

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
TRUTH IN LENDING AND THE FEDERAL TRADE COMMISSION ACTS

Docket C-2272. Complaint, August 18, 1972—Decision, August 18, 1972.

Consent order requiring a Springfield, Massachusetts, seller and distributor of home improvement products to cease, among other things, representing salesmen as officers, co-owners or advertising representatives of the respond-

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ent corporation; representing any price as special or reduced unless such price is a substantial reduction in price; failing to disclose terms and conditions of guarantees; inducing purchasers to sign blank or partially blank legal instruments or documents; failing to disclose to customers all necessary disclosures required by Regulation Z of the Truth in Lending Act. Respondent is further required to include on the face of its notes a notice that any subsequent holder takes the note with all conditions of the contract evidencing the debt.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by those Acts, the Federal Trade Commission, having reason to believe that Colonial Engineering Corporation, a corporation, and Stanley D. Saxby, (AKA S. Douglas Saxby), individually and as an officer of that corporation, hereinafter referred to as respondents, have violated the provisions of those Acts and of Regulation Z promulgated under the Truth in Lending 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 Colonial Engineering Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business located at 78 Verge Street, Springfield, Massachusetts.

Respondent Stanley D. Saxby (AKA S. Douglas Saxby) is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of corporate respondent.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of various home improvement products to the general public, including residential siding materials, and the installation thereof.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their

said products when sold, to be shipped from their place of business in the Commonwealth of Massachusetts 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 aforesaid business, and for the purpose of inducing the purchase of their products and installations, respondents have made, and are now making, numerous statements and representations through oral statements made by their salesmen and representatives with respect to the nature of their offer, their prices, time limitations, guarantees and performance of their products.

Typical and illustrative of said statements and representations but not all inclusive thereof, are the following:

Guaranteed for the life of the house.

The cost of heating your home will be cut in half.

We'll pay you \$100 for every customer obtained as a result of viewing your home.

We can give you a special reduced price because we want to use your home for advertising purposes.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not expressly set out herein, in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. Respondents' representatives or salesmen, soliciting the sale of products and installations are officers, co-owners, owners, or advertising representatives of the corporate respondent, or representatives of or connected or affiliated with the manufacturers of respondents' products.

2. Respondents' products and installations are being offered for sale at special or reduced prices, and that savings are thereby afforded purchasers from respondents' regular selling prices.

3. Homes of prospective purchasers had been specially selected as model homes for the installation of respondents' siding; after installation such homes would be used for demonstration and advertising purposes by respondents; and, as a result of allowing their homes to be used as models, purchasers would be granted reduced prices or would receive allowances, discounts or commissions.

4. The said offer of reduced prices must be accepted at once or within a limited time.

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5. Doors, railings, shutters, gutters or other things of value selected by a purchaser in connection with the purchase of siding materials and the installation thereof are given free to such purchasers.

6. Respondents' products and installations are unconditionally guaranteed, without condition or limitation, for life or for specific terms of years.

7. The purchase and installation of respondents' siding materials will result in a savings of up to 50 percent on the purchaser's heating fuel expenses.

PAR. 6. In truth and in fact:

1. Respondents' representatives or salesmen, soliciting the sale of siding materials and installations are not officers, co-owners, owners, or advertising representatives of or connected or affiliated with the manufacturers of respondents' products.

2. Respondents' products and installations are not being offered for sale at special or reduced prices, and savings are not granted respondents' customers because of a reduction from respondents' regular selling price. In fact, respondent does not have a regular selling price but the prices at which respondents' said products and installations are sold vary from customer to customer depending on the resistance of the prospective purchaser.

3. Homes of prospective purchasers are not specially selected as model homes for installation of respondents' products; after installation such homes are not used for demonstration and advertising purposes by respondents; and purchasers, as a result of allowing or agreeing to allow their homes to be used as models, are not granted reduced prices, nor do they receive allowances, discounts or commissions.

4. Respondents' offer need not be accepted at once or within a limited time. Said merchandise is offered regularly at the represented prices and on the terms and conditions therein stated.

5. Doors, railings, shutters, gutters or other things of value selected by a purchaser are not given free with the purchase of siding materials and the installation thereof, but the prices of these products are included in the price of the siding materials and installations.

6. Respondents' products and installations are not unconditionally guaranteed without condition or limitation for life or any specific term of years. Such guarantee as may be provided is subject to numerous terms, conditions and limitations and it fails to set forth the real nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder.

7. All purchasers of respondents' residential siding materials will not realize a savings of up to 50 percent in the cost of heating their residences. Few, if any, will realize such savings.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their home improvement products and installations, including residential siding materials, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

1. In a substantial number of instances and in the usual course of their business, respondents sell, transfer or assign their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

2. In a substantial number of instances through the use of false, misleading and deceptive statements and representations set out in Paragraphs Four and Five above, respondents have been able through high pressure sales tactics to induce customers into signing contracts with respondents on the respondents' initial contact with the customers. In many cases the contracts signed are blank or incomplete at the time of signing. In such a situation, it is highly improbable that the customer was able to seek out advice or make an independent decision on whether or not he should enter into the contract and, therefore, had to rely heavily on the advice and information given to him by respondents.

