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Complaint

tomers competing with such favored customer in the distribution or resale of such products.

It is further ordered, That the effective date of this order to cease and desist be and it hereby is postponed until further Order of the Commission.

IN THE MATTER OF

HOUSE OF MARBET, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8578. Complaint, June 19, 1963—Decision, Sept. 24, 1964

Order dismissing—the allegations not sustained—complaint charging sellers of aluminum siding, furnaces, roofing material and other home improvement products to the public with representing falsely that purchasers would not be required to make payments when unemployed, that the selling price and installation cost represented the total amount of the purchaser's obligation, that purchasers would receive a gift of merchandise after signing a contract of purchase, and that their products were fully guaranteed.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that House of Marbet, Inc., a corporation, and Marco Scratow, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent House of Marbet, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Federal and Blue Ridge Streets, Natrona, Pennsylvania.

Respondent Marco Scratow is an officer of the corporate respondent, House of Marbet, Inc. He formulates, directs and controls the acts and practices of the corporation, including the acts and practices hereinafter set forth. His address is the same as that of the said corporate respondent.

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PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the advertising, offering for sale, sale and distribution of aluminum siding, furnaces, roofing material and other home improvement products to the public.

PAR. 3. In the course and conduct of their business, respondents cause, and have caused, their products, when sold, to be shipped from warehouses in the State of Pennsylvania to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents employ salesmen or representatives who call upon prospective purchasers and solicit the sale of respondents' products. In the course of such solicitation, said salesmen or representatives have made many statements or representations, directly and by implication, for the purpose of inducing, and which have induced, the purchase of respondents' products. Typical, but not all inclusive of such statements or representations are the following:

(1) That purchasers would not be required to pay the full amount of the periodic payments due on financial obligations assumed in connection with the purchase of respondents' products at any time when said purchasers were unemployed as a result of strikes or for various other reasons;

(2) That the selling price of respondents' products and the cost of installation thereof represented the total amount of the purchaser's financial obligation;

(3) That purchasers would receive a gift of a specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products;

(4) That aluminum siding and other products sold by respondents were fully guaranteed for specified periods of time.

PAR. 5. In truth and in fact:

(1) Many of the purchasers of respondents' products were required to pay the full amount of the periodic payments due on financial obligations assumed in connection with the purchase of respondents' products when they became unemployed;

(2) Purchasers of respondents' products who financed their purchase were required to pay interest and other financing charges and, therefore, the total amount of their financial obligation was substantially in excess of the selling price of respondents' products and the

cost of installation thereof. Respondents' salesmen or representatives, in many instances, have obtained the signatures of purchasers on contracts, promissory notes, deeds of trust and other instruments and agreements incidental to such financing and have not apprised said purchasers of the terms and conditions of such instruments or agreements or that purchasers would be required to pay financing costs in addition to the selling price of respondents' products and the cost of the installation thereof;

(3) Many purchasers of respondents' products did not receive the promised gift of a specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products;

(4) The aluminum siding and other products sold by respondents are not fully guaranteed nor do such guarantees as are offered extend for the period of time specified. Respondents' salesmen or representatives, when advising a purchaser that a product is guaranteed, do not disclose the identity of the guarantor, the nature and extent of the guarantee and the manner or the manner in which the guarantor will perform thereunder.

Therefore, the statements and representations referred to in Paragraph Four hereof were, and are, false, misleading and deceptive.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Robert J. Hughes supporting the complaint.

Mr. Allen S. Gordon of Pittsburgh, Pa., for the respondents.

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INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

MAY 7, 1964

The complaint which issued in this proceeding on June 19, 1963, alleges that respondents violated Section 5 of the Federal Trade Commission Act in the course of selling, in interstate commerce, home improvement contracts to purchasers located in the State of Pennsylvania and in various other States of the United States. As a result of a clarification made at prehearing conferences, complaint counsel stated that he would attempt to prove only oral misrepresentations made at or about the time that the purchasers of the home improvements signed the contracts therefor.

Respondents' misrepresentations alleged in Paragraph "FOUR" of the complaint are:

(1) That purchasers would not be required to pay the full amount of the periodic payments due on financial obligations assumed in connection with the purchase of respondents' products at any time when said purchasers were unemployed as a result of strikes or for various other reasons;

(2) That the selling price of respondents' products and the cost of installation thereof represented the total amount of the purchaser's financial obligation;

(3) That purchasers would receive a gift of a specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products;

(4) That aluminum siding and other products sold by respondents were fully guaranteed for the specified periods of time.

Whereas according to Paragraph "FIVE" of the complaint, "in truth and in fact:"

(1) Many of the purchasers of respondents' products were required to pay the full amount of the periodic payments due on financial obligations assumed in connection with the purchase of respondents' products when they became unemployed;

(2) Purchasers of respondents' products who financed their purchase were required to pay interest and other financing charges and, therefore, the total amount of their financial obligation was substantially in excess of the selling price of respondents' products and the cost of installation thereof. Respondents' salesmen or representatives, in many instances, have obtained the signatures of purchasers on contracts, promissory notes, deeds of trust and other instruments and agreements incidental to such financing and have not apprised said purchasers of the terms and conditions of such instruments or agreements or that purchasers would be required to pay financing costs in addition to the selling price of respondents' products and the cost of installation thereof;

(3) *Many* purchasers of respondents' products did not receive the promised gift of a specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products; (*Italic supplied.*)

(4) The aluminum siding and other products sold by respondents are not fully guaranteed nor do such guarantees as are offered extend for the period of time

specified. Respondents' salesmen or representatives, when advising a purchaser that a product is guaranteed, do not disclose the identity of the guarantor, the nature and extent of the guarantee and the manner or the manner in which the guarantor will perform thereunder.

For greater ease in writing, and later in reading, this initial decision, these alleged deceptions or misrepresentations are referred to as the (1) "waiver," (2) "cost," (3) "gift," and (4) "guarantee" misrepresentations or deceptions. This abbreviated nomenclature refers to the misrepresentations articulated in Paragraphs FOUR and FIVE of the complaint.

Section 7(c) of the Administrative Procedure Act provides *inter alia*, "Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. * * * "No * * * order [shall] be issued except * * * as supported by * * * reliable, probative, and substantial evidence."

Section 3.14 of the Rules of Practice for Adjudicative Proceedings of the Federal Trade Commission provides "Counsel supporting the complaint shall have the burden of proof, but the proponent of any factual proposition shall be required to sustain the burden of proof with reference thereto." Applying the quoted sections of the Administrative Procedure Act and of the Rules of Practice of the Federal Trade Commission to the above quoted sections of the complaint, the examiner must review the evidence in this record having in mind that the burden in this proceeding was upon complaint counsel to prove by reliable, probative and substantial evidence that:

(1) *Many* of the purchasers of respondents' products were required to pay the full amount of the periodic payments due on financial obligations due in connection with respondents' products when they became unemployed, and that respondents had represented to such purchasers, contrary to the fact, before they signed the contract, that they would not have to pay.

(2) That purchasers of home improvement contracts from respondents who signed agreements therefor were required to pay and did pay substantially more for the home improvements than the purchasers were led to believe they would have to pay.

(3) That *many* of the purchasers of the home improvement contracts did not receive a gift of a specified article of merchandise which they had been promised as an inducement to signing the home improvement contract.

(4) That the aluminum siding and other products which the respondents sold were not fully guaranteed nor were such guarantees for the period of time specified, nor did respondents' salesmen, when ad-

vising a purchaser that a product was guaranteed disclose the identity of the guarantor, the nature and extent of the guarantee and the manner or manner in which the guarantor would perform thereunder.

In order to sustain the alleged "guarantee" misrepresentation complaint counsel must have proven that the guarantees, as represented to prospective purchasers by respondents' salesmen, constituted an unfair method of competition, or an unfair and deceptive act or practice in commerce.

As previously mentioned, at the prehearing conferences complaint counsel stated (and at all times thereafter adhered to) his position that the alleged deceptive representations were made *only orally* in conversations by respondents' salesmen during the period of time, and prior, to the time that the purchasers of the home improvements signed contracts therefor. It is asserted that such allegedly deceptive representations induced the buyers to sign the home improvement contracts. Hearings were convened in Pittsburgh, Pennsylvania, December 2, 1963, through December 10, 1963, inclusive. Additional hearings were set by the hearing examiner but were cancelled when additional exhibits were placed in the record on February 7, 1964, by stipulation.

Proposed findings and conclusions have been filed. The hearing examiner heard and observed the witnesses in the hearing room and on the witness stand. He observed their demeanor and their manner of answering questions. He was able to and did form an opinion as to their reliability and credibility. He was also able to and did form a judgment as to the weight and probative value of the testimony of each of the witnesses. He has considered the reliability, credibility and probative value of the witnesses' testimony in making his findings of fact. Proposed findings not made herein in the form proposed, or in substantially that form hereby are rejected. Any motions heretofore made and not previously ruled upon hereby are denied. The undersigned hearing examiner has carefully considered the entire record, including the exhibits, the pleadings and the testimony of the witnesses. Based upon the entire record in this proceeding, the hearing examiner makes the following:

FINDINGS OF FACT

1. Individual respondent, Marco Scratow, of Warehouse Builders, 418 East Eighth Avenue, Munhall, Pennsylvania, brokers of discount paper, graduated from the University in 1944 (Tr. 19). Thereafter he was employed by the General Electric Company in Pittsburgh, Pennsylvania, for a short time. Subsequently he engaged in the business of selling and installing home heating and air conditioning equipment,

doing business as ENGINEERING HEATING AND AIR CONDITIONING COMPANY. Marco Scratow in some instances, used the corporate form to conduct his various businesses, and in some instances he operated as a sole proprietorship. Whether operating as a sole proprietorship or as a corporation, Scratow has always been the true owner and proprietor of the business. HOUSE OF MARBET, INC., is only one of several corporations used by Scratow in conducting his businesses. In every instance in which Scratow conducted his business through the use of the corporate form, he was either the sole or controlling stockholder of the corporation. Scratow formulated, directed and controlled the acts and practices of all of the corporations and the sole proprietorships which he owned, including the present corporate respondent the House of Marbet, Inc. (hereafter HOM). The names and forms which Scratow has used in conducting his businesses include:

A. *Engineering Heating and Air Conditioning Company*, from 1949 to 1963.

B. *Marbet Heating Company*, a sole proprietorship, doing heating and air conditioning work selling G.E. equipment, furnaces and air conditioners (Tr. 19).

C. *Marbet Heating & Air Conditioning Company*, a sole proprietorship. At the time of Scratow's appearance on the witness stand, he stated that (Tr. 21) Marbet Heating and Air Conditioning Company had gone out of business. However, at least 14 of the home improvement contracts in evidence which were negotiated in the name of "House of Marbet, Inc.," provide at the end for their approval or acceptance not by HOM but by "Marbet Heating & Air Conditioning Company" (see CX 2, CX 3, CX 11, CX 13, CX 14, CX 16, CX 17, CX 20, CX 21, CX 27, RX 12, RX 14, RX 22 and RX 23).

D. *Stuart Homes, Inc.* (Tr. 35), a corporation, was active from the middle of 1962 to mid-1963, for the purpose of constructing homes and placing home mortgages. At the time of his appearance Scratow testified that Stuart Homes, Inc., was inactive, although still in existence.

E. *Charmwood, Inc.*, manufactured and installed kitchens (Tr. 36). At the time of his testimony, Scratow did not know whether Charmwood, Inc., was legally in existence or had been legally dissolved.

F. *Everlast Products Company*, a brokerage house for Vista Stone, acted as a factory agent for Hollywood Manufacturing Company which manufactured Vista Stone. Scratow was sole proprietor of Everlast Products Company and testified that that company had gone out of business.

