

OFFICE OF THRIFT SUPERVISION

Receivership Of A Federal Savings Bank

Date: March 26, 2010
Order No.: 2010-12
OTS No.: 14929

The Acting Director of the Office of Thrift Supervision (OTS), or his designee, in cooperation with the Federal Deposit Insurance Corporation (FDIC), has determined to appoint the FDIC as receiver of Key West Bank, Key West, Florida (Savings Bank).

GROUND FOR APPOINTMENT OF FDIC AS RECEIVER FOR THE SAVINGS BANK

The Acting Director, or his designee, based upon the administrative record, finds and determines the following:

- (i) The Savings Bank is in an unsafe and unsound condition to transact business;
- (ii) The Savings Bank, by resolution of its board of directors, has consented to the appointment of a receiver;
- (iii) The Savings Bank is critically undercapitalized; and
- (iv) The Savings Bank has substantially insufficient capital.

The Savings Bank is a Deposit Insurance Fund-insured, federally chartered stock savings bank based in Key West, Florida. The Savings Bank operates as a community bank with one full service branch, and is wholly owned by Key West Bancgroup, Inc. As of December 31, 2009, the Savings Bank reported in its Thrift Financial Report (TFR) that it had approximately \$88.031 million in assets, \$87.979 million in liabilities, \$52,000 in stockholders' equity and a net loss for the year ended December 31, 2009, of approximately \$6.5 million. In its December 31, 2009, TFR the Savings Bank reported tangible, tier one (core), tier one risk-based, and total risk-based capital of 0.06 percent, 0.06 percent, 0.09 percent and 0.19 percent, respectively. Based on the tangible capital ratio in the Savings Bank's December 31, 2009, TFR, the Savings Bank is critically undercapitalized.

DISCUSSION OF GROUNDS FOR APPOINTMENT OF A RECEIVER FOR THE SAVINGS BANK

Section 5(d)(2)(A) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(d)(2)(A), provides that OTS may appoint a receiver for any insured savings association if OTS determines that one or more grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1821(c)(5), exist.

Unsafe and Unsound Condition to Transact Business

Under section 11(c)(5)(C) of the FDIA, OTS may appoint a receiver for a savings association if it is in an unsafe and unsound condition to transact business. An unsafe or unsound condition has been identified as one where an institution is operated in a manner that causes an unacceptable risk to its depositors' funds. See Franklin Savings Association v. Director, OTS, 934 F.2d 1127, 1145 (10th Cir. 1991), cert. denied, 503 U.S. 937 (1992).

The Savings Bank is in an unsafe and unsound condition due to its capital deficiency, lack of core profitability, and poor asset quality. Over the past year the Savings Bank has experienced significant losses due in part to required provisions for allowance for loan and lease losses (ALLL), asset valuation adjustments and write-downs, and operating losses. These losses and write-downs have significantly depleted capital, resulting in the Savings Bank being critically undercapitalized and nearly insolvent, with only \$52,000 remaining in equity capital as of December 31, 2009. Since December 31, 2009, the Savings Bank's equity capital has not improved, and as of March 19, 2010, its equity capital had deteriorated to \$43,000. Additional declines in asset values are likely, thereby further depleting capital and jeopardizing the Savings Bank's operations. Therefore, the Acting Director, or his designee, concludes that the Savings Bank is in an unsafe and unsound condition to transact business.

Consent

Under section 11(c)(5)(I) of the FDIA, OTS may appoint a receiver if the institution, by resolution of its board of directors, consents to the appointment. The Acting Director, or his designee, finds that, the board of directors of the Savings Bank, by resolution dated February 20, 2010, consented to the appointment of a conservator or receiver by OTS and, on February 22, 2010, the Savings Bank entered into a Stipulation and Consent agreement with OTS for such an appointment.

Critically Undercapitalized

Under section 11(c)(5)(L)(i) of the FDIA, OTS may appoint a receiver for a savings association if it is critically undercapitalized, as defined in 12 U.S.C. § 1831o(b) of the FDIA. Under section 1831o(b), an institution is critically undercapitalized if it fails to meet any level of capital specified under section 1831o(c)(3)(A) of the FDIA.