Therefore, the acts and practices as set forth in Paragraph Seven hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of home improvements, including residential siding, of the same general kind and nature as that sold by respondents.

PAR. 9. The use by the 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

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of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. 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 and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of the Truth In Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend or arrange for the extension of consumer credit, and for some time last past have regularly extended or arranged for the extension of consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth In Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 12. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with credit sales as "credit sales" is defined in Section 226.2 (n) of Regulation Z, have caused and are causing their customers to execute retail installment contracts, hereinafter referred to as "the contract."

PAR. 13. By and through the use of the contract, respondents, in a number of instances:

1. Have failed to disclose the date on which the finance charge begins to accrue if different from the date of the transaction, as required by Section 226.8 (b) (1) of Regulation Z.

2. Have failed to disclose the finance charge expressed as an annual percentage rate as required by Section 226.8 (b) (2) of Regulation Z.

3. Have failed to disclose the number, amount and due dates or period of payments scheduled to repay the indebtedness, and the sum of such payments, as required by Section 226.8 (b) (3) of Regulation Z.

4. Have failed to give a clear identification of the property to which any security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify, as required by Section 226.8 (b) (5) of Regulation Z.

5. Have failed to disclose the "cash price" of the property and/or service purchased, as required by Section 226.8 (c) (1) of Regulation Z.

6. Have failed to disclose the amount of the downpayment itemized as downpayment in money and downpayment in property, as required by Section 226.8 (c) (2) of Regulation Z.

7. Have failed to disclose the "unpaid balance of cash price" as the difference between the amounts described as "cash price" and "total down payment," as required by Section 226.8 (c) (3) of Regulation Z.

8. Have failed to disclose all other charges, individually itemized, which are included in the amount financed but are not part of the finance charge, as required by Section 226.8 (c) (4) of Regulation Z.

9. Have failed to disclose the sum of the "unpaid balance of the cash price" and all other charges included in the "amount financed" but which are not part of the "finance charge," as required by Section 226.8 (c) (5) of Regulation Z.

10. Have failed to disclose the "amount financed," as required by Section 226.8(c) (7) of Regulation Z.

11. Have failed to disclose the total amount of the finance charge, as required by Section 226.8 (c) (8) (i) of Regulation Z.

12. Have failed to disclose the "deferred payment price" as the sum of the cash price, all other charges which are part of the amount financed but are not part of the finance charge, and the finance charge, as required by Section 226.8 (c) (8) (ii) of Regulation Z.

13. Have failed to furnish the customer with a duplicate of the instrument containing the disclosures required by Section 226.8 or a statement by which the required disclosures are made at the time those disclosures are made, as prescribed by Section 226.8 (a) of Regulation Z.

PAR. 14. By and through the use of the contract respondents have in various instances induced and caused their customers to affix their signatures to such contracts prior to the completion and insertion of all terms and figures relevant to such contract. In such manner the respondents have failed to provide those disclosures required by Section 226.8 (a) (b) (c).

PAR. 15. By and through the use of respondents' contract to perform various home improvements, a security interest, as "security interest" is defined in Section 226.2 (z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of respondents' customers. Respondents' retention or acquisition of such security interest in said real property thereby entitles his credit customers to be given the right

to rescind that transaction until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later.

Respondents have failed in a number of instances to provide their customers with a notice of the customers' right to rescind as required by Section 226.9 (b) of Regulation Z.

PAR. 16. Pursuant to Section 103 (q) of the Truth in Lending Act, respondents' failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, the Truth in Lending Act, and regulations promulgated under the Truth in Lending Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Colonial Engineering Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business located at 78 Verge Street, Springfield, Massachusetts.

Respondent Stanley D. Saxby, (AKA S. Douglas Saxby) is an officer of the corporate respondent. He formulates, directs, and controls the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondents Colonial Engineering Corporation, a corporation, its successors and assigns, and its officers, and Stanley D. Saxby (AKA S. Douglas Saxby) individually and as an officer of said corporation trading under said corporate name or any trade name or names, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with advertising, offering for sale, sale, distribution or installation of residential siding materials or other home improvement products or services or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing that:

(a) Respondents' salesmen or representatives are officers, co-owners, owners or advertising representatives of the corporate respondent, or representatives of or connected or affiliated with the manufacturers of respondents' products.

(b) Any price for home improvement materials or other products or services, sold or installed by respondents, is a special or reduced price; unless respondents can affirmatively show that such price constitutes a significant reduction from the price at which respondents have sold or installed substantially similar home improvements, or other products or services, for a reasonably substantial period of time in the recent regular course of their business.

(c) The home of any of respondents' customers or prospective customers has been selected to be used or will be used as a model home, or otherwise, for advertising or demonstration purposes.

(d) Any reduced price, allowance, discount or commission is granted by respondents to purchasers in return for permit-

ting or agreeing to allow the premises on which respondents' products are installed to be used for model home or for demonstration purposes.

(e) Any offer to sell products and installations is limited in time or in any other manner unless any represented limitation or restriction is actually imposed and adhered to.