G. *The House of Marbet, Inc.*, the corporate respondent. From 1959 until April 30, 1962, Scratow sold home improvement contracts under the name of The House of Marbet, Inc. This was a corporation organized and doing business under the laws of the State of Pennsylvania. Scratow did not remember the names of the other officers of the corporation (Tr. 14).

2. Although the corporate respondent, HOM, may have ceased to transact business, and may, as of now, be legally dissolved under the laws of the State of its incorporation, Pennsylvania, the ease and frequency with which Scratow has moved in and out of sole proprietorships, corporations and any other business forms which suit his business convenience at any particular time, compels a finding that if Scratow should, in the future decide to reenter the business of selling home improvements, or home improvement contracts, he could reactivate the House of Marbet, or form another corporation with a similar name to sell such home improvement contracts. The record does not contain official government documents setting forth precise and exact legal status of any of the seven different businesses above named. Such defenses, therefore, as abandonment, or lack of public interest in this particular proceeding, which may have been asserted, inferentially or directly, on behalf of the corporate respondent HOM or on behalf of Scratow are rejected as being contrary to the evidence. Scratow was the "moving force" behind HOM and dictated the policy it would follow (Tr. 15). HOM promoted the sale and installation of home improvement jobs. HOM on its own credit, purchased the material, and, with its own funds, paid the labor used in completing the jobs. In some instances HOM subcontracted out the home improvement jobs. In such instances, HOM might not have used its own funds to buy the materials or pay the labor.

3. Individuals who sold the home improvement contracts for respondents were in several separate categories: herein for convenience referred to as (a) canvassers, (b) salesmen, and (c) solicitors. Neither the canvassers, salesmen, nor solicitors were employees of respondents. Canvassers were independent contractors who financed all of their own operations, including the operation of their automobiles, and paying the salesmen. If any oral misrepresentations were made to prospective buyers of home improvements, such oral misrepresentations were made either by the canvassers, salesmen, or solicitors. Scratow personally never made to any buyer of any home improvement any of the misrepresentations alleged in the complaint.

4. Respondents usually paid the canvassers 75% of the net profit on each home improvement contract (see Tr. 614). Respondents pur-

chased the contracts from the canvassers, and assumed full responsibility for making the home improvements and otherwise completing the seller's obligations under the contracts in a satisfactory manner. Respondents purchased the aluminum siding, the furnaces, the roofing, and all other required equipment and building materials on respondents' credit. The equipment and material was billed to respondents and paid for by respondents. In some instances respondents paid for the labor used to install the equipment and materials (Tr. 16), but when an entire home improvement job was subcontracted out respondents usually negotiated a single all-inclusive price with the subcontractor. Respondents were liable to and paid the subcontractors this negotiated price. Subcontracting out the jobs did not relieve respondents from their legal obligations as sellers under the home improvement contracts.

5. However, not all home improvement contracts sold by the salesmen were actually carried out by respondents. In some instances respondents subcontracted the entire job and paid the subcontractor a flat fee for the particular job (Tr. 43-49, incl.).

6. The "salesmen" were employees of the "canvassers." The precise basis upon which the canvassers compensated the salesmen is not clearly set out in this record but is of no substantial legal consequence. Sometimes a home improvement contract was sold through the joint efforts of more than one salesman, or a salesman and a canvasser. The "solicitors" were usually the persons who made the initial contact with a prospect, to determine whether it would be worth a salesman's time to call upon the prospect.

7. Respondents furnished their canvassers a "pitch book" which outlined the sales "pitch" to be made by the salesmen to prospective buyers. These "pitch books" were available to and used by the salesmen and the canvassers. These "pitch books" contained specimen copies of the guarantees which were issued by each of the guarantors. The specimen guarantees as set forth in the pitch books include Exhibits CX 4, CX 5, CX 6, CX 7A, CX 7B, CX 8A, CX 8B, CX 9A, CX 9B, CX 10, CX 19A and CX 19B, CX 29B and CX 29C, and these were usually shown by the salesmen to the prospective buyers when the buyer raised the question of a guarantee.

8. Within the context of the Federal Trade Commission Act, and the legal interpretations of it, Scoratow was, and is, legally responsible for the consequences of all representations made by the canvassers, salesmen and solicitors who sold and attempted to sell his home improvement contracts. This responsibility attached, and remains, whether Scoratow was, and is, doing business as an individual,

or as a sole proprietorship, or as a corporation, *i.e.*, as Marbet Heating & Air Conditioning Co., or the House of Marbet, Inc.

9. "Scoratow salesmen" as used herein means those persons individually, or in the aggregate, who solicited, promoted, negotiated, and effectuated the sale of home improvements to the buyers thereof.

10. Respondents furnished their canvassers, who in turn furnished their salesmen, a complete set of papers or forms for effectuating sales of the home improvement contracts. These forms included "MECHANICS INSTRUCTION SHEETS" (CX 1); "ENGINEERING CONTRACTORS" (CX 2); "CUSTOMER COMPLAINT FORM" (RX 26); "CUSTOMERS MODERNIZATION CREDIT APPLICATION" (RX 36, RX 38); "DISBURSEMENT SHEET" (RX 39); "CONDITIONAL SALE CONTRACT" (RX 40). The canvassers, salesmen and solicitors represented to prospective buyers that respondents were the sellers. Prospective buyers were led to believe and did believe that respondents were the sellers of the home improvements.

11. Although a few witnesses in support of the complaint denied that they had signed some of these documents, the answers of these same witnesses, upon cross-examination, made it appear that these witnesses had not recalled all the facts accurately. For instance, certain information listed upon these credit applications (RX 36, RX 38) could have been obtained only from the witnesses themselves. The witnesses admitted that they must have been the ones who supplied the credit information. The examiner finds that all complaint witnesses signed a complete set of the papers required to buy the home improvements. Without such signatures respondents would not have approved the sale nor would General Electric Credit Corporation have financed the purchases.

12. The House of Marbet, Inc., the corporate respondent, secured its charter to do business in the State of Pennsylvania on October 9, 1959, and ceased selling home improvement contracts to the public after April 30, 1962 (Tr. 52). At the time of Scoratow's appearance on the witness stand HOM had ceased doing business, although it had not been legally dissolved under the laws of the State of Pennsylvania.

13. During the period from November 9, 1959, to September 30, 1960 (HOM's fiscal year ran from October 1 to September 30), respondents made home improvement sales to customers in the amount of \$3,602,165.19, of which 2% represented sales to purchasers located outside of the State of Pennsylvania. From October 1, 1960, to September 30, 1961, respondents made home improvement sales to consumers in the amount of \$4,417,285.12, of which amount 2% represented sales to home improvement purchasers located outside the State of Pennsylvania. From October 1, 1961, to April 30, 1962,

respondents made home improvement sales in the amount of \$754,078.03, of which amount 2% represented sales to home improvement purchasers located outside the State of Pennsylvania (see Tr. pp. 7-10).

14. During the period of time that Scratow did business as the House of Marbet, Inc., he generated in excess of 5,000 home improvement contracts providing for General Electric Credit Corporation (GECC) installment credit to the home improvement buyers. These contracts were sold to General Electric Credit Corporation in Pittsburgh, Pennsylvania. Of this number, approximately 100 contracts "more or less" represented business outside the State of Pennsylvania (Stein testimony, Tr. 765, 766).

15. In the course and conduct of their business, respondents caused their products, when sold, to be shipped from their places of business in the state of Pennsylvania to purchasers thereof located in various other States of the United States.

16. In the conduct of their business, at all times relevant to this proceeding, respondents were in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents (Tr. 33, 34).

17. Until on or about April 30, 1962, respondents maintained a substantial course of trade in their products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

18. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this proceeding. This proceeding is in the public interest.

19. Respondents used television and newspaper advertisements to solicit home improvement sales (Tr. 23 and 24). The leads generated through radio and television advertising were turned over by respondents to their canvassers. No charge has been asserted that respondents made any misrepresentations in their television and newspaper advertising.

20. The following purchasers of home improvement contracts testified in support of the complaint:

Mrs. Dorothy Smarra, Hermine, Pa. (Tr. 56)
Mrs. Kenneth Rugg, Confluence, Pa. (Tr. 102)
Mrs. Lena Delpiere, McDonald, Pa. (Tr. 109)

FROM NEW CASTLE, PENNSYLVANIA:

Mr. Ira Gene Brown (Tr. 123)
Mr. James W. Curwin (Tr. 133)
Mrs. Viola Hamett (Tr. 149)
Florence M. Barlett (Tr. 157)

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FROM STEUBENVILLE, OHIO:

Nicholas Giannaras (Tr. 174)

Charles M. Miller (Tr. 196)

Lucille Whitlock (Tr. 223)

FROM IRONDALE, OHIO:

Francis Dye (Tr. 238)

David R. Young (Tr. 285)

William R. Beckwith (Tr. 316)

FROM WEIRTON, WEST VIRGINIA:

Samuel J. Iaquina (Tr. 340)

Lucy Brewer (Tr. 370)

Paul F. Leszun (Tr. 411)

Ethel and Harold Reed (Tr. 430)

Mrs. Mary E. Sartor (Tr. 443)

Edward Rowe (Mary C. Renner), New Cumberland, W. Va. (Tr. 390)

Gerald I. and Dolly Nelson, Cameron, W. Va. (Tr. 493)

Gale W. Scheetz, Follansbee, W. Va. (Tr. 529)

21. Respondents produced as their witnesses Scoratow's canvassers or salesmen who had participated in negotiating most of the contracts listed in the above paragraph. Some of respondents' witnesses were canvassers and some were salesmen. All were available for cross-examination by complaint counsel.

22. Respondent Scoratow testified. The man in his office responsible for seeing that the contracts were faithfully performed, Frank Pagnotta (Tr. 620) testified and Walter Stein, of General Electric Credit Corporation in Pittsburgh, who handled the Scoratow-House of Marbet papers testified (Tr. 760).

23. The canvassers and/or salesmen who testified, and the contracts as to which they testified were:

Canvasser, salesman or solicitor:	Contract
Gerald Schall (Tr. 549)-----	Smarra.
Marvin Fink (Tr. 567)-----	Barlett.
Bernard Harris (Tr. 606)-----	Nelson.
E. K. Hughes (Tr. 646)-----	Rugg.
Paul William Standley (Tr. 653); Habib Aschi (Tr. 678).	Dye, Beckwith, Young.
Joseph S. Miller (Tr. 689)-----	Brown, Brewer, Rowe, Sartor (Jeter), Scheetz, Leszun.
Virgil Bua (Tr. 741)-----	Delpiere, Reed.

24. Purchasers of home improvements signed an agreement for their respective home improvements on House of Marbet, Inc., letterhead with the familiar General Electric (GE) circle on each side reading, *inter alia*,

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ENGINEERING CONTRACTORS

To:

[Here are several small lines for the names and addresses of purchasers.]

The undersigned Seller hereby agrees to sell and install [here is a blank space for writing in the work to be done, and the equipment, such as siding, drain spouts, furnaces, roofing, etc. to be installed] in conformance with the specifications of a proposal (No. ----- and attached hereto to be submitted) which is made a part of this contract, on the premises of the Buyer as described in said proposal, for a total price of \$ ----- to be paid as follows:

\$ ----- upon acceptance of this contract, and

\$ ----- upon -----, and

\$ ----- upon completion of the installation.

All payments must be made promptly.

Title to the property which is the subject of this contract (except electrical wiring, ducts, piping embedded in walls, floors or ceiling installed by Seller, which shall become part of the building and are not any part of the property to which title is retained as hereinafter provided) shall not pass to Buyer until said price is fully paid in cash; and property shall remain strictly personal property and nothing (anything which may be done by the parties hereto to the contrary notwithstanding) shall prevent the Seller from removing same, or so much thereof as Seller, in its sole discretion may determine, from any premises to which it may be attached, upon any breach of this contract.

