

IN THE MATTER OF
ARLEN REALTY & DEVELOPMENT CORP., TRADING AS
KORVETTES, ET AL.

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

Docket C-2383. Complaint, April 18, 1973—Decision, April 18, 1973.

Consent order requiring a New York City operator of 51 department stores in numerous states and its subsidiary located in Baltimore, Maryland, whose charge plate is honored by approximately 4,000 merchants in the D.C. - Baltimore area, among other things to cease issuing credit cards without a prior request or application for them.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act, as amended, 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 Arlen Realty & Development Corp., a corporation, also doing business as Korvettes, a division, and NAC Credit Corporation, a corporation, hereinafter sometimes 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 Arlen Realty & Development Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 888 Seventh Avenue, New York, New York. Respondent Arlen Realty & Development Corp. formulates, controls, and directs the policies, acts and practices, including those hereinafter set forth, of its division, Korvettes, and of its wholly-owned subsidiary, NAC Credit Corporation.

PAR. 2. Korvettes is an operating division of respondent Arlen Realty & Development Corp. with its main office and principal place of business located at 450 West 33rd Street, New York, New York. Through this division, said respondent is now, and for some time in the past has been, engaged in the advertising, offering for sale, sale and distribution of general merchandise through over fifty (50) Korvettes retail stores located in numerous states.

PAR. 3. Respondent NAC Credit Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 200 West Baltimore Street, Baltimore, Maryland. Respondent NAC Credit Corporation, hereinafter sometimes referred to as NAC, is a wholly-owned subsidiary of respondent Arlen Realty & Development Corp.

PAR. 4. In the ordinary course and conduct of its business, as aforesaid, respondent Arlen Realty & Development Corp., doing business as Korvettes, subsequent to October 26, 1970, regularly issued credit cards, as "credit card" 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. 5. In the ordinary course and conduct of its business, as aforesaid, respondent Arlen Realty & Development Corp., doing business as Korvettes, in connection with its credit sales, as "credit sale" is defined in Regulation Z, has caused and is causing a substantial number of its customers to execute retail

installment sales contracts. Within the test of these retail installment sales contracts is a sentence to the effect that one or more credit cards are requested by the consumer. Typical of such language, but not all inclusive thereof, are the following:

1. I hereby request a Korvettes Charge Plate.
2. I request a Charge Plate from Korvettes or any of its parent or subsidiary companies.
3. I hereby request a charge plate from Korvettes, Arlen Realty & Development Corp. or any of its affiliated or subsidiary companies.

Pursuant to the above-quoted language and the consumer's signature on the retail installment sales contract, said respondent issued a substantial number of credit cards to customers who were unaware of the existence of such language and who had not intended to request or apply for such credit cards.

PAR. 6. By and through the use of said practice described in Paragraph Five hereof, said respondent issued Korvettes' credit cards without responding to a "request or application" for such credit cards, as required by the Truth in Lending Act. Further, such cards were not issued in renewal of or in substitution for an accepted credit card, as "accepted credit card" is defined in Regulation Z, in violation of Section 132 of the Truth in Lending Act and Section 226.13(b) of Regulation Z.

PAR. 7. In the ordinary course and conduct of their business, respondents Arlen Realty & Development Corp. and NAC Credit Corporation are now, and for some time in the past have been, engaged in the advertising for, solicitation and acceptance of open end credit accounts with consumers, doing business as "NAC Charge Plan."

PAR. 8. In the ordinary course and conduct of their business, as aforesaid, subsequent to October 26, 1970, respondents Arlen Realty & Development Corp. and NAC Credit Corporation regularly issued credit cards, as "credit card" 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. 9. In the ordinary course and conduct of their business, said respondents contract with retailers of goods and services to accept their "NAC Charge Plate" credit card in lieu of cash. Respondents supply special forms, sometimes referred to as "sales drafts," to be used when a cardholder charges a purchase against his NAC charge account.

On the sales draft, in addition to the information applicable to the particular sale, is language of which the following is typi-

cal and illustrative, but not all inclusive: "I hereby request an NAC Charge Card."

When a consumer makes a purchase, the sales draft is completed by the retailer, identifying the merchandise purchased, and the consumer's credit card imprint is embossed thereon. The consumer then signs the sales draft for the purpose of authorizing the credit sale.

PAR. 10. In a substantial number of instances, a consumer uses a major credit card other than an NAC Charge Plate to purchase goods or services from various retail outlets, and the sales draft supplied by NAC is used by the retailer in the same manner as described in Paragraph Nine hereof.

Pursuant to the language appearing on the sales draft and such consumer's signature thereon, said respondents issued a substantial number of NAC credit cards to consumers who were unaware of the existence of such language and who had not intended to request or apply for such NAC Charge Plate.