(f) Doors, railings, shutters, gutters or other things of value selected by a purchaser in connection with the purchase of siding materials and the installation thereof are given free to such purchasers.

(g) Any of respondents' products and installations are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented, under the terms of each such guarantee.

(h) Purchasers of respondents' siding materials and installations will realize any specific percentage or amount of savings, or that savings can be had generally in their heating fuel expenses.

2. Inducing or causing purchasers or prospective purchasers of respondents' products or services to sign blank or partially completed retail installment contracts or other legal instruments or documents.

3. Assigning, selling or otherwise transferring respondents' notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract or other documents evidencing the indebtedness.

4. Failing to include the following statement clearly and conspicuously on the face of any note, contract or other instrument of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding.

5. Contracting for any sale arising out of a door to door solicitation which shall become binding on the buyer prior to midnight

of the third day, excluding Sundays and legal holidays, after the date of consummation of the transaction.

6. (a) Failing to disclose to the buyers, in any sale arising out of a door to door solicitation, orally, prior to the consummation of the sale, and in writing, on any conditional sales contract, security agreement, promissory note or other instrument executed by such buyer with such conspicuousness and clarity as is likely to be observed and read by such buyer, that the buyer may rescind or cancel the sale by directing or mailing a notice of cancellation to respondents' address prior to midnight of the third day, excluding Sundays and legal holidays, after the date of the sale.

(b) Upon such cancellation, the burden shall be on respondents to collect any goods left in buyer's home and to return any payments received from the buyer. Nothing contained in this right-to-cancel provision shall relieve buyers of the responsibility for taking reasonable care of the goods prior to cancellation and during a reasonable period following cancellation.

(c) Failing to provide a separate and clearly understandable form which the buyer may use as a notice of cancellation.

(d) Failing to refund immediately all monies to customers who have requested contract cancellation in writing within three (3) days from the execution of such contract.

II

It is ordered, That respondents Colonial Engineering Corporation, a corporation, its successors and assigns, and its officers, and Stanley D. Saxby (AKA S. Douglas Saxby), individually and as an officer of the corporation, trading under the corporate name or trading or doing business under any other name or names, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90-321, 15 USC 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the date on which the finance charge begins to accrue when that date is different from the date of the transaction, as required by Section 226.8(b) (1) of Regulation Z.

2. Failing to disclose the finance charge expressed as an annual percentage rate, as required by Section 226.8(b)(2) of Regulation Z.

3. Failing to disclose the number, amount and due dates or period of payments scheduled to repay the indebtedness, and the sum of such payments, as required by Section 226.8(b)(3) of Regulation Z.

4. Failing to give a clear identification of property to which any security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify, as required by Section 226.8(b)(5) of Regulation Z.

5. Failing to disclose the "cash price" of the property and/or service purchased, as required by Section 226.8(c)(1) of Regulation Z.

6. Failing to disclose the amount of the downpayment, itemized as downpayment in money and downpayment in property, as required by Section 226.8(c)(2) of Regulation Z.

7. Failing to disclose the "unpaid balance of cash price" as the difference between the amount described as "cash price" and "total downpayment" as required by Section 226.8(c)(3) of Regulation Z.

8. Failing to disclose all other charges, individually itemized, which are included in the amount financed but are not part of the finance charge, as required by Section 226.8(c)(4) of Regulation Z.

9. Failing to disclose the sum of the "unpaid balance of the cash price" and all other charges included in the "amount financed" but which are not part of the "finance charge," as required by Section 226.8(c)(5) of Regulation Z.

10. Failing to disclose the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

11. Failing to disclose the total amount of the finance charge, as required by Section 226.8(c)(8)(i) of Regulation Z.

(12) Failing to disclose the "deferred payment price" as the sum of the cash price, all other charges which are part of the amount financed but are not part of the finance charge, and the finance charge, as required by Section 226.8(c)(8)(ii) of Regulation Z.

13. Failing to furnish the customer with a duplicate of the instrument containing the disclosures required by Section 226.8

or a statement by which the required disclosures are made at the time those disclosures are made, as prescribed by Section 226.8(a) of Regulation Z.

14. Failing to give notice to the customer of his right to rescind the transaction as required by Section 226.9(b) of Regulation Z, when all of the security interests in the customer's principal residence which have been or will be retained or acquired have not been effectively waived.

15. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, in the manner, form, and amount required by Sections 226.6, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

FLORIDA STATE CONSTRUCTORS SERVICE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
TRUTH IN LENDING AND THE FEDERAL TRADE COMMISSION ACTS

Docket C-2273. Complaint, August 22, 1972—Decision, August 22, 1972.

Consent order requiring a Miami, Florida, seller and distributor of home improvement products to cease violating the Truth in Lending Act by failing to disclose to customers the annual percentage rate; the total number of payments; the method of computing penalty charges and other disclosures required by Regulation Z of the said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Florida State Constructors Service, Inc., a corporation, and Joseph Weinstock, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 Florida State Constructors Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 7541 Biscayne Boulevard, Miami, Florida.

Respondent Joseph Weinstock is an officer of the corporate respondent. He formulates, directs and controls the policy, acts and practices of the corporation, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of home improvement products to the public and in the installation thereof.