Buyer authorizes any attorney or prothonotary to appear in any court of record in the United States and confess judgment, as of any time, as of any term, in the amount of the unpaid balance owing under this contract against the Buyer and in favor of the Seller and waives the issue of process and all rights of appeal as well as property exemption laws.

There is no agreement, verbal or otherwise, which is not set down herein, and there are no warranties other than those contained in the proposal referred to above; no waivers or modifications shall be valid unless written upon or attached hereto. (Italics supplied.)

This agreement shall not become effective or binding on the Seller until approved by one of its officers, or other authorized executive.

In case of customer's default in agreement, equipment, eligible to be removed and cost of such billed to customer.

All quotations are current market prices and are subject to change within 30 days.

In case of cancellation of this contract, 20 per cent of the total amount of job will be retained.

Executed in triplicate this ----- day of -----, 19---. The parties intend to be legally bound hereby.

Witness (or Attest):

----- (Seal)
Buyer's Signature (or Title of Company)

By -----
Title (if any)

Attest:

Accepted and approved:
MARBET HEATING & AIR CONDITIONING Co.

By -----

Title

Copies of the above contract are in evidence for the following: CX 2, Whitlock; CX 3, Dye; CX 11, Young; CX 13, Beckwith; CX 14, Iaquinta; CX 15, Brewer; CX 16, Leszun; CX 17, Reed; CX 20; RX 43 (Jeter) Sartor; CX 23, Nelson; CX 27, Scheets; RX 2, Smarra; RX 12, Delpiere; RX 14, Curwin; RX 16, Barlett; RX 22 and RX 23, Miller; RX 49, Brown; RX 52, Rowe.

25. After these agreements were signed they had to be approved by respondents. If so approved, respondents subsequently sold them to General Electric Credit Corporation (hereafter GECC), in Pittsburgh without recourse (Tr. 790). GECC completed its credit check of the buyers based upon information in the "Customers Modernization Credit Application" which was completed at the time the contract was signed (see RX 36 and RX 38 for specimens of these forms).

26. Respondents did not accept all contracts submitted to them by the canvassers, salesmen and/or solicitors (Tr. 615). GECC did not buy all the contracts submitted to them by respondents.

27. After the contracts were approved by respondents the contracts were sold, without recourse, to GECC. The contracts and other related papers were turned over to GECC. Starting in June 1960 GECC sent the home improvement buyers two communications reading as follows:

Dear Customer:

Your dealer, _____, has presented your contract for purchase indicating completion of all work as listed on your contract. You will shortly receive a coupon book from our Canton, Ohio Service Center outlining our insurance coverage and your payment schedule.

Payments will run _____ months at \$_____, with first installment due _____. This will constitute our only terms agreement. If you have any question, this should be clarified immediately as no other paying arrangement can subsequently be accepted.

We are pleased to handle your account and will look forward to hearing from you if we may be of further service in any manner.

Very truly yours,

GENERAL ELECTRIC CREDIT CORP.,
PROPERTY IMPROVEMENT DEPT.

(RX 56)

RX 55 reads:

NOTICE OF PROPOSED PURCHASE OF PROPERTY IMPROVEMENT CONTRACT

We have approved for purchase the Property Improvement Contract which you entered into with _____, (the Dealer), under date of _____, whereunder the Time Price Balance is \$_____, payable in _____ installments of \$_____ each, together with the accompanying judgment Note in like amount and payable in like installments, subject to our being furnished with the Completion Certificate mentioned below. Upon our actually purchasing the Contract

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and Note, a coupon book indicating payment due dates and other information will be forwarded to you.

We do not inspect the installation of the improvements and the performance of the work covered by the Contract but will purchase the Contract only upon the Dealer furnishing us with a *Completion Certificate* signed by you, acknowledging that the same have been completed to your satisfaction and we will rely on such signed certificate in effecting the purchase. *You should be certain, therefore, that you do not sign the Completion Certificate until you are satisfied that the installation and work have been fully completed.*

The Contract does not include any charge for insurance against damage to your property by fire, flood, etc. To substantiate that your property is adequately covered, we request that you furnish us with a copy of your current Fire Insurance Policy.

Should you have any questions of any nature regarding this transaction, please notify us immediately.

Very truly yours,

GENERAL ELECTRIC CREDIT CORP.,
PROPERTY IMPROVEMENT DEPARTMENT,
Credit Manager.

28. Thereafter, GECC sent the buyers a payment book showing the number of monthly payments required and the amount of each monthly payment. The record does not contain substantial evidence that any of the 22 buyers who testified ever complained to GECC that the payments set forth in RX 55 and RX 56, forms which they received or in the installment payment books which they received were at variance with the representations made by Scoratow salesmen. Two buyers complained to GECC because the work was not satisfactorily completed (Mrs. Dorothy Smarra), and that the furnace had not been installed as it should have been (Mr. Iaquinta). Complaint counsel has failed to prove by a preponderance of reliable, probative and substantial evidence in this record that Scoratow salesmen ever misrepresented to any purchaser the cash price of any home improvement contract, or the cost of the improvements if paid in 54 or 60 equal monthly installments to GECC. None of the witnesses who testified paid for the improvements on a cash basis. Some did arrange for a "six months skip" payment which postponed commencement of the payments for six months and required 54 instead of 60 monthly payments. The six months skip plan is in the GECC book (RX 57). The 54 monthly payment plan did require higher monthly payments than the 60 month plan, and purchasers eventually made up, or paid for the interest on the loan which had been postponed during the first six months. All this appears on RX 57 which Scoratow salesmen used in computing payments due.

29. A brief summary of some of the highlights of the testimony is as follows:

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MRS. DOROTHY SMARRA, of Herminie, Pa., a witness in support of the complaint, testified that she and her husband entered into a home improvement contract with respondents on September 10, 1959, RX 2 (Tr. 65), for asphalt siding, new box gutters, changing of windows and fixing of leaking roof (Tr. 61), to be paid in 60 payments over a period of 5 years (Tr. 61, 62); that the sale was an installment time sale and not a cash sale (Tr. 88); that she was informed that the cash price would be about \$2,049 for the job (Tr. 88, 89); that she knew that there would be financing charges on a time installment sale (Tr. 89); and that the siding and box gutters were guaranteed for 20 years (Tr. 62, 63). Mrs. Smarra's complaint was that the box gutters were not properly installed and were tarred (Tr. 95, 100, 101, 102). The Smarra contract provides for 60 payments at \$46.23 (Tr. 65). Gerald Schall, the Smarra salesman, testified that the Smarras requested Glatex siding (Tr. 551); that \$2,049 was the cash price; that the Smarras could not pay cash and requested installment credit financing (Tr. 552); that he used a General Electric chart, in the presence of the Smarras and informed them that the payments for the cash price of \$2,049 would be 5 years or 60 months at \$46.23; that 60 payments at \$46.23 was written on the contract prior to the signing thereof (Tr. 552); that no guarantees were made to the Smarras since they had already decided upon Glatex siding and were just trying to find the lowest price. In her correspondence with GECC (RX 8A, RX 8B), Mrs. Smarra never mentioned guarantees nor objected to the financing arrangements. The Smarras knew that the cash price was \$2,049, and knew that there would be financing and interest charges on an installment credit sale. The Smarras requested the Glatex siding; knew the product, and were not induced to buy the product on any representations as to guarantees.

MRS. KENNETH RUGG, of Confluence, Pa., was a witness in support of the complaint. She and her husband contracted with respondents in January 1960 (Tr. 103) for a fuel oil furnace (Tr. 104). Mrs. Rugg's testimony concerned the oral representation as to what their obligations would be if Mr. Rugg were out on strike and did not have any work. RX 10 dated February 5, 1960, is a written statement by Kenneth Rugg that the job was completed and satisfactory (Tr. 108). E. K. Hughes, the Rugg salesman, testified that he never represented to the Ruggs that there would be a clause in their contract so that if Mr. Rugg were laid off that the Ruggs would not have to make any payments during the period that he was laid off. Hughes testified that he only represented to the Ruggs, by way of illustration, that during the prior steel strike GECC "went along with the steel workers

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and GECC would go along with customers who had bona fide reasons for asking for extensions of time to make payments" (Tr. 647, 648). The evidence shows this was a true statement.

MRS. LENA DELPIERE, of McDonald, Pa., a witness in support of the complaint, testified that in July 1959, she and her husband contracted to have a furnace installed by respondents (Tr. 111); that respondents offered a free swimming pool (Tr. 111); that she did not receive the swimming pool (Tr. 112); that she had forgotten about it and was not interested in the swimming pool (Tr. 112); that RX 11 had written thereon free swimming pool and that the cash price of the job was \$1,086 (Tr. 120); that she purchased the furnace on an installment credit basis and knew that she had to pay interest charges (Tr. 120); she testified that during the 6 month skip period during which time no payments were to be paid, interest was to be charged to her (Tr. 120). Mrs. Delpiere's complaint was that she did not receive a free swimming pool which was listed on RX 11 as a contractual obligation of the respondents, and that she was charged interest during the 6 month skip period which increased her interest rate on the five year installment contract. She had no complaint about the interest which was charged for the period of $4\frac{1}{2}$ years or 54 months after the 6 month skip period. Mrs. Delpiere's half-hearted complaint was that interest was charged during the six month skip period even though she knew it would be assessed. The contract, RX 12, stated on its face thereof that if it were paid before the due date that there would be no interest charges. Virgil Bua, the Delpiere salesman, testified that \$1,086 was the cash price (Tr. 744, 745); that if the customer paid within 6 months, \$1,086 would be the cash price of the job without any interest charges (Tr. 745); that if the customer did not pay before the due date, that the job would be financed on a 54 month skip plan, and that the GECC chart provides for interest during the 6 months in which no payments are made (Tr. 745); that the interest charges for the 6 months during which no payment is made is included in the interest charges for the subsequent 54 months (Tr. 746); and that since the free swimming pool was stated in the contract a free swimming pool should have been given to the customer (Tr. 745). There was no misrepresentation as to a gift. The gift item was written into the contract and was a contractual obligation of the respondents. Complaint counsel might have pressed Mrs. Delpiere to find out why she did not make an effort to get the free swimming pool. It would appear that she simply was not sufficiently interested.

IRA GENE BROWN, of New Castle, Pa., a witness in support of the complaint, testified that respondents put siding on his house (Tr. 124)

about four years prior to his testifying; that it was his impression that if he became unemployed because of a strike, his regular monthly payments to GECC would be postponed until he returned to work (Tr. 124). Brown had no occasion to test the strike waiver because he had never been laid off or on strike (Tr. 124). Brown signed a promissory note after the workmen completed the job (Tr. 125). He received a 20-year guarantee on the stone and aluminum siding, but the guarantees were not delivered in writing (Tr. 126). Storm doors were not satisfactorily installed and the transom over the door and plaster job around the picture window were not finished as promised (Tr. 126, 127). The Vista Stone and aluminum siding were satisfactory (Tr. 127). Brown had been told that the siding would save heat and fuel. It did save heat and fuel (Tr. 127). Joseph S. Miller, the Brown salesman, testified that the \$2,800 on RX 49 was the cash price; the contract eventually provided for 60 payments of \$64.40 per month (Tr. 695). The GECC chart reveals that \$2,800 installment credit for 5 years requires 60 monthly payments of \$64.40 (Tr. 695, 696). The terms of the installment financing was discussed with Miller's customers and the customers knew that they had to pay financing charges and interest for installment credit (Tr. 696, 697). Miller maintained a good relationship with his customers. Twenty percent of his business was referral business (Tr. 698). Miller testified that he made no warranties on siding to customers other than the warranties in the sales pitch book shown to the customers. Miller testified that he never represented there was a 20-year warranty on ALCOA siding because ALCOA never gave such a warranty (Tr. 700). There was a 20-year warranty on Vista Stone in the sales pitch book (Tr. 700, 701). Miller testified that the only warranties he had given to customers were the manufacturers' warranty (Tr. 701). RX 49 indicates the Browns borrowed \$1,750 to pay for the home improvements and \$1,050 for payment of other obligations. The total loan or amount stated in the contract was \$2,800 (Tr. 693, 694). The Browns did not complain about the financing charges.

