

IN THE MATTER OF
GREATER KANSAS CITY GAS FURNACE &
AIR CONDITIONING COMPANY, INC., ET AL.

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

Docket C-2428. Complaint, August 2, 1973—Decision, August 2, 1973.

Consent order requiring a Kansas City, Missouri, retailer of furnaces, heating equipment, air conditioners, and parts therefor, among other things to cease violating the Truth in Lending Act by failing to disclose to customers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act. Respondents are further required to cease transferring any documents of indebtedness without providing that the rights or defenses of the consumer may be asserted against any subsequent holder of the documents and to include a statement to that effect on the face of any note or other instrument evidencing indebtedness. Further, the firm must recontact and offer the right of rescission to all eligible consumers who purchased on or after July 1, 1969.

Appearances

For the Commission: *E. E. Harrison.*

For the respondents: *Charles A. Gallipeau*, Kansas City, Missouri.

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 the Greater Kansas City Gas Furnace and Air Conditioning Company, Inc., a corporation, and Dennis G. Svejda, 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 Greater Kansas City Gas Furnace and Air Conditioning Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its principal office and place of business located at 3315 Troost, Kansas City, Missouri.

Respondent Dennis G. Svejda is an officer of the corporate respondent. He formulates, directs, and controls the policies, 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 for some time have been engaged in the advertising, offering for sale, and sale of furnaces, heating equipment, air conditioners, and parts therefore to the purchasing public, and in the repair and servicing of the aforementioned products.

Alleging violations 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 I as if fully set forth verbatim.

PAR. 3. In the ordinary course of their aforesaid business, respondents have regularly extended and arranged for the extension of consumer credit, as "consumer credit" and "arrange for the extension of credit" are 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. 4. Subsequent to July 1, 1969, in the ordinary course of their aforesaid business and in connection with their credit sales,

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as "credit sale" is defined in Regulation Z, respondents have caused their customers to enter into a credit agreement other than open end, hereinafter sometimes referred to as the transaction. Respondents provide the disclosures attendant to the transaction and required by Regulation Z on a separate statement, hereinafter sometimes referred to as the statement.

PAR. 5. By and through the use of the statement, respondents have failed to:

1. Identify on the statement the transaction to which it relates, as required by Section 226.8(a) (2) of Regulation Z.
2. Disclose the date on which the finance charge begins to accrue when different from the date of the transaction, as required by Section 226.8(b) (1) of Regulation Z.
3. Disclose the sum of all payments required, and describe that sum as the "total of payments," as required by Section 226.8(b) (3) of Regulation Z.
4. Provide a description of the type of any security interest held or to be retained or acquired by the creditor in connection with the transaction, as required by Section 226.8(b) (5) of Regulation Z.
5. Use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the transaction, as required by Section 226.8(c) (1) of Regulation Z.
6. Use the term "cash downpayment" to describe the downpayment in money made in connection with the transaction, as required by Section 226.8(c) (2) of Regulation Z.
7. Use the term "total downpayment" to describe the sum of the cash downpayment and trade-in, as required by Section 226.8(c) (2) of Regulation Z.
8. Use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c) (3) of Regulation Z.
9. Disclose all other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c) (4) of Regulation Z.
10. Disclose the sum of the unpaid balance of cash price and all other charges and describe that sum as the "unpaid balance," as required by Section 226.8(c) (5) of Regulation Z.
11. Use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c) (7) of Regulation Z.

12. Disclose the sum of the cash price, all charges which are included in the amount financed but which are not a part of the finance charge, and the finance charge, and describe that sum as the "deferred payment price," as required by Section 226.8(c) (8) (ii) of Regulation Z.

13. Disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

PAR. 6. In certain instances respondents have failed to deliver to customers, the statement or any other instrument containing the disclosures required by Section 226.8 of Regulation Z prior to the consummation of the transaction, as required by Section 226.8(a) of Regulation Z.

PAR. 7. By and through the use of respondents' credit agreement, 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. The retention or acquisition of such security interest in said real property thereby entitles their 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 in certain instances failed to give their credit customers the right to rescind until midnight of the third business day following the consummation of the transaction or the date of delivery of all disclosures, whichever is later, and have failed to set forth the "Effect of Rescission" in the rescission notice to their customers, as required by Sections 226.9(a) and (b).

Further, respondents have made physical changes in customers' property, and performed work or services on such property before expiration of the three-day rescission period. Respondents' failure to refrain from commencing work pursuant to rescindable contracts before the rescission period has expired is in violation of Section 226.9(c) of Regulation Z.

PAR. 8. Respondents' credit agreement contains information or explanations which contradict, obscure, or detract attention from the information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

PAR. 9. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' failures to comply with the provisions of Regula-

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tion Z as alleged in Paragraph Five through Eight herein constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

COUNT II

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 II as if fully set forth verbatim.