Section 1831o(c)(3)(A) provides for the appropriate banking agency to set a ratio of tangible equity to total assets at which an institution is critically undercapitalized. OTS has promulgated 12 C.F.R. § 565.4(b)(5), which defines an institution as critically undercapitalized if it has a ratio of tangible equity to total assets that is equal to or less than two percent. As of December 31, 2009, the Savings Bank reported a tangible capital ratio of 0.06 percent. Thus, the Acting Director, or his designee, concludes that the Savings Bank is critically undercapitalized.

Substantially Insufficient Capital

Under section 11(c)(5)(L)(ii), OTS may appoint a receiver for a savings association if it has substantially insufficient capital. Pursuant to the authority granted in sections 5(t)(1)(A)(i) and 5(t)(2)(A) of the HOLA, OTS has promulgated 12 C.F.R. Part 567, requiring all savings associations that are not "1" rated to maintain a leverage capital ratio of 4 percent and all savings associations to maintain a minimum total risk-based capital ratio of 8 percent of the institution's risk-based assets, as defined. OTS has concluded previously that failure to maintain at least two-thirds of any capital required by 12 C.F.R. Part 567 constitutes a substantial capital insufficiency within the meaning of the 12 U.S.C. § 1821(c)(5)(L)(ii).

The Savings Bank is not "1" rated and has a leverage capital ratio and a risk-based capital ratio of 0.06 percent and 0.19 percent, respectively, as of December 31, 2009. Accordingly, the Savings Bank's leverage capital ratio and risk-based capital ratio both are less than two-thirds of the applicable capital requirements. Accordingly, the Acting Director, or his designee, concludes that the Savings Bank has substantially insufficient capital.

The Acting Director, or his designee, therefore, has determined that grounds for the appointment of a receiver for the Savings Bank exist under section 5(d)(2) of the HOLA, and sections 11(c)(5)(C), (I), (L)(i) and (L)(ii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(C), (I), (L)(i) and (L)(ii).

ACTIONS ORDERED OR APPROVED

Appointment of a Receiver

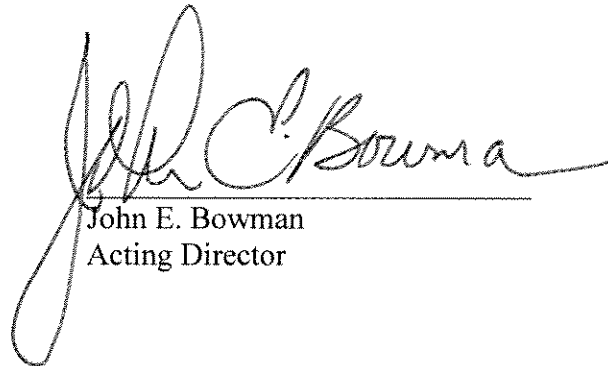
The Acting Director, or his designee, hereby appoints the FDIC as receiver for the Savings Bank, for the purpose of liquidation or winding up the affairs of the Savings Bank, pursuant to section 5(d)(2) of the HOLA, 12 U.S.C. § 1464(d)(2), and section 11(c)(6)(B) of the FDIA, 12 U.S.C. § 1821(c)(6)(B).

Delegation of Authority to Act for OTS

The Acting Director, or his designee, hereby authorizes the OTS Southeast Regional Director, or his designee, and the Deputy Chief Counsel for Business Transactions of the Chief Counsel's Office, or his designee, to: (i) certify orders; (ii) sign, execute, attest, or certify other documents of OTS issued or authorized by this Order; (iii) designate the persons or entity that will give notice of the appointment of a receiver for the Savings Bank and serve the Savings Bank with a copy of this Order pursuant to 12 C.F.R. § 558.2; and (iv) perform such other functions of OTS necessary or appropriate for implementation of this Order. All documents to be issued under the authority of this Order must be first approved, in form and content, by the Chief Counsel's Office. In addition, the Acting Director, or his designee, hereby authorizes the Deputy Chief Counsel for Business Transactions, or his designee, to make any subsequent technical corrections, that might be necessary, to this Order, or any documents issued under the authority of this Order.

By Order of the Acting Director of OTS, or his designee, effective: (a) as to the above matters regarding the delegation of authority, immediately upon signature; and (b) as to the above matters regarding the appointment of the FDIC as receiver, immediately upon service of this Order on the Savings Bank.

Executed this 26th day of March, 2010.



John E. Bowman
Acting Director