JAMES W. CURWIN, of New Castle, Pa., a witness in support of the complaint, testified that in 1958 or 1959 he bought aluminum siding, a stone front and storm windows from respondents (Tr. 134). The job cost \$3,000 (Tr. 134). Curwin received his book from GECC showing total payments in excess of \$3,000 (Tr. 135). Curwin claimed he was not informed about the financing charges (Tr. 135). Curwin, a Staff Manager of American General Life Insurance Company (Tr. 137) at the time of the contract, January 25, 1960, was an agent with Knights Life Insurance Company (Tr. 137). He went to work for Knights in

1958 (Tr. 138). Curwin had attended the University of Pittsburgh for two years (Tr. 138, 139). He was buying a home which was being financed by a mortgage (Tr. 139, 140); and had on many occasions made personal loans from various lending institutions prior to making his loan from GECC (Tr. 140, 141). Curwin knew that interest was paid on loans from lending institutions (Tr. 141); that the price of around \$3,000 for the job was to be financed for 60 months (Tr. 141); that he was required to pay interest for the 60 months (Tr. 141); that RX 14 dated January 25, 1960, was the contract between the Curwins and respondents (Tr. 142). In RX 15 dated March 28, 1960, Curwin stated that as to the installers "Both men did an excellent job and were courteous and cooperative in all matters concerning the above."

MRS. VIOLA HAMETT, of New Castle, Pa., a witness in support of the complaint, testified that she and her husband purchased a General Electric gas furnace from respondents in November, 1959 (Tr. 151). CX 1 shows a 20-year guarantee and a 1 year free service guarantee in writing for the furnace (Tr. 152). There had been no occasion for service on the furnace (Tr. 153). Mrs. Hamett indicated she believed that if she or her husband were laid off from work or unemployed for any reason that they could send in \$1 a month and that would cover something (Tr. 153). The furnace had been operating satisfactorily since installation (Tr. 156). There was no occasion for forbearance of payment on account of unemployment (Tr. 156). No representation had been made to her that she would get a written guarantee other than that written in the contract (Tr. 156). Mrs. Hamett understood the contract contained the entire agreement between the parties (Tr. 156). The Hametts' 20 year, and 1 year free service, guarantee was in their contract and not made in oral representation. The Hametts had not tested the guarantee because there had been no occasion to ask respondents or the manufacturers to perform thereunder. She believed there had been a representation that in case of unemployment she would not have to make any payments on her contract. There had been no occasion to test the truthfulness or untruthfulness of this representation. She had had no occasion, at any time, to request a forbearance of payment on account of unemployment. As far as this record shows the forbearance representation to this witness is not proven to have been false or misleading.

FLORENCE M. BARLETT, of New Castle, Pa., a witness in support of the complaint testified that in the fall of 1960 she purchased ALCOA aluminum siding and a stone front (Tr. 158) from respondents. The salesman represented that the stone siding was guaranteed not to crack but it did crack two weeks after installation. Mrs. Barlett testified

that although she complained, nothing was ever done about it (Tr. 158); that the salesman represented that the guarantee on the stone siding was 20 years (Tr. 159), but that she did not remember anything about a guarantee on the aluminum siding (Tr. 159). Mrs. Barlett further testified that the salesman had said that if she or her husband were laid off from work or unemployed they were to pay \$1 a month until her husband got back to work; that this statement was not true because GECC required her to make her full monthly payments (Tr. 160); and that the stone has never been fixed (Tr. 162). She testified that GECC informed her that the stone company went bankrupt and that they could do nothing about the stone guarantee (Tr. 161).

RX 16 is the Barlett contract (Tr. 164). RX 17A, RX 17B, RX 18, RX 19, RX 20, and RX 21 are letters from the Barletts to GECC complaining about the stone and stating that payments could not be made because Mr. Barlett was unemployed. These letters do not mention guarantees or representations of forbearance during unemployment made by the salesman (Tr. 162, 163, 164, 165, 166, 167, 168, 169). RX 16 shows a cash price of \$2,440 or \$62.49 for 54 months if paid by means of an installment loan. The Barletts had not complained about the financing and interest charges.

MARVIN FINK, the Bartlett salesman, testified that he gave no warranties on ALCOA siding (Tr. 572); that Vista Stone was manufactured by Hollywood Manufacturing Company and had a 20 year conditional warranty (Tr. 573, Tr. 574); that the only warranties that would be given on Vista Stone would be those contained in the sales pitch book (Tr. 573, 574). Fink stated that the warranties would be represented to the customers as stated in the sales pitch books (Tr. 574, 575); that he did not represent to the Barletts that there would be forbearance of their payments on account of unemployment if they paid \$1 per month; and that there was a misunderstanding on this subject (Tr. 575). Fink testified that during the steel strike of 1959 GECC made concessions to their deserving customers based upon payment of a \$1 per month forbearance fee by GECC borrowers unemployed as a direct result of the strike. That steel strike ended in November 1959. The Barlett contract was written September 26, 1960. Fink believed he may have mentioned the \$1 forbearance practice of GECC in order to demonstrate the good will which GECC had shown for their deserving borrowers (Tr. 576). Fink testified the \$1 forbearance practice was not publicized by him to make sales (Tr. 576, 577). Fink testified that selling home improvements is a highly competitive business. Many salesmen may have visited the home improvement

buyers including the Barletts. Representations attributed to Fink by the Barletts may have been made by some other salesman (Tr. 577). It was Fink's experience as a salesman of home improvements that customers are seldom interested in warranties on well known products, such as ALCOA siding, Rubberoid roofing, and General Electric furnaces (Tr. 578). It is significant that in the Barlett correspondence there is not one statement about guarantees and the strike plan.

NICHOLAS GIANNARAS, of Steubenville, Ohio, testified in support of the complaint that in 1959 before the steel strike he purchased aluminum siding and roofing from respondents (Tr. 176). Giannaras had an understanding that in case of a strike induced unemployment that he had to let the GECC payments go. There was a strike and Giannaras had to pay interest on the house (Tr. 177). Giannaras was offered as a premium and bonus for the signing of the contract a radio and two tickets to the ball game. He received silverware and dishes (Tr. 177, 178). The \$2,900 cash price was financed through the Mellon Bank at \$62 a month for 5 years (Tr. 182). Giannaras testified that he knew that he had to pay the bank extra for financing, that it would be over the \$2,900 so that the financed job would cost \$3,700, and that if he paid cash the price would be \$2,900 (Tr. 183). At page 177 Mr. Giannaras testified: "No, I wasn't going to pay cash for it, but I made an understanding in case of a strike or anything goes wrong, that I have to let it go, and he agreed to that. So, there was a strike and I had to pay interest on the house." It is difficult to determine how such testimony proves any of the charges in the complaint.

CHARLES M. MILLER, of Steubenville, Ohio, testified in support of the complaint that on July 14, 1959, he contracted with respondents for aluminum siding, Vista Stone and a new roof (Tr. 197-198) at \$2,195 for the aluminum siding and \$675 for the roof (Tr. 198). Miller claimed he did not know the installment credit price until he received the payment book from GECC showing payments of \$65.32 a month for the 60 months (Tr. 199). Miller claimed the salesman said nothing about a guarantee (Tr. 200); that he and his wife were purchasing their own home and were financing it with a mortgage (Tr. 203); that he knew that financing charges were paid on installment loans (Tr. 203); that he had made various loans from finance companies (Tr. 203), and had paid financing charges thereon (Tr. 204); that he had signed various papers and documents at the lending institutions where he borrowed money (Tr. 204); that he was to finance the HOM contract for 5 years or 60 months (Tr. 204); that RX 24 was a purchase money mortgage (Tr. 215); the financing charges were not filled in (Tr. 211); he could tell from examining the purchase money mortgage

that it contained provisions for financing charges and monthly payments (Tr. 215). Miller identified RX 22, his contract setting forth a contract price of \$2,195 for the siding and Vista Stone (Tr. 207). He identified RX 23 dated August 17, 1959, as the contract for the roof for \$685 (Tr. 208). Miller identified RX 25 as a letter from him dated July 21, 1960, to GECC complaining that the siding was coming apart, and stating that he would not make any payments until the job was corrected (Tr. 218). Miller identified RX 26 (Tr. 219), RX 27 (Tr. 220), and RX 28 (Tr. 221) complaining about the work. Mr. Miller was a 1952 graduate of West Virginia State College. Although he was employed as a laborer at Weirton Steel, Weirton, West Virginia, at the time of the hearing the examiner finds that Mr. Miller was not deceived by any oral representations made to him at the time he signed the home improvement contracts with respondents. He was an educated man, a college graduate, had utilized installment credit financing previously and was not misled, or deceived by statements of Scoratow salesmen. Reference is made to the testimony on page 221 where Mr. Hughes asked Mr. Miller the following question as to his education: "Do not take this next question the wrong way, it is just important in the context of this hearing, how far did you get in school, sir?"

The testimony of Mr. Miller was offered to show that he knew nothing about financing charges. Mr. Miller understood the nature of the documents that he was signing. He knew that financing charges would be paid in addition to the cash price.

LUCILLE WHITLOCK, of Steubenville, Ohio, a witness in support of the complaint, identified CX 2 (as well as RX 29 withdrawn, a duplicate of CX 2), a contract dated February 12, 1960, with respondents for Vista Stone and aluminum siding for the sum of \$2,300 cash, or \$52.24 per month for 60 months. Mrs. Whitlock testified that she knew that she was required to pay \$52.24 a month (Tr. 223), but she did not remember whether 60 months was on the contract (Tr. 233). CX 2 clearly states \$52.24 for 60 months.

FRANCIS DYE, of Irondale, Ohio, testified in support of the complaint that by contract with respondents dated April 30, 1959 (CX 3; Tr. 240), he purchased Duralum siding. The contract figure of \$1,925 included a loan of \$600 cash to him to complete two rooms and \$1,325 cash for the cost of siding (Tr. 241). In installments the payments were \$43.41 a month (Tr. 241). There was a 20-year guarantee (Tr. 242). The salesman represented to him that if he were laid off or on strike, a few dollars per month would be all he would be required to pay to obtain a forbearance (Tr. 243). Dye was laid off for eleven months and GECC gave him extensions on his payments (Tr. 243).

Dye's payment book called for payments of \$48 a month (Tr. 244). Dye had made personal loans from other lending institutions in which he had paid financing charges and signed various documents (Tr. 244, 245). Dye financed with GECC on the 6 month skip plan. Dye testified that the salesman told him that the payments would be \$43.41 a month (Tr. 246, 247), whereas his payments were \$48 and some cents for 54 months (Tr. 247). The purchase money mortgage dated April 30, 1959 (RX 30), provided for 54 monthly payments of \$48.45 beginning October 30, 1959 (Tr. 249). The difference between \$48.45 and \$43.41, as monthly payments, was due to the 6 months' skip period during which Dye made no payments, RX 31A and 31B, 32, 33, 34A and 34B are Dye's letters to GECC explaining that his payments were not regular by reason of his unemployment or sickness. These letters do not refer to strike insurance (Tr. 251, 252, 253, 254). Although Dye identified his signature on RX 30, he could not remember signing the document (Tr. 254, 255, 256). Paul W. Standley, the Dye salesman, employed by Habib Aschi as a salesman (Tr. 654), testified that \$1,925 was the cash price (Tr. 655); that he discussed financing arrangements with Dye on the 6 month skip plan (Tr. 656); that he represented to Dye that in case of strike or lay off that it would be satisfactory to pay interest each month (Tr. 657); that he worked from April 1959 to December 1959 for the respondents (Tr. 658), and that he showed Dye the manufacturer's warranty which was set forth in his presentation book (Tr. 658).

