

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BBU BANK, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-2801  
 )  
 OFFICE OF FINANCIAL REGULATION, )  
 DIVISION OF FINANCIAL )  
 INSTITUTIONS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

REPORT OF PUBLIC HEARING

Pursuant to notice, a public hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, in Tallahassee, Florida, on September 21, 2004.

APPEARANCES

For Petitioner: Raul J. Valdes-Fauli, Esquire  
Steel, Hector & Davis, LLP  
200 South Biscayne Boulevard, Suite 4000  
Miami, Florida 33131-2398

and

R. Michael Underwood, Esquire  
Steel, Hector & Davis, LLP  
215 South Monroe Street, Suite 601  
Tallahassee, Florida 32301-1804

For Respondent: Bruce Kuhse, Esquire  
Office of Financial Regulation  
The Fletcher Building, Suite 526  
200 East Gaines Street  
Tallahassee, Florida 32399-0379

STATEMENT OF THE ISSUE

The ultimate issue in this case is whether an application to organize Petitioner, BBU Bank, should be approved by Respondent, the Office of Financial Regulation, Division of Financial Institutions.

PRELIMINARY STATEMENT

On March 12, 2004, Respondent received an Application for Authority to Organize a Bank, a Savings Bank or Association Pursuant to Chapters 658 and 665, Florida Statutes, seeking authority to organize a new bank in Florida. Pursuant to the Application, the new bank was to be known as BBU Bank. The Application also disclosed that two foreign nationals, Juan Carlos Escotet and Luis Xavier Lujan, are to own in excess of ten percent of the proposed new bank.

Due to the proposed ownership interest by Mr. Escotet and Mr. Lujan, BBU Bank was required by Section 120.80(3)(a)4., Florida Statutes, to participate in a public hearing conducted pursuant to Sections 120.569 and 120.57, Florida Statutes. Accordingly, on August 5, 2004, the Office of Financial Regulation issued an Order Granting Office's Petition for Public Hearing, ordering the conduct of the public hearing.

By letter dated August 9, 2004, the Office of Financial Regulation referred the matter to the Division of Administrative Hearings, requesting the assignment of an administrative law

judge to conduct the public hearing. It was represented that the hearing would last between two and two and one-half hours and that it should be held in Tallahassee, Florida. A copy of the Order Granting Office's Petition for Public Hearing was filed with the August 9, 2004, letter. The request was designated DOAH Case No. 04-2801 and was assigned to the undersigned.

After consultation with the parties, a Notice of Hearing was entered on August 19, 2004, scheduling the hearing to commence at 1:00 p.m. on September 21, 2004. Notice of the hearing was caused to be published by Petitioner in The Miami Herald, on August 31, 2004. That Notice, as evidenced by an Affidavit of Publication filed by Petitioner, indicated the time, date, and location of the public hearing in compliance with Florida Administrative Code Rule 3C-105.105(1).

On September 14, 2004, an Order Granting Motion for Official Recognition was entered. Pursuant to this Order, official recognition, requested by Respondent, was taken of Florida Administrative Code Rules 3C-105.001 through 3C-105.210, was taken.

On September 17, 2004, the parties filed a Joint Pre-Hearing Stipulation.

At the commencement of the public hearing, it was determined that no members of the public were present who wished

to be heard from. Petitioner then presented the testimony of Mr. Escotet, Mr. Lujan, Ambassador V. Manual Rocha, and Manuel Lasaga, Ph.D. Petitioner also offered two exhibits, which were marked as Petitioner's Exhibits 1A and 1B, and 2. Respondent offered five exhibits, which were marked as Respondent's Exhibits 1 through 5. All exhibits were admitted without objection. Respondent's Exhibits 1 and 2 consist of confidential documents which have remained in the possession of the undersigned and have been reviewed only by the undersigned. Those documents are being returned to Respondent with this Report.

At the conclusion of the public hearing the parties were advised by the undersigned of their right to file proposed public hearing reports. With the agreement of the parties, a filing date of 15 days after the filing of the transcript of the public hearing was established for the filing of proposed reports. By Notice of Filing Transcript, the parties were informed that the Transcript had been filed on October 5, 2004, and, therefore, their proposed reports were to be filed on or before October 20, 2004. On October 20, 2004, Respondent filed a Joint Proposed Report of Public Hearing. The Joint Proposed Report has been fully considered in completing this Report.

