy of the proposed employment contract or compensation arrangement or a detailed, written description of the compensation arrangement to be offered to such officer or director, including all benefits and perquisites. The Board shall ensure that any contract, agreement or arrangement submitted to the Regional Director fully complies with the requirements of 12 C.F.R. Part 359, 12 C.F.R. §§ 563.39 and 563.161(b), and 12 C.F.R. Part 570 – Appendix A, and the Interagency Guidance on Sound Incentive Compensation Policies contained in OTS Chief Executive Officer Memorandum No. 354.

25. Within thirty (30) days, the Association shall terminate or renegotiate any employment agreements with terms that do not conform with all applicable OTS policies and guidance, including that contained in OTS Examination Handbook Section 310 and 12 C.F.R. §563.39.

Golden Parachute and Indemnification Payments.

26. Effective immediately, the Association shall not make any golden parachute payment⁶ or prohibited indemnification payment⁷ unless, with respect to each such payment, the Association has complied with the requirements of 12 C.F.R. Part 359 and, as to indemnification payments, 12 C.F.R. § 545.121.

⁶ The term “golden parachute payment” is defined at 12 C.F.R. § 359.1(f).

⁷ The term “prohibited indemnification payment” is defined at 12 C.F.R. § 359.1(l).

Third Party Contracts.

27. Effective immediately, the Association shall not enter into any arrangement or contract with a third party service provider that is significant to the overall operation or financial condition of the Association⁸ or outside the Association's normal course of business unless, with respect to each such contract, the Association has: (a) provided the Regional Director with a minimum of thirty (30) days prior written notice of such arrangement or contract and a written determination that the arrangement or contract complies with the standards and guidelines set forth in Thrift Bulletin 82a; and (b) received written notice of non-objection from the Regional Director.

Violations of Law.

28. Within thirty (30) days, the Association shall ensure that all violations of law and/or regulation discussed in the 2010 ROE are corrected and that adequate policies, procedures and systems are implemented to prevent future violations.

Board Oversight of Compliance with Order.

29. Within thirty (30) days, the Board shall designate a committee to monitor and coordinate the Association's compliance with the provisions of this Order and the completion of all corrective actions required in the 2010 ROE (Oversight Committee). The Oversight Committee shall be comprised of four (4) or more directors, the majority of whom shall be independent⁹ directors.

⁸ A contract will be considered significant to the overall operation or financial condition of the Association where the annual contract amount equals or exceeds two percent (2%) of the Association's total capital, where there is a foreign service provider, or where it involves information technology that is critical to the Association's daily operations without regard to the contract amount.

⁹ For purposes of this Order, an individual who is "independent" with respect to the Association shall be any individual who:

30. Within sixty (60) days after the end of each quarter, beginning with the quarter ending September 30, 2010, the Oversight Committee shall submit a written compliance progress report to the Board (Compliance Tracking Report). The Compliance Tracking Report shall, at a minimum:

- (a) separately list each corrective action required by this Order and the 2010 ROE;
- (b) identify the required or anticipated completion date for each corrective action; and
- (c) discuss the current status of each corrective action, including the action(s) taken or to be taken to comply with each corrective action.

31. Within sixty (60) days after the end of each quarter, beginning with the quarter ending September 30, 2010, the Board shall review the Compliance Tracking Report and all reports required to be prepared by this Order. Following its review, the Board shall adopt a resolution:

(a) certifying that each director has reviewed the Compliance Tracking Report and all required reports; and (b) documenting any corrective actions adopted by the Board. A copy of the Compliance Tracking Report and the Board resolution shall be provided to the Regional Director within ten (10) days after the Board's review of the Compliance Tracking Report.

-
- (a) is not employed in any capacity by the Association or Holding Company, its subsidiaries, or its affiliates, other than as a director;
 - (b) does not own or control more than ten percent (10%) of the outstanding shares of the Association, Holding Company or any of its affiliates;
 - (c) is not related by blood or marriage to any officer or director of the Association, Holding Company or any of its affiliates, or to any shareholder owning more than ten percent (10%) of the outstanding shares of the Association, Holding Company or any of its affiliates, and who does not otherwise share a common financial interest with any such officer, director or shareholder;
 - (d) is not indebted, directly or indirectly, to the Association, Holding Company or any of its affiliates, including the indebtedness of any entity in which the individual has a substantial financial interest, in an amount exceeding ten percent (10%) of the Association's total Tier 1 (Core) capital; and
 - (e) has not served as a consultant, advisor, underwriter, or legal counsel to the Association, Holding Company or any of its affiliates.

32. Nothing contained herein shall diminish the responsibility of the entire Board to ensure the Association's compliance with the provisions of this Order. The Board shall review and adopt all policies and procedures required by this Order prior to submission to the OTS.

Effective Date, Incorporation of Stipulation.

33. This Order is effective on the Effective Date as shown on the first page. The Stipulation is made a part hereof and is incorporated herein by this reference.

Duration.

34. This Order shall remain in effect until terminated, modified, or suspended by written notice of such action by the OTS, acting by and through its authorized representatives.

Time Calculations.

35. Calculation of time limitations for compliance with the terms of this Order run from the Effective Date and shall be based on calendar days, unless otherwise noted.

36. The Regional Director, or an OTS authorized representative, may extend any of the deadlines set forth in the provisions of this Order upon written request by the Association that includes reasons in support for any such extension. Any OTS extension shall be made in writing.

Submissions and Notices.