DAVID R. YOUNG, of Irondale, Ohio, testified in support of the complaint that he entered into a contract with respondents on May 12, 1959, for asbestos siding for \$960 and for a personal loan of \$800 to be used to pay off his home. These contracts totalled \$1,760 (CX 11, CX 12; Tr. 286, 287, 288, 289, 290). Young's payment book from GECC provided for 54 payments at \$44.30 a month (Tr. 291). Young testified the salesman told him that his payments would be \$32 per month (Tr. 291); that if he were laid off or on strike, he would not have to make his monthly payments upon payment of \$2 or \$3 per month during the period of lay off or strike (Tr. 292). Young was laid off and GECC extended his payments three or four different times (Tr. 292). Young received a 15-year guarantee on the ALCOA aluminum siding (Tr. 292, 293). He testified there was no complaint about the siding. It was good (Tr. 293). Young received \$615 of the \$800 (Tr. 294). Young knew the \$1,760 was to be paid upon completion of the installation, and also knew that his contract was a 6 month skip contract (Tr. 297, 298), payable "in either 5 years or 5½ years" (Tr. 297, 298, 299). Young testified he signed a modernization credit

application (RX 36; Tr. 308, 309). Young testified he understood that the interest charges were to come out of the \$800 which was loaned to him; that he received \$615 out of the \$800 personal loan and intended to sue for the \$185. RX 37A to RX 37P, inclusive, are letters from Young to GECC requesting an extension for payments on account of his being laid off. These letters contain no mention of forbearance of payments on account of lay offs, guarantees for Alcoa siding, nor financing charges of GECC (Tr. 312, 313, 314, 315).

PAUL W. STANDLEY, Young salesman, testified that the \$1,760 price was the cash price; that he explained the monthly payments, financing charges, and the 6 month skip plan to Young. He represented there would be a 15-year guarantee on the asbestos siding.

HABIB ASCHI testified that in 1959 he instructed his salesmen to tell customers that in the event of a steel strike, the customers, for some nominal payment, or payment of interest, might have their regular monthly payments waived or postponed. This waiver would have to be arranged with GECC (Tr. 683, 684). There was a set of manufacturers' warranties in the pitchbook which was shown to the customer. These warranties showed the type of product, the name of the company, and the extent of the warranty (Tr. 686).

WILLIAM R. BECKWITH, of Irondale, Ohio, a witness in support of the complaint, testified that he made a contract (CX 13) with the respondents on May 23, 1959 (Tr. 317) for the installation of Asphalt Rocktex (Tr. 318). Beckwith stated that the salesman, Paul Standley, represented that the total cost, including financing charges was \$2,350 (Tr. 319); that Standley represented that if Beckwith were laid off, upon payment of a couple of dollars a month Beckwith might have his regular monthly payments deferred (Tr. 320). Beckwith further testified that the siding was guaranteed for 15 years (Tr. 321), and that the siding job was not properly done (Tr. 321). CX 13 shows that \$2,350 was the cash price to be paid upon completion of the installation (Tr. 323). Beckwith testified at the hearing on December 4, 1963 (about 4½ years after the contract), that he had made nine payments of \$59.08 each, which establishes that GECC gave Beckwith many extensions of payments due. Beckwith understood the six month skip plan. It was explained to him in detail (Tr. 326, 327). Beckwith understood he would be required to pay \$2,350 when the job was completed (Tr. 327, 328). He had other experiences with lending institutions, and knew he would be required to pay interest and financing charges (Tr. 328, 329). Beckwith signed the contract on May 23, 1959, and was laid off June 1, 1959, for a period of 14 months (Tr. 331). Beckwith gave the credit information on his credit application (Tr.

336-40). Paul W. Standley, the Beckwith salesman, testified that \$2,350 was the cash price (Tr. 660); that it was financed on a six month skip plan; that he represented to Beckwith that if he were laid off that he might be able to make arrangements with GECC to defer the payments. Standley warranted the asbestos siding for 15 years because that was the manufacturer's warranty in his presentation book. Standley explained to Beckwith what his monthly payments would be for a 54 month period and took a credit report from him (Tr. 660-61).

SAMUEL J. IAQUINTA, of Weirton, West Virginia (Tr. 340, et seq.; CX 14), a Commission witness, owned 5 separate parcels of real estate, including one at 306 Chester Street, New Cumberland, West Virginia. The substance of Iaquina's complaint was that respondents did not complete installation of a gas furnace in the New Cumberland home. The installation was not made because Iaquina made it impossible for respondents to install the furnace. Iaquina refused to complete the interior of the house in a condition to receive the furnace, in that he did not complete the plastering around the ducts, nor did he install electric power to operate the furnace's electrical components. Iaquina wanted respondents' installers to use the electrical current run in over a makeshift wire strung in from an adjoining house. Iaquina would have respondents violate the building and fire codes, which respondents refused to do. Iaquina also represented to respondents that he had this house up for sale. Respondents agreed to wait six months and if the sale was completed within that time respondents would accept a cash payment of \$975. The house was not sold so the cash price was financed through GECC. At the time of his appearance on December 3, 1963, Iaquina still owed \$825 on his contract, which is dated February 10, 1960. Obviously GECC had been more than liberal in waiving Iaquina's payments as they became due, even though Iaquina owned four parcels of income producing real estate. From February 10, 1960, until December 3, 1964, Iaquina had made only a very few payments. He paid \$150 on a \$975 obligation over a period of 46 months.

Iaquina was completely sophisticated in the entire area of installment financing, having utilized that credit device for buying both real and personal property.

LUCY BREWER, of Weirton, West Virginia, a witness in support of the complaint, testified that her husband and she entered into a contract with the House of Marbet at monthly payments of \$70.55. She knew that her monthly payments would be high, but not how much until she got her book (Tr. 376); that the job was for siding and storm

doors (Tr. 373); that they were in the habit of borrowing money and paying interest to lending institutions (Tr. 376); that she did not remember what the salesman told her about payments and contract price (Tr. 388), that she had no knowledge of the transaction since her husband took care of all the financial arrangements (Tr. 388, Tr. 389). Her husband was in court, but was not called to testify (Tr. 388, Tr. 389). Joseph Miller, the Brewer salesman, testified that the total contract price of \$3,106.25 included disbursements of \$1,506.25 and \$1,600 for the cost of the job (Tr. 702); that he told the Brewers that their payments would be \$70.55 a month for 5 years and that the job would be financed through General Electric Credit Corporation (Tr. 703). The Brewers knew what their monthly payments would be since it was written on the contract offered in evidence by the Government as CX 15 (Tr. 373).

EDWARD ROWE, of Cumberland, West Virginia, a witness in support of the complaint, testified that in 1960 respondents installed siding and new windows (Tr. 391); that the cost of the job was \$1,800 plus \$600 to pay off some bills; that he knew that it was to be financed and knew that he had to pay interest charges (Tr. 393); that the salesman did not tell him how much interest he had to pay (Tr. 394); that he received a payment book from General Electric for 60 payments at \$55.08 a month, which totaled \$3,304.80 (Tr. 394); that he had borrowed money from other lending institutions (Tr. 398, Tr. 399), that he made arrangements for a 5 year loan (Tr. 399, Tr. 400), that he signed at the same time a Deed of Trust, RX 41, note and contract, and that he knew that he would have to pay \$55.08 for a 5 year period (Tr. 405). Mr. Rowe testified that all the papers were complete and all the blanks filled in when he signed them (Tr. 409).

PAUL F. LESZUN, of Weirton, West Virginia, a witness in support of the complaint, testified that he was a letter carrier in the United States Post Office (Tr. 411); that he entered into a contract dated April 4, 1960 with respondents, CX 16 (Tr. 414, Tr. 415, Tr. 416); that the cost of the job was \$1,300 (Tr. 416); that he expected to pay interest (Tr. 416); that the salesman did not tell him anything about the interest, but that the salesman told him that the payments would be \$32.70 for 54 months (Tr. 417); that he had put on his house asbestos siding, stone, and storm door in the basement, and that the salesman stated that the work would be guaranteed for 20 years (Tr. 418); that he never requested a guarantee after the work was completed (Tr. 419), that he gave the salesman credit information (Tr. 419, Tr. 420); that the loan was for 5 years on the 6 month skip plan (Tr. 420, Tr. 421), that he executed a Deed of Trust dated June 9, 1960 voluntarily,

RX 42, in which the payments were the same as set forth in the book received from General Electric Credit Corporation (Tr. 423, Tr. 427); and that no work guarantees were written in the contract (Tr. 428). Joseph Miller, salesman on the Leszun contract, testified that \$1,300 was the cash price (Tr. 710); that \$32.78 a month included the interest charges (Tr. 711); that he did not guarantee the whole job for 20 years; but that under his policy of selling, he would have given Mr. Leszun the same warranties which were given by the manufacturer of the products sold (Tr. 711).

ETHEL REED, of Weirton, West Virginia, a witness in support of the complaint, testified that she entered into a contract with respondents dated April 6, 1959, for a furnace, CX 17 (Tr. 432), and as shown on CX 18, Mechanic's Instruction Sheet, the heat exchanger was unconditionally guaranteed for 20 years (Tr. 433); that the furnace was operating properly since installation (Tr. 437); that the salesman only guaranteed the heat exchanger for 20 years (Tr. 438), that two years later, respondents placed Vitramic siding on her house (Tr. 442). On page 443, the following testimony appears:

TRIAL EXAMINER. I see. What is the nature of your complaint, if any, about your relationship with the House of Marbet?

THE WITNESS. Well, the only thing is that several people have told me that I paid too much for both jobs. That I probably could have gotten it done cheaper at other places.

TRIAL EXAMINER. Do you think they misrepresented how much you should have to pay for the job? Did they misrepresent how much you had to pay for the job?

THE WITNESS. Well, no, I suppose they told me what it was, and I just don't have much business sense about things like that.

TRIAL EXAMINER. Thank you very much.

Virgil Bua, the Reed salesman, testified that the heat exchanger was guaranteed for 20 years, which guarantee was put in writing (Tr. 750). At page 750 the following testimony appears:

Q. In other words, not only did you tell the customer that the Heat Exchanger was guaranteed for 20 years, but you specifically put that in your writing and contract?

A. That is what I am supposed to do. Anything verbally I was instructed to tell the customer these facts and write it down. In other words, when I would leave the home, I asked them, do you people know what you have bought from me; do you know how much it cost; do you know what your monthly payments are; do you know what you are getting for your money; and, they would agree.

Mr. Bua did not guarantee the whole furnace for 20 years, he only represented that the heat exchanger was guaranteed for 20 years and the electrical parts of the furnace for one year (Tr. 751).