PAR. 11. By and through the use of said practice described in Paragraphs Nine and Ten hereof, respondents issued NAC credit cards without responding to a "request or application" for such credit cards, as required by the Truth in Lending Act. Further, such cards were not issued in renewal of or in substitution for an accepted credit card, as "accepted credit card" is defined in Regulation Z, in violation of Section 132 of the Truth in Lending Act and Section 226.13(b) of Regulation Z.

PAR. 12. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with that Act and Section 226.13 of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have violated the Federal Trade Commission Act.

DISSENTING STATEMENT OF COMMISSIONER MARY GARDINER JONES

I dissent to the Commission's preliminary acceptance of this consent order because in my judgment it fails to adequately protect the public interest.

The notice order required respondent to issue credit cards only on the basis of a written request. The consent order permits respondent to issue credit cards on the basis of oral solicitation primarily on the rational that the statute is silent as to whether the required request should be oral or in writing and that to require written requests would constitute an unreasonable or unnecessary burden on the respondent. Since this order seeks to rectify a violation of this law, the statute clearly does not

control the type of relief which may be required in order to prevent future violations. With respect to the argument based on burdensomeness, it is clear that relief should not unduly burden a respondent. But it is also clear that claimed burdensomeness should not stand in the way of necessary relief. In the instant case, requiring written requests would clearly be the most effective relief for a respondent which was charged with so burying the request within its retail installment contracts that consumers signing these contracts could hardly be said to have made a conscious deliberate request for a credit card. In respondent's future conduct, the objective is to make sure they do not try to secure the same result by different means. Oral solicitations are highly vulnerable to similar concealment in part because they will be difficult to supervise and partly because consumers will not have very specific recalls of oral conversations and the Commission will inevitably be confronted with disputes as to what was said. Accordingly, if oral solicitations are to be permitted the order should surround them with essential safeguards.

I believe the order should have required that where oral solicitations are made in person, the request for the credit card must be in writing since it will be a simple matter for the respondent to present a form request for signature. When the request is made by telephone, where written confirmation might be difficult, respondent should be required to confine his telephone solicitation to the single point of seeking a request for a credit card. If respondent is permitted to include a credit card solicitation among other solicitations or as part of a survey or what other matters which respondent may chance to talk about during the course of a telephone solicitation, the Commission staff will be unable to verify whether in fact the customer so solicited freely and consciously gave his consent to receiving a credit card. Respondent will claim the customer was fully informed, the customer may not believe so, yet the respondent will still be able to claim compliance with the order.

With the safeguard of being limited in a telephone solicitation to inquiring about the consumer's interest in receiving a credit card, disparities of recollection can be minimized and the Commission can be assured that a fast talking salesman will not again bury the request in the midst of other points being talked about and the consumer's consent, if given, will be equally clearly directed to the receipt of the credit card and not to some other questions which may have been put to him or her.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Truth in Lending Act and the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Arlen Realty & Development Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 888 Seventh Avenue, New York, New York.

Korvettes is an operating division of respondent Arlen Realty & Development Corp. with its main office and principal place of business located at 450 West 33rd Street, New York, New York.

Respondent NAC Credit Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 200 West Baltimore Street, Baltimore, Maryland.

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

It is ordered, That respondent Arlen Realty & Development Corp., a corporation, also doing business as Korvettes, a division, or under any other name or trade style, and respondent NAC Credit Corporation, a corporation, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the issuance of credit cards, as "credit card" is defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act, as amended, (Pub. L. 90-321, 15 U.S.C. 1601, *et seq.*), shall forthwith cease and desist from:

Issuing any credit card, other than a credit card issued in renewal of or in substitution for an accepted credit card, as "accepted credit card" is defined in Section 226.13(a) of Regulation Z, unless:

1. In response to the recipient's separate, signed, affirmative and specific written request or written application therefor. *Or*

2. In response to the recipient's specific oral request obtained pursuant to oral solicitation, provided that the following procedures are employed:

- A. The person making the oral solicitation must state the following, or words of similar meaning and import, at the very outset of the conversation with the person being solicited:

The purpose of this telephone call [or conversation] is to find out if you would like to have a Korvettes [or NAC or other specific name, as applicable] credit card. and

- B. A detailed log of all oral solicitations is maintained for a period of at least two years, such log to include:

- (1) The name of the individual who made the oral solicitation;
 - (2) The name of the person with whom the solicitor spoke;
 - (3) The time and date of the solicitation; and
 - (4) Whether or not a credit card was requested.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all persons engaged in the issuance of respondents' credit cards, whether or not employed by respondents, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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Complaint

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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.

Commissioner Jones dissenting
