

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

_____ )	Order No.: DC-10_034
In the Matter of )	
)	
<b>JAMES C. MCKAY</b> )	Effective Date: October 28, 2010
)	
Former Director, and )	
Institution-Affiliated Party of )	
)	
IMPERIAL SAVINGS AND LOAN )	
ASSOCIATION )	
Martinsville, Virginia )	
OTS Docket No. 07270 )	
_____ )	

**ORDER OF ASSESSMENT OF A CIVIL MONEY PENALTY**

**WHEREAS**, James C. McKay (McKay) has executed a Stipulation and Consent to the Issuance of an Order of Assessment of a Civil Money Penalty (Stipulation); and

**WHEREAS**, McKay, by executing the Stipulation, has consented and agreed to the issuance of this Order of Assessment of Civil Money Penalty (Order) by the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1818(i); and

**WHEREAS**, pursuant to delegated authority, the Deputy Director of Examinations, Supervision and Consumer Protection is authorized to issue Orders of Assessment of a Civil Money Penalty where an institution-affiliated party has consented to the issuance of an Order.

**NOW, THEREFORE, IT IS ORDERED that:**



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Martinsville, Virginia )	
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**STIPULATION AND CONSENT TO THE ISSUANCE OF  
AN ORDER OF ASSESSMENT OF A CIVIL MONEY PENALTY**

**WHEREAS**, the Office of Thrift Supervision (OTS), acting by and through its Deputy Director of Examinations, Supervision and Consumer Protection (Deputy Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed James C. McKay (McKay or Respondent), former Director of Imperial Savings and Loan Association, Martinsville, Virginia, OTS Docket No. 07270 (Imperial or Association), that grounds exist to initiate a civil money penalty assessment proceeding against him pursuant to 12 U.S.C. § 1818(i); and

**WHEREAS**, the Deputy Director, pursuant to delegated authority, is authorized to issue Orders of Assessment of a Civil Money Penalty where an institution-affiliated party has consented to the issuance of an order; and

**WHEREAS**, McKay desires to cooperate with the OTS to avoid the time and expense of an administrative civil money penalty proceeding by entering into this Stipulation and Consent to the Issuance of an Order of Assessment of a Civil Money Penalty (Stipulation), without admitting or denying that such grounds exist, but only admitting the statements and conclusions in Paragraphs 1, 2 and 3 below concerning jurisdiction, hereby stipulates and agrees as follows:

**Jurisdiction.**

1. The Association was a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4) at all times relevant hereto. Accordingly, the Association is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c).
2. As a director of the Association, McKay was deemed to be an “institution-affiliated party” of the Association, as that term is defined in 12 U.S.C. § 1813(u), and served in such capacity within six (6) years of the Effective Date as shown on the first page (see 12 U.S.C. § 1818(i)(3)).
3. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate federal banking agency” to initiate and maintain a civil money penalty proceeding against McKay pursuant to 12 U.S.C. § 1818(i).

**OTS Findings of Fact.**

4. The OTS finds that McKay violated 12 C.F.R. §§ 563.177, 562.4(b)(1), and 544.5(b)(1), and Paragraphs 1(d), 5, 6, and 11 of the OTS Cease and Desist Order, No. SE-08-06 (April 30, 2008). Further, McKay violated Sections 2.1, 2.2, and 2.3 of Part II of the June 11, 2008 Prompt Corrective Action Directive issued by the OTS to Imperial.
5. As a result of these violations, breaches of McKay’s fiduciary duty to the Association, and/or unsafe or unsound practices, McKay recklessly engaged in a pattern of misconduct and/or

has caused more than a minimal loss to the Association.

**Consent.**

6. McKay consents to the issuance by the OTS of the accompanying Order of Assessment of a Civil Money Penalty (Order). McKay 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.**

7. This Stipulation is issued by the OTS under the authority of 12 U.S.C. § 1818(i). Upon the Effective Date, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

**Waivers.**

8. McKay waives the following:
- (a) the right to be served with a written notice of the OTS's assessment of a civil money penalty against him as provided by 12 U.S.C. § 1818(i) and 12 C.F.R. Part 509;
  - (b) the right to an administrative hearing including, without limitation, any such right provided by 12 U.S.C. §§ 1818(h) or 1818(i);
  - (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 1818(i), or otherwise to challenge the validity of the Order;
  - (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; and

(e) the right to assert this proceeding, this consent to the issuance of the Order, and/or the issuance of the Order, the payment of any monies, or the provision of any other financial relief as contemplated by the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

**OTS Authority Not Affected.**

9. Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar or otherwise prevent the OTS from taking any other action affecting McKay if at any time the OTS deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law. The OTS agrees not to institute further proceedings against McKay for the specific acts, omissions, or violations in the Findings of Fact set forth in Paragraph 4-5 above to the extent known to the OTS as of the Effective Date of the accompanying Order, unless such acts, omissions, or violations reoccur.

**Other Governmental Actions Not Affected.**

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

**Agreement for Continuing Cooperation.**

11. McKay agrees that he will fully cooperate with the OTS including, but not limited to, at the OTS's written request, on reasonable notice and without service of subpoena, providing discovery and testifying truthfully at any deposition, or at any judicial or administrative

proceeding related to any investigation, litigation, or other proceeding brought by the OTS or other appropriate federal banking agency, relating to Imperial, or its institution-affiliated parties.

**Miscellaneous.**

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

13. 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 Deputy Director in his sole discretion determines otherwise.

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

15. 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.

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

WHEREFORE, McKay executes this Stipulation.

JAMES C. MCKAY

OFFICE OF THRIFT SUPERVISION

By:           / s /            
James C. McKay

By:           / s /            
Thomas A. Barnes  
Deputy Director, Examinations, Supervision and  
Consumer Protection

Date: See Effective Date on page 1