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MARY E. SARTOR, of Weirton, West Virginia, a witness in support of the complaint, testified that she entered into a contract dated April 2, 1960, CX 20 (Tr. 446) with the respondents for siding, gutters and roofing (Tr. 447); that she did not pay cash and financed it by a mortgage (Tr. 447) and understood that she would pay \$1,695 (Tr. 447); that she knew she had to pay interest when she borrowed money (Tr. 448); that the salesman said nothing about interest (Tr. 448); that she owed \$1,695 on the contract (Tr. 448); that she signed two different contracts (Tr. 449); that the salesman told her that her payments would be \$38.58 a month, but it was \$38.98 when she got her payment book (Tr. 450); that she did not remember the salesman telling her how many months she would pay the \$38.58 (Tr. 452); that no guarantee was made on the siding (Tr. 450, Tr. 451); that RX 43 is a contract dated April 18, 1960, and signed by Mary E. Jeter, that RX 44 is a Conditional Sales Contract dated April 18, 1960, and signed by Mary E. Jeter, which Conditional Sales Contract shows a cash price of \$1,695 and financing charges of \$643.80, or a total of \$2,338.80, that RX 44 was filled out at her home on April 18, 1960, and properly executed and left with her and given by her to her attorney (Tr. 455, Tr. 456). Joseph Miller, the Sartor salesman, testified that the reason for the two contracts with Mary Sartor was that the property was titled in the name of Mary Jeter (Tr. 712, Tr. 713), that the two contracts were for the same job (Tr. 713), that the price including interest would be \$2,314.80 (Tr. 714), and that two years after this job he sold Mrs. Jeter and her husband a G. E. furnace (Tr. 715).

GERALD I. NELSON, of Cameron, West Virginia, a witness in support of the complaint, testified that he entered into a contract with respondents on May 11, 1960, CX 21 (Tr. 465, Tr. 466); that Bernard Harris was the salesman (Tr. 466); that he signed a disbursement sheet, CX 22, dated May 11, 1960 (Tr. 466); that he contracted for concrete work on his house (Tr. 467); that he entered into a second contract dated January, 1961, CX 23 (Tr. 468, Tr. 469), that the job was to be financed through GECC and that to his knowledge the price of \$2,050 included interest (Tr. 470). The contracts state the monthly payments and the number of months. The first contract, CX 21, providing for 60 payments of \$47.15 was marked "Void." The second contract, CX 23, states "the balance of \$1,100—finance 48 mo. at \$29.75 per month." Nelson testified that he financed the job for 5 years and expected to pay interest for 5 years (Tr. 480); that he knew from May 11, 1960, that the contract was for 60 payments at \$47.15 as set forth in CX 21 (Tr. 481), that he signed the Deed of Trust, RX 48A through D, at the time Mr. Pagnotta came to make settlement with him, which Deed of

Trust from General Electric Credit Corporation stated that he owed \$1,428 payable at the rate of \$29.75 a month until the entire sum was paid (Tr. 485); that he signed the contract on account of fear of his children being injured on account of the physical condition of the premises (Tr. 489); and that he did not know whether the Deed of Trust was filled in when he signed it (Tr. 490). Bernard Harris, the Nelson salesman, testified that \$2,050 was the cash price (Tr. 609), that 60 payments at \$47.15 represents the installment financing price (Tr. 609); that he, Harris, computed the monthly payments for 60 months from the General Electric Credit Corporation rate chart (Tr. 610); that Nelson knew that the job was to be financed through General Electric Credit Corporation and knew that he was to make payments of \$47.15 for 60 months (Tr. 610); and that in all his contracts he, Harris, inserted the monthly payments and the period of time of the contract (Tr. 611). Frank W. Pagnotta respondents' expediter, testified that he settled the Nelson contract for \$1,100, which was the cash price, and that the customer financed the job for 48 months at \$29.78 a month (Tr. 623, Tr. 624).

FRED BURGESS, of Daniels, West Virginia, a witness in support of the complaint, testified that respondents made a deal with him whereby his house would be a sample for advertisement purposes (Tr. 495); that he would receive \$50 for each and every job that went up in his area (Tr. 495); that he contracted for aluminum siding, picture window and two storm doors (Tr. 494, Tr. 495), that he denied his signature on CX 24 dated August 11, 1960 (Tr. 496), that he signed no papers (Tr. 497); that respondents paid off his obligations in the amount of \$1,495 (Tr. 498); that he was out of work and that insurance would pay off his obligations (Tr. 498); that he understood that he received \$1,500 as a gift for the use of his house for advertising (Tr. 499), that aluminum siding was put on his house, two storm doors, front and back, and one picture window (Tr. 501), that a 17 foot awning across the front porch was promised but never put in (Tr. 501), that he was to receive a mixer at wholesale price which he never received (Tr. 515, Tr. 516), that the aluminum siding was guaranteed not to peel or crack (Tr. 517), that the entire transaction was oral between him and Mr. Tyler and that he did not sign any contracts (Tr. 520); that he never agreed upon a price for the job and never signed any papers for the price (Tr. 520, Tr. 521), that there was no agreement as to financing charges (Tr. 524), that he received \$1,495 for use of his house of sample purposes (Tr. 524, Tr. 525), that he never signed any contracts obligating him to pay anybody (Tr. 525), that he never paid any money to General Electric Credit Corporation (Tr. 526), because he never obligated

himself to pay General Electric Credit Corporation (Tr. 526). This Burgess evidence is found not to be creditable. The witness' demeanor on the witness stand and all the surrounding objective facts do not support the facts as testified to by Burgess.

GALE W. SCHEETZ, of Follansbee, West Virginia, a witness in support of the complaint, testified that he entered into a contract dated May 21, 1960, for a roofing job (Tr. 530); that under the terms of his contract, CX 27 he was to make 60 payments of \$40.04 (Tr. 531); that he was informed of the interest charges which was figured out by the salesman (Tr. 533); that he figured out the price of the job as \$2,400 or \$2,500 (Tr. 533); that the roof was guaranteed for life by the salesman (Tr. 533); that he never had trouble with the roof and that it was a good roof (Tr. 534); and that he never made any complaints about the roof (Tr. 534). Joseph Miller, the Scheetz salesman, testified that he computed the charges with Mr. Scheetz and the job was financed for 60 months at \$40.05 per month (Tr. 716), and that the roof was a Rubberoid Interlock roof and that it was guaranteed as set forth in the sales book (Tr. 716, Tr. 717).

MERVIN SNYDER of Jones and Brown Inc., Pittsburgh distributors of building materials for the Tri-State area a witness in support of the complaint testified that CX 4, 5, 6, 7, 8 and 9 were warranties that were in active use by the companies stated therein at the time he gave them to the Commission which was during May 1961 (Tr. 263, Tr. 264). He testified that respondents purchased all its aluminum siding from Jones & Brown (Tr. 271). Prior to March 1960, Duralum siding was sold to the respondents (Tr. 272). After March 1960, Alcoa siding was sold to the respondents (Tr. 272). Alcoa does not issue any guarantees in writing but there is an unwritten guarantee that Alcoa will stand behind its products (Tr. 273). Snyder represented to the respondents that Alcoa was a good product and Alcoa would stand behind any reasonable complaint on its product (Tr. 273, Tr. 274). "Alcoa has never let me down." Respondents purchased all their roofing material from Jones & Brown (Tr. 275). Respondents used only "top notch quality" building materials (Tr. 275). Snyder stated that even though a customer or dealer might not have secured any certificates or warranties for products purchased by the dealer from his company the certificates and warranties would, nevertheless, extend to the customer and be honored (Tr. 276, Tr. 277). The Altex Corporation 20 year warranty related to the Duralum siding (Tr. 282). The Mastic Corporation 15 year warranty applied to insulated siding (Tr. 283). The following specimens of warranties are in evidence:

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CX 4, Wind Warranty of The Rubberoid Co.

CX 5, 15 year warranty for plastic surfaced siding.

CX 5, 15 year warranty for mineral surfaced siding.

CX 7A, 7B, Alcoa Noninsulated Siding certificate.

CX 8A, 8B, Alcoa Insulated Siding certificate.

CX 9A, 9B, Altex Corporation, 20 year warranty.

Counsel stipulated that CX 29A through C show that as to General Electric Gas Furnaces, a one-year warranty is given with every General Electric Gas Furnace and the "Thermal Trap" Heat Exchanger is backed by a written ten-year warranty, and as to General Electric Oil Furnaces, a one-year warranty is given with every General Electric Oil Furnace and the "Vertifin" Heat Exchanger is backed by a written ten-year warranty.

THE ALLEGED "WAIVER" MISREPRESENTATION

30. In order for the "waiver" representation to be actionable under the Federal Trade Commission Act, complaint counsel must have proven in this record that the salesmen's representations that GECC would waive payments in the event of unemployment caused by strike (or other indicated causations) was in fact a *misrepresentation*, *i.e.*, that GECC would not and did not waive or extend the payments due when the borrower became unemployed on account of a strike. Twenty-two (22) witnesses testified in support of the complaint. Complaint counsel has the burden of proving, as he has alleged in his complaint, that "many" (complaint, page 3 [p. 788 herein], Paragraph Five (1)) of *respondents'* customers out of the more than 5,000 he sold, were required to make their monthly payments even though they were unemployed on account of a strike. The complaint language is imprecise, within the context of this record. Neither respondents nor Scoratow salesmen represented that failure to pay because of unemployment for any reason, would constitute grounds for waiver of payments. Neither Scoratow salesmen, respondents, nor GECC represented, or inferred, that they were including unemployment insurance as an unwritten covenant in every sales contract.

31. The gravamen of complaint counsel's "waiver" misrepresentation seems to be that respondents represented, contrary to the fact, that buyers of home improvements from them would "not be required to pay the full amount of the periodic payments due * * * when said purchasers were unemployed as a result of strikes or for various other reasons" (complaint, p. 2) [p. 788 herein], whereas "*many* were required to pay the full amount of the periodic payments * * * when they became unemployed" (complaint, p. 3) [p. 788 herein]. (*Italics supplied.*)

32. The examiner cannot believe that complaint counsel intended in the above language to assert that Scratow salesmen orally represented to prospective buyers that every home improvement contract had an unwritten clause providing unemployment insurance. Such assertion would be absurd—and certainly not proven in this record. On the other hand, if complaint counsel sought in the quoted language to assert that Scratow salesmen represented that GECC would be very liberal in granting forbearance to its borrowers who were unable, because of circumstances beyond their control, to make their regular monthly payments, then such representations were neither false, misleading, nor deceptive because GECC in fact had and practiced a liberal policy of granting relief from periodic payments to deserving borrowers who became unemployed after they had obtained installment credit from GECC.

33. Walter E. Stein of GECC testified (Tr. 762, *et seq.*) that in the early part of January 1959 there was talk of a steel strike in the Tri-State (Pennsylvania, Ohio and West Virginia) area, and GECC's previous experiences with strikes had made GECC conscious of the fact that talk of such a strike "had serious effects upon the buying power of the public." GECC was quite concerned and could feel curtailment in consumer buying (Tr. 763) and in GECC's business. For the duration of the strike GECC permitted some signers of some installment paper, which it had purchased to pay \$1 per month in return for which the regular monthly payments due under the contracts would be extended or "waived" for one month. Mr. Stein testified (Tr. 764, *et seq.*):

Q. Did your company make any extensions based on your \$1.00 strike plan during the steel strike, and a reasonable time thereafter?

A. Yes, sir.

Q. And if a customer would orally state to you, or state in writing, that some dealer, salesman, had informed them of this \$1.00 strike plan, would you recognize that representation?

A. Definitely. As long as they were involved directly with the steel strike, or indirectly. Of course, we had many customers also who were not directly affected, or indirectly affected, by this strike. Actually, we requested these people if they had financial difficulties at that particular time to pay the normal extension charge if so granted.

Q. And what would the normal extension charge be?

A. It would be one half per cent of their unpaid balance of their account.

Q. Now, when your customers, your unemployed generally by reason of illness, or laid off, or for other good reasons, cannot make their payments, what is your policy with respect to these circumstances?

A. Well, sir, we would have to be satisfied in our judgment that these were bona fide customer problems, and certainly if they were bona fide, we recognize them and work with the customer in offering an extension, or rewriting their account to fit into their current budget.