PAR. 10. In the ordinary course of their aforesaid business, respondents have caused their products, when sold, to be shipped from their principal place of business in the State of Missouri to purchasers thereof located in the States of the United States other than the state in which the shipments originated, and have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 11. In the ordinary course of their aforesaid business, respondents have caused their customers' obligations to be sold or transferred to various financial institutions having the status of a holder in due course, thus cutting off various personal defenses to the payment of said obligation which would otherwise be available to the obligor against respondents, if respondents still held said obligation.

PAR. 12. The act and practice of respondents, as alleged in Paragraph Eleven herein, is prejudicial and injurious of the public, and constitutes an unfair act and practice in commerce, in violation of Section 5 of 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 Kansas City 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; 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 Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed 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 hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Greater Kansas City Gas Furnace & Air Conditioning Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 3315 Troost, city of Kansas City, State of Missouri.

Respondent Dennis G. Svejda is an officer of said corporation. He formulates, directs, and controls the policies, acts, and practices of said corporation, and his principal office and place of business is located at the above stated address.

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 respondent Greater Kansas City Gas Furnace and Air Conditioning Company, Inc., a corporation, and its officers, and Dennis G. Svejda, individually and as an officer of said corporation, trading under said corporate name or under any trade name or names, their successors and assigns, and respondents' 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

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Truth in Lending Act (Pub.L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to identify on the disclosure statement required by Section 226.8(a) of Regulation Z the transaction to which the statement relates, as required by Section 226.8(a) (2) of Regulation Z.

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

3. Failing to disclose the sum of all payments required, and to describe that sum as the "total of payments," as required by Section 226.8(b) (3) of Regulation Z.

4. Failing to describe the type of any security interest held or to be retained or acquired by the creditor in the connection with the transaction, as required by Section 226.8(b) (5) of Regulation Z.

5. Failing to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the transaction, as required by Section 226.8(c) (1) of Regulation Z.

6. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the transaction, as required by Section 226.8(c) (2) of Regulation Z.

7. Failing to use the term "total downpayment" to describe the sum of the cash downpayment and trade-in, as required by Section 226.8(c) (2) of Regulation Z.

8. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c) (3) of Regulation Z.

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

10. Failing to disclose the sum of the unpaid balance of cash price and all other charges and describe that sum as the "unpaid balance," as required by Section 226.8(c) (5) of Regulation Z.

11. Failing to use the term "amount financed" to describe the amount of credit extended as required by Section 226.8

(c) (7) of Regulation Z.

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

13. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

14. Failing to furnish the customer a statement containing the disclosures required by Section 226.8 of Regulation Z, in the manner and form as prescribed by Section 226.8(a) of Regulation Z.

15. Failing, in any transaction in which a security interest or the future right to a security interest is retained or acquired in real property which is used or expected to be used as the principal residence of the customer, to comply with all requirements regarding the right of rescission set forth in Section 226.9 of Regulation Z.

16. Making any physical changes in a customer's property or performing any work or services on such property before expiration of the three-day rescission period provided for in Section 226.9(a) of Regulation Z, in any transaction in which a security interest or the future right to a security interest is retained or acquired in real property which is used or is expected to be used as the principal residence of the customer, as provided in Section 226.9(c) of Regulation Z.

17. Supplying, orally or in writing, any information to a customer so as to mislead or confuse the customer, or contradict, obscure, or detract attention from the information required by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

18. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 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.

II

It is ordered, That respondent Greater Kansas City Gas Furnace & Air Conditioning Company, Inc., a corporation, and its officers,

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and Dennis G. Svejda, individually and as an officer of said corporation, trading under said corporate name or under any trade name or names, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the transfer of any indebtedness in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. 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 such documents evidencing the indebtedness.

2. 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.

It is further ordered, That respondents shall, within thirty (30) days after service upon them of this order, deliver notice of the right of rescission, in the number, manner and form set forth in Sections 226.9(b) and (f) of Regulation Z, to each customer in each transaction entered into by respondents on or after July 1, 1969, in which a security interest or the future right to a security interest was retained or acquired in any real property which, at the time of the transaction, was used or was expected to be used as the principal residence of the customer, and that respondents shall perform all obligations set forth in Section 226.9(d) of Regulation Z in any such transaction if the customer exercises the right of rescission within the time and in the manner prescribed in Section 226.9(a) of Regulation Z.

It is further ordered, That respondents shall maintain adequate records, to be furnished upon the request of the Federal Trade Commission, which disclose compliance with the paragraph above.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future

salesmen and/or other persons engaged in the sale of respondents' products and/or services, and to all present and future personnel of respondents, engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising of that consumer credit, and shall secure from each such salesman and/or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent 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.

IN THE MATTER OF

HOFMANN CONSTRUCTION CO., ET AL.

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

Docket C-2429. Complaint, August 2, 1973—Decision, August 2, 1973.

Consent order requiring a Concord, California, builder-developer, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.