

OTS Order 95-169
August 31, 1995

**ORDER DENYING REQUEST FOR A STAY OF AN APPROVAL ORDER
PENDING JUDICIAL REVIEW**

Matthew Lee, Yvonne Santana, Vielka Peguero and Inner City Press/Community on the Move Homesteaders' Association ("Protesters") seek a stay pending review by the United States Court of Appeals for the Second Circuit of Office of Thrift Supervision ("OTS") Order 95-158, dated August 18, 1995 ("Order 95-158"), which approves the acquisition of U.S. Trust Company of Florida Savings Bank, Palm Beach, Florida (the "Savings Bank") by New USTC Holdings Corporation, New York, New York (the "Holding Company") pursuant to section 10(e) of the Home Owners' Loan Act, 12 U.S.C. 1467a(e), and OTS regulations thereunder. For the reasons set forth below, the request is denied.

1. Legal Standard

OTS previously has not had occasion to consider whether to stay an order approving an application. The agency has, however, received requests to stay orders in enforcement proceedings. See, e.g., In the Matter of Tom Rapp, et al., OTS Order No. AP 93-13 (Feb. 12, 1993), In the Matter of David K. Wachtel, Jr., et al., OTS Order No. AP 91-93 (Dec. 30, 1991). In those cases, we have adopted the rationale of the federal courts of appeals.

Specifically, a party seeking a stay of an administrative

order pending judicial review has the burden of demonstrating that four criteria have been met before a stay will be entered. First, the movant must make a strong showing that the movant is likely to prevail on the merits of its appeal. Second, the movant must show irreparable injury absent a stay. Third, the movant must show that granting a stay would not substantially harm the other party. Fourth, the movant must show that granting a stay is not harmful to the public interest. Hamlin Testing Laboratories, Inc. v. Atomic Energy Commission, 337 F.2d 221 (6th Cir. 1964); Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958). We believe that these standards may be appropriately employed here.

2. Stay Request

The Protesters have not made the requisite showings. The Protesters do not assert that they are likely to prevail on the merits of the case upon judicial review, and our review of the record of the Holding Company's application persuades us that any judicial challenge is not likely to succeed. With respect to the requirement of showing irreparable injury, the Protesters have made no showing of any injury at all. We also are unable to discern from the record any evidence of possible irreparable injury to the Protesters. The Protesters have also failed to address the third and fourth criteria, which are prejudice to the other party and the public interest. In light of our approval of the Holding Company's

application, we believe that consummation of the proposed transaction, rather than a stay, is in the public interest. Accordingly, the Director of Supervision will deny the stay request.

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Upon consideration of the request,

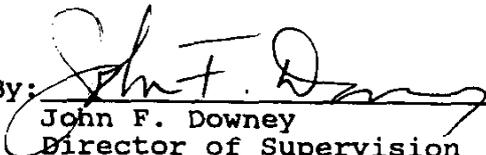
IT IS HEREBY ORDERED that the Protesters' motion for a stay of Order 95-158 is denied.

THE OFFICE OF THRIFT SUPERVISION

DATE:

8-31-95

By:


John F. Downey
Director of Supervision