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Q. Have you, at any time, on any home improvement contract bought from the House of Marbet, given any extension of time, or adjusted monthly payments in case of need?

A. Oh yes. I would say currently, and in the past, our extensions on accounts would run somewhere around 80, 90, to 100 a month.

HEARING EXAMINER GROSS. Eighty, ninety, to one hundred per month?

The WITNESS. That is right. We have rewritten since that particular time we started into this business, the home modernization business, and we separated this from our former operations. I would say about 750 accounts that we have written due to certain consumer problems, requesting lower payments, and this economic slump we faced in the past two or three years. We have had to adjust their installments to their income.

Q. Could you give us a reasonable estimate as to about how many home improvement contracts you purchased from the House of Marbet from the time that they started to do business, say from about 1958 through April 30, 1962?

A. Well, this would be difficult to say. I have no records to refer to. Going from memory here, I would say approximately in excess of 5,000 accounts more or less.

HEARING EXAMINER GROSS. With the House of Marbet?

The WITNESS. Well, from Marbet and Company.

By Mr. GORDON :

Q. Would that be the House of Marbet and Marco Scratow?

A. That is right.

34. Scratow salesmen did not misrepresent when they told prospective purchasers that, under certain circumstances, the purchasers could have their monthly payments extended. The testimony of Mr. Stein is uncontradicted in the record, that GECC had given relief from the payments as contracted for, to 750 different accounts—or 80, 90 to 100 a month. It is reasonable to assume that out of the more 5,000 Scratow contracts which it purchased, GECC would in the natural course of events have a few borrowers whose reasons for asking waiver of payments were not good reasons. Some borrowers probably took advantage of GECC's liberal waiver policy. Likewise it is also probably true that a few deserving buyers who were entitled to some temporary relief from payments did not receive such relief.

35. The evidence fails to substantiate the complaint's charge that:

Many (meaning many of the 22 witnesses who testified) of the purchasers of respondents' products were required to pay the full amount of the periodic payments due on financial obligations assumed in connection with the purchase of respondents' products when they became unemployed.

Stein's un rebutted testimony is that those whose unemployment was directly attributable to a strike, did have their monthly payments deferred, as had been represented. It is also uncontradicted in the record that GECC showed compassion for other Scratow customers whose inability to pay was not directly related to strike caused unemployment.

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36. Several of complaint counsel's witnesses had in fact been the beneficiaries of GECC's liberal forbearance or waiver policy. For instance, during a period of 54 months *Beckwith* had made only 9 payments of \$59.08 (Tr. 320, 325, 330, 331). *Dye* testified (Tr. 243, lines 16 & 17): "we did get an extension." In RX 37K see GECC's offer to *Young* to "extend your account as requested." *Brown* had never had occasion to test whether the waiver was misrepresented because he had never been laid off (Tr. 124). For the *Hamett* contract see Tr. 153, 156; the *Bartlett* contract see Tr. 162-169, inclusive, and Tr. 575-577, inclusive. For the *Young* contract, Exhibits RX 35-RX 37P, both inclusive, are documents prepared at or about the dates they bear, and give an accurate picture of *Young's* relationship with GECC. *Young's* failure to perform under his agreements with GECC were treated very sympathetically by GECC.

37. The alleged "waiver" misrepresentation should be dismissed for failure of proof.

THE ALLEGED "COST" MISREPRESENTATION

The complaint asserts that *Scoratown* salesmen represented

that the selling price of respondents' products and the cost of installation thereof represented the total amount of the purchaser's financial obligation ;

Whereas,

in truth and in fact, * * * purchasers of respondents' products who financed their purchase were required to pay interest and other financing charges and, therefore, the total amount of their financial obligation was substantially in excess of the selling price of respondents' products and the cost of installation thereof. Respondents' salesmen or representatives, in many instances, have obtained the signatures of purchasers on contracts, promissory notes, deeds of trust and other instruments and agreements incidental to such financing and have not apprised said purchasers of the terms and conditions of such instruments or agreements or that purchasers would be required to pay financing costs in addition to the selling price of respondents' products and the cost of the installation thereof ;

38. It is not clear precisely what alleged "cost" misrepresentations, actionable under the Federal Trade Commission Act, complaint counsel seeks to enjoin in this proceeding. Implicit in the language of the complaint, quoted above, would appear to be charges: (A) that the true cost of installment financing, vis-a-vis, cash payment upon completion of a job was withheld from the buyers; (B) that *Scoratown* salesmen concealed from the buyers the true nature of the instruments which they were signing, *i.e.*, second mortgages on their homes—which somehow injured them; (C) that *Scoratown* salesmen falsely repre-

sented that it would not cost the buyers any more to pay for the home improvements in monthly installments over a period of five years than it would cost them if they paid cash upon completion of the installation. The buyers testified that he or she knew installment buying was more expensive than a cash payment. If they did not know they should have known because that fact was made clear to them by the Scoratow salesmen, and also appears on the face of the contracts which the buyers signed.

39. Complaint counsel has sought to imply that Scoratow salesmen deceived prospective purchasers by leading such purchasers to believe that the items which they were buying would not cost them as much as they actually did cost them. Complaint counsel infers that because Scoratow salesmen initially quoted a cash price, whereas, eventually all of the purchasers paid on the installment plan, Scoratow thereby misrepresented to prospective buyers the cost of the home improvements. This is *non sequitur*. Witnesses in support of the complaint testified that they did understand, and it is found that they understood, that if they paid on the installment plan they would have to pay more than if they paid cash. For instance, see Tr. 552.

40. A "six months skip" type of financing was offered by GECC to prospective buyers under which they "did not have to make any payments for the first six months of the contract." What the "six months skip" plan amounted to in net result, and what it was represented by the salesmen to the buyers to be, was that the time at which payments commenced under the contracts was postponed for six months and the loan plus interest, instead of being repaid GECC in 60 monthly installments, was repaid in 54 monthly installments.

41. The evidence proves and the examiner finds that the cost of the contracts, if paid on an installment basis, was accurately and precisely stated to the buyers on at least four separate occasions: *First*, at the time that the salesman wrote up the basic initial agreement of purchase, captioned "Engineering Contractors"; *second*, at the time that GECC mailed out to the purchaser RX 56 (Par. 27, *supra*); *third*, at the time GECC mailed out to the purchaser RX 55 (Par. 27, *supra*), and *fourth*, at the time that GECC mailed to the buyers their payment books. There is no substantial evidence that any of the 22 buyers listed in paragraph 20 above at any time complained to GECC that GECC was not setting forth accurately the number and amount of the monthly payments arranged with Scoratow salesmen.

42. RX 57, GECC's schedule of monthly payments was used by all Scoratow salesmen to compute the monthly payments required to finance home modernizations. It indicates that on a \$1,000 unpaid bal-

ance on a contract, the purchaser would pay \$23 per month for sixty months, or \$1,380. The borrower paid an extra \$380 to borrow \$1,000 for five years, or \$76 per year. However, there is no allegation in the complaint, nor was any evidence offered to prove that Scratow or his salesmen ever attempted to or did represent that the cost of borrowing the \$1,000 for five years was any less than \$76 per year. United States Senate Bill 750, "The Truth in Lending Bill," designated as a "bill to assist in the promotion of economic stabilization by requiring the disclosure of finance charges in connection with extensions of credit," is presently pending before the full Senate Banking and Currency Committee, on a report by the Subcommittee. The full Committee met on April 9, 1964, but took no action on the bill. S. 750 attempts to mandate installment lenders, somehow, to alert installment borrowers more forcefully to the exact cost of installment credit. In this proceeding, however, it has not been charged, nor proven, that Scratow salesmen ever misrepresented to a borrower the cost of installment credit.

43. Several purchasers of home improvement contracts from Scratow borrowed enough money not only to pay for the home improvements, but also borrowed additional money to pay other outstanding financial obligations. In some instances, all of these other outstanding financial obligations were consolidated into one loan which included the installment payment price of the home modernization improvements. In those instances where other obligations were paid off by loans in addition to the home modernization loans, such other outstanding obligations may have included interest and financing charges, imposed at the time that the prior loans had been negotiated. When other unpaid installment credit obligations were financed through GECC home improvement loans, the borrowers probably paid interest on interest. In the Dye contract, CX 3, a six months skip contract, the salesman included in the cash price of \$1,925, a loan of \$600 which was turned over to Dye to finish 2 rooms in his house. Dye paid \$1,325 for the Duralum siding, but borrowed the additional \$600 to finance improvements he was going to make himself (Tr. 654). The contract provides for \$1,965 to be paid upon completion of the installation. This \$1,925 contract price was financed with a loan from GECC (Tr. 565). The Beckwith job in CX 13 is also a six months skip job. The cash price of \$2,350 was financed (Tr. 660).

44. David Young purchased asbestos siding for \$960 and borrowed an additional \$800 to pay off the balance due on the mortgage on his home. This total obligation of \$1,760 was financed by a GECC six months skip plan of \$44.30 per month for 54 months. RX 37A to RX 37P, inclusive, a series of Young's letters to GECC and some GECC

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replies, concern themselves solely with Young's inability to keep up his payments. Nowhere in these letters does Young complain about the higher cost of financing vis-a-vis the cash price, nor any failure of Scoratow to make good on any warranty. According to this series of exhibits GECC, *inter alia*, in reply to Young offered "to extend your account as requested" (see RX 37K dated Dec. 2, 1959).

45. Pages 492 and 493 of the Federal Reserve Bulletin for April 1964 gives, as of February 1964:

Consumer credit outstanding-----	\$68,786,000,000
Non-installment credit-----	15,234,000,000
Installment credit-----	53,552,000,000
Installment credit held by:	
Commercial banks-----	21,799,000,000
Sales finance companies-----	13,788,000,000
Other financial institutions-----	11,867,000,000
Repair and modernization loans held by:	
Commercial banks-----	2,316,000,000
Finance companies-----	154,000,000
Other financial institutions-----	865,000,000
Total-----	3,335,000,000

The average retail credit installment purchaser, including buyers of Scoratow home improvements apparently was and is not as much interested in the total cost of the products or service they purchase as they were and are in the answer to "How much is it going to cost me each month?"

46. The purchasers of respondents' products who borrowed money from GECC to pay for them, repaid their loans from GECC in either 54 or 60 monthly installments. Such borrowers were required to pay and did pay interest and other financing charges. The total cost of home improvements paid for on an installment credit basis was "substantially" more than if such improvements had been paid for in cash at the time the improvements were installed. The purchasers understood that installment payments in 54 or 60 months were substantially more than a cash payment.

47. It was not been proven by reliable, probative and substantial evidence in this record that Scoratow salesmen ever represented to any prospective purchaser that the cash price of the home improvements, was the same as the price if the cost were financed for five years in monthly installments. Nor is there any reliable, substantial and probative evidence in this record that any of the 22 purchasers who testified in support of the complaint were led to believe, and did believe, at the time that they signed the "Engineering Contractors" form, upon the

basis of representations made to them by Scoratow salesmen, that the cash price of the home improvements and the 60 month installment payment price of the home improvements were identical.

48. Scoratow salesmen may in one or two instances—but not in *many* instances—as alleged in the complaint, have obtained the signatures of prospective purchasers to a deed of trust (a mortgage) without apprising the purchasers of the details of such instruments and agreements. The evidence preponderates in favor of a finding that the signatures to such mortgages as were executed were obtained by GECC's representatives and not by Scoratow salesmen (see witness Harris' testimony, Tr. 616; see Pagnotta's testimony, Tr. 639). GECC's interest in obtaining additional security for a few of the uncertain loans is normal, and constitutes part of every-day business procedures.