## FINDINGS OF FACT

1. On March 12, 2004, the Office of Financial Regulation (hereinafter referred to as the "Office") received an Application for Authority to Organize a Bank, a Savings Bank or Association Pursuant to Chapters 658 and 665, Florida Statutes (hereinafter referred to as the "Application").

2. The new bank is to be known as BBU Bank and is to be located at 150 Alhambra Circle, Coral Gables, Miami-Dade County, Florida.

3. The Application listed three individuals who would own an interest in BBU Bank who were nationals of a country other than the United States: Juan Carlos Escotet, Luis Xavier Lujan, and Jorge Carraballo Rodriguez. Mr. Escotet and Mr. Lujan, but not Mr. Rodriguez, were determined to be proposed "major shareholders" of BBU Bank. A major shareholder is defined in Florida Administrative Code Rule 3C-105.001(7) as "any person subscribing to 10 percent or more of the voting stock or nonvoting stock which is convertible into voting stock of the proposed state financial institution." Mr. Rodriguez will not own ten percent of the stock of BBU Bank nor will he be a director or executive officer of BBU Bank.

4. The Office caused notice of its receipt of the Application to be published in the March 26, 2004, edition of the Florida Administrative Weekly. That notice was made

consistent with the requirements of Section 120.80(3)(a)1.a., Florida Statutes, and Florida Administrative Code Rule 3C-105.103(1).

5. By letter dated March 22, 2004, the Office acknowledged receipt of the Application and deposit of the filing fee, reported that notice of receipt of the Application had been published in the Florida Administrative Weekly, and requested additional information, including documentation of BBU Bank's source of cash and/or a copy of a loan commitment to fund the purchase of bank stock by each of the proposed directors, the qualifications of the proposed directors, and information concerning whether an application had been filed with the Federal Deposit Insurance Corporation (hereinafter referred to as the "FDIC").

6. By letter dated July 2, 2004, the Office notified the applicants that documents addressing the information requested in previous correspondence had been received and reviewed. The Office, therefore, informed the applicants that it had "now [found] your application substantially complete." The Office also notified the applicants that a public hearing was required, due to the proposed role of Mr. Escotet and Mr. Lujan in BBU Bank.

7. On August 5, 2004, Don Saxon, Commissioner of the Office, issued an Order Granting Office's Petition for Public

Hearing, ordering the public hearing on the Application required by Section 120.80(3)(a)4, Florida Statutes.

8. The Order was filed with the Division of Administrative Hearings on August 10, 2004, with a letter requesting the assignment of an administrative law judge to conduct the public hearing.

9. The public hearing was scheduled to commence at 1:00 p.m., on September 21, 2004. Notice of the hearing was caused to be published in The Miami Herald on August 31, 2004, in compliance with Florida Administrative Code Rule 3C-105.105(1).

10. The public hearing was conducted as scheduled. No member of the public appeared at the hearing. No opposition to the Application was expressed by anyone appearing at the hearing.

11. Mr. Escotet, a proposed director and holder of 62 percent of the common stock of BBU Bank, appeared and testified at the public hearing. Based upon that testimony, it is found that Mr. Escotet:

- a. Is a citizen of Venezuela;
- b. Is currently President of Banesco Banco Universal, Caracas, Venezuela;
- c. Has extensive banking experience and serves on the board for several other banks in Venezuela; and

d. Possess sufficient financial institution experience, ability, standing, and reputation to enable him to perform his duties as a director for BBU Bank in a manner that can reasonably be expected to result in the successful operation of the bank.

12. Mr. Lujan, a proposed director and holder of 31 percent of the common stock of BBU Bank, appeared and testified at the public hearing. Based upon that testimony, it is found that Mr. Escotet:

a. Is a citizen of Venezuela;

b. Is currently the Executive President of Banesco Bank Universal, Caracas, Venezuela;

c. Has more than 20 years of educational, managerial, and executive experience in the banking business; and

d. Possess sufficient financial institution experience, ability, standing, and reputation to enable him to perform his duties as a director for BBU Bank in a manner that can reasonably be expected to result in the successful operation of the bank.

13. The other proposed directors, Jose R. Gutierrez, Martha S. Pantin, Raul Robau, Santiago D. Morales, and Raul J. Valdes-Fauli, are all citizens of the United States. They have sufficient business institution experience, ability, standing, and reputation to enable them to perform their duties as a

director for BBU Bank in a manner that can reasonably be expected to result in the successful operation of the bank.