37. All submissions, including any reports, to the OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes.

38. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing and sent by first class U.S. mail (or by reputable overnight carrier, electronic facsimile transmission or hand delivery by messenger) addressed as follows:

- (a) To the OTS:
Regional Director
Office of Thrift Supervision
1475 Peachtree St., N.E.
Atlanta, Georgia 30309
404.897.1861 (Fax)

- (b) To the Association:
Board of Directors
c/o Steven D. Hayworth, Chairman of the Board
Gibraltar Private Bank & Trust Co.
220 Alhambra Circle, Fifth Floor
Coral Gables, Florida 33134

No Violations Authorized.

39. Nothing in this Order or the Stipulation shall be construed as allowing the Association, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED.

OFFICE OF THRIFT SUPERVISION

By: _____/s/
James G. Price
Regional Director, Southeast Region

Date: See Effective Date on page 1

**UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION**

In the Matter of)	Order No.: SE-10-046
)	
GIBRALTAR PRIVATE BANK AND TRUST COMPANY)	Effective Date: October 15, 2010
)	
Coral Gables, Florida)	
OTS Docket No. 08007)	
)	

STIPULATION AND CONSENT TO ISSUANCE OF ORDER TO CEASE AND DESIST

WHEREAS, the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Southeast Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed Gibraltar Private Bank and Trust Company, Coral Gables, Florida, OTS Docket No. 08007 (Association), that the OTS is of the opinion that grounds exist to initiate an administrative proceeding against the Association pursuant to 12 U.S.C. § 1818(b);

WHEREAS, the Regional Director, pursuant to delegated authority, is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order; and

WHEREAS, the Association desires to cooperate with the OTS to avoid the time and expense of such administrative cease and desist proceeding by entering into this Stipulation and Consent to Issuance of Order to Cease and Desist (Stipulation) and, without admitting or denying that such grounds exist, but only admitting the statements and conclusions in Paragraphs 1 and 2

below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

Jurisdiction.

1. The Association is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, the Association is “an insured depository institution” as that term is defined in 12 U.S.C. § 1813(c).
2. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an administrative enforcement proceeding against a savings association. Therefore, the Association is subject to the authority of the OTS to initiate and maintain an administrative cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b).

OTS Findings of Fact.

3. Based on its May 5, 2010 examination of the Association (2010 ROE), the OTS finds that the Association has engaged in unsafe or unsound banking practices including, but not limited to, operating:

- (a) the Association with an ineffective Bank Secrecy Act/Anti-Money Laundering compliance program;
- (b) the Association with an excessive level of adversely classified loans or assets, delinquent loans, and nonaccrual loans;
- (c) with an asset liability policy that does not address all requirements of the Interagency Policy Statement on Funding and Liquidity Risk Management contained in CEO Memorandum No. 342 (March 17, 2010); and
- (d) in contravention of supervisory policy statements and other regulatory guidance, including, but not limited to:

- (i) Interagency Guidelines Establishing Standards for Safety and Soundness;
- (ii) Interagency Guidelines for Real Estate Lending Policies; and
- (iii) Federal Financial Institutions Examination Council *Bank Secrecy Act/Anti-Money Laundering Examination Manual*.

4. Based on its 2010 ROE of the Association, the OTS finds that the Association has engaged in violations of law and regulation, including:

- (a) 12 C.F.R. § 563.177(c)(1);
- (b) 12 C.F.R. § 563.177(c)(4);
- (c) 12 C.F.R. § 563.180(d)(3)(iv)(C);
- (d) 12 C.F.R. § 563.180(d)(5);
- (e) 12 C.F.R. § 563.180(d)(10); and
- (f) 12 C.F.R. § 563.180(d)(12).

Consent.

5. The Association consents to the issuance by the OTS of the accompanying Order to Cease and Desist (Order). The Association further agrees to comply with the terms of the Order upon the Effective Date of the Order and stipulates that the Order complies with all requirements of law.

Finality.

6. The Order is issued by the OTS under 12 U.S.C. § 1818(b). Upon the Effective Date, the Order shall be a final order, effective, and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

Waivers.

7. The Association waives the following:

- (a) the right to be served with a written notice of the OTS's charges against it as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (b) the right to an administrative hearing of the OTS's charges as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and
- (d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs, or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, federal statutes, or otherwise.

OTS Authority Not Affected.

8. Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar, or otherwise prevent the OTS from taking any other action affecting the Association if at any time the OTS deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law.

Other Governmental Actions Not Affected.

9. The Association acknowledges and agrees that its consent to the issuance of the Order is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 8 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Association that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than the OTS.

Miscellaneous.

10. The laws of the United States of America shall govern the construction and validity of this Stipulation and of the Order.

11. If any provision of this Stipulation and/or the Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

12. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns.

13. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the interpretation of this Stipulation or the Order.

14. The terms of this Stipulation and of the Order represent the final agreement of the parties with respect to the subject matters thereof, and constitute the sole agreement of the parties with respect to such subject matters.

15. The Stipulation and Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Regional Director or other authorized representative.

Signature of Directors/Board Resolution.

16. Each Director signing this Stipulation attests that he or she voted in favor of a Board Resolution authorizing the consent of the Association to the issuance of the Order and the execution of the Stipulation.

WHEREFORE, the Association, by its directors, executes this Stipulation.

Accepted by:

GIBRALTAR PRIVATE BANK
Coral Gables, Florida

OFFICE OF THRIFT SUPERVISION

By: /s/
Steven D. Hayworth
Chairman

By: /s/
James G. Price
Regional Director, Southeast Region

Date: See Effective Date on page 1

/s/
Gail Birks, Director

/s/
Eduardo Cisneros, Director

/s/
Robert Dickinson, Director

/s/
James Dyke, Director

/s/
Russell Galbut, Director

/s/
Jeremy Hubball, Director

/s/
David Kirkland, Director

/s/
Ronald G. Stone, Director