49. In every instance, at the time that the purchaser of the home improvement contract signed the basic document captioned "Engineering Contractors," a copy of the same document was left with the prospective purchaser, and some of the salesmen testified that in a few instances they told the purchasers that they would delay a few days before turning the contracts into the Marbet office, to afford the purchasers an opportunity to study the contract further and reconsider it (Tr. 672).

50. Under this "cost" charge in the complaint, counsel has failed to prove by reliable, probative and substantial evidence in this record any false, misleading and deceptive statement which is actionable under the Federal Trade Commission Act and legal interpretations thereof.

THE ALLEGED "GIFT" MISREPRESENTATION

51. Two witnesses testified in substantiation of this charge in the complaint. Lena Delpiere testified (Tr. 118) that the salesman promised her a "free swimming pool." RX 11, the Mechanic's Instruction Sheet for the Delpiere job, has the words "free swimming pool" written across the bottom. There was no attempt to deceive Mrs. Delpiere because the promise was put in writing. Nevertheless when the witness was asked whether she had ever called respondents to find out why the swimming pool had not been delivered, she replied: "I still can't say for sure. * * *" (Tr. 118). Obviously the swimming pool, undescribed in this record as to value or type, was of no substantial moment to Mrs. Delpiere.

52. Nicholas Giannaras, the other "gift" witness, testified (Tr. 177) a radio and 2 tickets to the ball game were offered to him as "a

premium or a bonus for signing the contract." He received instead "silverware and dishes." The record is silent as to whether Giannaras ever complained that the wrong bonus or premium had been delivered to him. In the absence of evidence to the contrary, we may assume that the silverware and dishes were as valuable as the radio and two tickets to the ball game, and were just as acceptable to Mr. Giannaras. Perhaps Mrs. Giannaras preferred the silverware and dishes to the radio and tickets to the ball game.

53. Walter E. Stern, Pittsburgh branch manager of GECC, testified that from about 1958 through April 30, 1962, GECC purchased "in excess of 5,000 accounts more or less" from respondents (Tr. 765). He further testified (Tr. 766-767):

Q. Were there any complaints from customers, to your office about not receiving any gifts that might have been promised to them by various salesmen?

A. Yes, we had some complaints.

Q. About how many would you say?

A. Oh, I would say half a dozen or so.

Q. And what did you do in those half dozen instances?

A. Well, in those particular instances, we would notify the dealer of the customers complaint, or request, and the dealer would see that they received their gift as promised.

54. The "Gift" misrepresentation set forth in Paragraphs Four and Five of the complaint that respondents promised that "purchasers would receive a gift of specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products; * * * when in truth and in fact * * * many purchasers of respondents' products did not receive the promised gift of a specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products" has not been proven by reliable, probative and substantial evidence in this record, and such charge in the complaint must be dismissed for failure of proof.

THE ALLEGED "GUARANTEE" MISREPRESENTATION

55. The complaint asserts that Scratow salesmen represented:

That aluminum siding and other products sold by respondents were fully guaranteed for specified periods of time.

Whereas,

in truth and in fact * * * the aluminum siding and other products sold by respondents are not fully guaranteed nor do such guarantees as are offered extend for the period of time specified. Respondents' salesmen or representatives, when advising a purchaser that a product is guaranteed, do not disclose the identity of the guarantor, the nature and extent of the guarantee and the manner or the manner in which the guarantor will perform thereunder.

56. Scratow testified at Tr. 538 as follows: Hollywood Manufacturing Company gave a twenty-year guarantee on the Vista Stone and at Tr. 539:

Well, the identical warranty that was given to us was given to the customer. * * * Well the customer did get it, they would have gotten it from Hollywood Manufacturing Company, by one of the sales persons who was involved in the sale. * * * Well I would say that some salesmen give the guarantee, and others do not give guarantees unless they are asked for it. That would have to be a generalization. I do not know.

57. At Tr. 540 Scratow testified that he had a complete book containing specimens of the guarantees and it was turned over to Mr. Dolan of the Federal Trade Commission. Complaint counsel was not able to produce the material that had been turned over to Dolan by Scratow. At Tr. 542 Scratow testified as to the guarantee on General Electric furnaces purchased from Marbet.

* * * General Electric would give a guarantee on all of the parts, and they would give a ten-year warranty on the Heat Exchanger. Now, I would give a 20-year warranty on the Heat Exchanger and the salesmen were told to write that in the contracts, and that was given directly from me, the House of Marbet, to the customer, a 20-year guarantee on the Heat Exchanger.

Scratow testified (Tr. 543) that he had had *one* claim by customers under the guarantee which he had offered on the Heat Exchanger. "I changed the complete Heat Exchanger without any cost whatsoever to the customer."

58. The twenty-year warranty on the Heat Exchanger which Scratow offered applied only to the cast iron and stainless steel Heat Exchangers which were in General Electric LP-84 oil furnaces and LC oil furnaces. Scratow had such complete confidence in the excellence of these particular Heat Exchangers that he authorized his salesmen to write the twenty-year warranty on the specification sheets (Tr. 544). The written guarantee from the General Electric Company would usually be in an envelope attached to the furnace at the time that the furnace was delivered to the customers' premises, and the guarantee would be with the furnace.

59. General Electric gave a "product warranty" (CX 19A, 19B), which was a guarantee of replacement of parts or controls. The General Electric "product warranty" was part of the pitch book which Scratow salesmen showed to the customers.

60. The salesman Fink testified (Tr. 572) that when he made sales he had with him the general sales books put out by the companies whose products he was selling. He gave no warranties on ALCOA siding because a certificate in the back of the ALCOA book has a list of certain

things that ALCOA will do or will not do and, "of course, this is the only thing that they have in their sales book." CX 7A and 8A are siding certificates of the Aluminum Company of America for ALCOA non-insulated, and insulated siding.

The only warranties that would be made are the ones that are in the vista stone siding book, because it is a sales book. It has the pictures of homes done in vista stone, and of course as you go through the book with the customer this is the selling procedure, at the end of the book—if I am not mistaken—is the conditional warranty, and there are some points in this conditional warranty that we used for sales purposes. I mean, they were very good points. I think it is a 20-year warranty, conditional warranty. (Tr. 573-574.)

61. Fink testified that some of his customers would look at the warranty and other customers were not interested in it. If a customer were interested in a warranty Fink disclosed the warranty to the customer as it was printed on the certificate and in the sales pitch book. Fink testified that in his experience as a salesman of home improvements for approximately ten years he had very few requests for warranties where the manufacturers of the products sold were well known, such as ALCOA siding, Rubberoid roofing and General Electric furnaces (Tr. 578). Fink always carried pitch books with him and these were the books he followed in making his sales presentations (Tr. 586). He did not make it a point to see to it that the customer always received a warranty, unless the customer asked for it (Tr. 587).

62. Bernard Harris testified that he always tried to follow the pitch books in making a sales presentation to the customer (Tr. 617-618).

63. Paul Standley testified (Tr. 658) in connection with the *Dye* contract that the salesman had a pitch book which had a specimen of the warranty of the company whose products were being sold. Although he did not read the warranty to prospective buyers, he showed the warranty to the customer while he was writing the contract. If the customer wanted to read the warranty "it was right there on the table" for them to read. "I never gave any warranty other than the manufacturers' warranty." In connection with his sale of the Beckwith contract (CX 13) for asbestos siding (cash price \$2350), Stanley recalled that the asbestos siding had a warranty issued by the manufacturer of the siding. This warranty was exhibited by him to Beckwith (Tr. 660-661). He wrote a six months skip financing contract for Beckwith. In connection with the *Young* contract (CX 11) (cash price \$1,760), Standley wrote a six months skip installment financing plan. He told Young there was a fifteen-year warranty on some asbestos siding. The manufacturers' warranty which was in

Stanley's sales pitch book was shown to Young in the same manner the warranties were exhibited to Beckwith. It appeared that the fifteen-year warranty of the asbestos siding is what the manufacturer gives. Standley did not deliver copies of the warranties to his customers personally but he was "under the impression that either the manufacturers, or the House of Marbet would send it to them. That was my impression." (Tr. 671.)

63. Stein of GECC testified (Tr. 767) :

I could only think of actually one complaint that is outstanding in my mind as far as warranties, and that would be one customer requested a 99 year guarantee on their aluminum siding. That is the main reason I remember that request. It seemed quite ridiculous.

64. Complaint counsel has failed to prove by a preponderance of reliable, probative and substantial evidence, in this record, that "respondents' salesmen * * * when advising a purchaser that a product is guaranteed, do [did] not disclose the identity of the guarantor, the nature and extent of the guarantee and the manner or the manner in which the guarantor will perform thereunder."

65. Stein of GECC testified (Tr. 767, 768) :

Q. What were the nature of most of the complaints, if any, that you received on these home improvement jobs for the dealer House of Marbet in this case?

A. Well, the nature of the majority of the complaints would be that of storm doors not closing properly. These are more or less in the adjustment area.

Naturally, it has been our experience and financing this type of business, you are performing many jobs that are being sold to the customer, there are going to be adjustments after this job is completed. We looked at them and treated them as complaints, so they would naturally be taken care of immediately. There were aluminum storm doors that needed adjusting, gutters and downspouts that worked loose, storms, heavy ice in the winter time would melt and come down and maybe rip them loose. There were corners on aluminum siding through the expansion and contraction of the metal through the summer time. It would pop the corners. These were all minor things. Certainly the customer is entitled to this service, and we notified the dealer, and he corrected them.

66. Mervin Snyder of Jones and Brown, Inc., a Commission witness, *inter alia*, testified that respondents used only "top notch quality" building materials: and that even though a customer might not have secured from the Scoratow salesmen a certificate of warranty for products sold by respondents, nevertheless, the manufacturers of the products would honor the warranty, even though a specimen copy thereof had not been delivered to the ultimate consumer (p. 34 [pp. 816, 817 herein], *supra*). Scoratow was selling prime quality merchandise of firms of nationally good reputations, who would back up their merchandise, if necessary. Stein's testimony concerning the absence of claims based upon the warranties further substantiates this finding.

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Order

67. Complaint counsel produced only 22 witnesses to testify in support of at least four different categories of complaints. Respondents sold more than 5,000 home improvement contracts. The testimony of complaint counsel's 22 witnesses weighed against the entire record is *de minimis*. It also fails to prove the charges in the complaint.

68. No inferences have been drawn from complaint counsel's allusion to the involvement of two Scratow salesmen in the Federal Housing Administration's so-called "PM" list. Guilt "by association," or "listing" is certainly foreign to this field of trade regulation law, and contrary to the entire system of jurisprudence under which these proceedings are conducted. Had complaint counsel desired to produce a witness from FHA to testify as to the salesmen's lack of credibility, he had ample opportunity to do so. He was invited by the hearing examiner to do so (Tr. 557). A second series of hearings which were tentatively set by the hearing examiner were canceled by agreement of all counsel.

69. It appears that Scratow's first name is "Morris" instead of "Marco." (Tr. 17.) Wherever the first name "Marco" is used to refer to Scratow instead of "Morris," it is found that it refers to Morris Scratow; "Marco" Scratow and "Morris" Scratow are the same person.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this proceeding. This proceeding is in the public interest.

2. Counsel supporting the complaint has failed to prove by reliable, probative and substantial evidence the violations of the Federal Trade Commission Act charged against respondents in the complaint issued in this proceeding.

It is, therefore,

ORDERED

that the complaint be and it hereby is dismissed.

DECISION OF THE COMMISSION

This matter has been heard by the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision holding that the allegations of the complaint had not been sustained and ordering that the complaint be dismissed. The Commission has considered the entire record, including the briefs and oral argument of counsel, and has determined that the initial decision is

appropriate in all respects to dispose of this proceeding and that the appeal of counsel supporting the complaint should be denied