14. Mr. Gutierrez is the proposed President and Chief Executive Office for BBU Bank. Mr. Gutierrez is currently a director for, and chairman of the Audit Committee of, Eastern National Bank, Miami, Florida. Mr. Gutierrez has 24 years of banking experience, including serving as president of three banks, in Miami-Dade County. Mr. Gutierrez has sufficient financial institution experience, ability, standing, and reputation to enable him to perform his duties as BBU Bank's President and Chief Executive Officer in a manner that can reasonably be expected to result in the successful operation of the bank.

15. Neither Mr. Escotet or Mr. Lujan has been convicted of, or pled guilty or nolo contendere to, any violation of Section 655.50, Florida Statutes, any offense described in Chapter 896, Florida Statutes, or any other crime. The other proposed officers and directors of BBU Bank reported to the Office that they had not been convicted of, or pled guilty or nolo contendere to, any violation of Section 655.50, Florida Statutes, any offense described in Chapter 896, Florida Statutes, or any other crime and no evidence to the contrary was presented at the public hearing.

16. The Office conducted a background investigation of all of the directors and executive officers of BBU and reported no information to preclude them from serving in their proposed capacities for the bank. Respondent's Exhibit 2 at 337-371.

17. Consistent with Section 658.21(4), Florida Statutes, three of the proposed directors, Mr. Escotet, Mr. Lujan, and Mr. Valdes-Fauli, have direct financial institution experience within three years of the date of the Application.

18. The business plan for BBU Bank represents that the bank will offer full-service banking to individuals and businesses located primarily in Miami-Dade County. BBU Bank will seek international businesses originating from Venezuela and other countries in Latin America, relying upon the contacts and experience of its directors and executive officers.

19. BBU Bank will issue 2,000,000 shares of common stock at a price of \$7.50 per share. Stock sales will produce \$15,000,000.00 in capital. After payment of \$350,000.00 of organization expenses, BBU Bank will allocate the remaining \$14,650,000.00 capital funds as follows:

Paid-in Capital (2,000,000 shares of \$5.00 par value):	\$10,000,000.00
Paid-in Surplus (at least 20% of Paid-in Common Stock):	<u>4,650,000.00</u>
Total Capital Account	\$14,650,000.00

The initial capitalization of BBU Bank is adequate for its proposed business activities.

20. BBU Bank will have quarters suitable to carry out its business. Conditions in Miami-Dade County indicate reasonable prospects for the successful operation of BBU Bank. The bank's financial plan is reasonable and attainable.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction to conduct a public hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and to issue a report thereon. § 120.80(3)(a)4., Fla. Stat.

22. Section 120.80(3)(a)4., Florida Statutes, provides, in pertinent part, the following:

In the case of every application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of every application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of any such foreign national to appear personally at the hearing shall be grounds for denial of the application. Notwithstanding the provisions of s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information

or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

23. Two individuals, Mr. Escotet and Mr. Lujan, are foreign nationals who propose to own or control ten percent or more of any class of voting securities of BBU Bank.

24. Therefore, after publishing notice consistent with Florida Administrative Code Rule 3C-105.105, a public hearing was conducted on the Application on September 21, 2004.

25. This Report is being issued consistent with the requirements of Section 120.80(3)(b), Florida Statutes.

DONE AND ENTERED this 27th day of October, 2004, in Tallahassee, Leon County, Florida.



---

LARRY J. SARTIN  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of October, 2004.

COPIES FURNISHED:

Raul J. Valdes-Fauli, Esquire  
Steel, Hector & Davis, LLP  
200 South Biscayne Boulevard, Suite 4000  
Miami, Florida 33131-2398

R. Michael Underwood, Esquire  
Steel, Hector & Davis, LLP  
215 South Monroe Street, Suite 601  
Tallahassee, Florida 32301-1804

Bruce Kuhse, Esquire  
Office of Financial Regulation  
The Fletcher Building, Suite 526  
200 East Gaines Street  
Tallahassee, Florida 32399-0379

Don B. Saxon, Commissioner  
Office of Financial Regulation  
The Fletcher Building, Suite 526  
200 East Gaines Street  
Tallahassee, Florida 32399-0379