

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.

Appearances

For the Commission: *H. G. Sodergren.*

For the respondents: *pro se.*

Complaint

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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 Hofmann Construction Co., a corporation doing business as Hofmann Company, and Kenneth H. Hofmann, 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 Hofmann Construction Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, under the name Hofmann Company, with its principal office and place of business located at 989 Detroit Avenue South, Concord, California.

Respondent Kenneth H. Hofmann is president of the corporate respondent. He formulates, directs and controls the policies, acts and practices of said 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 construction, development, and sale of residential real property, and in the offering for sale and retail sale and distribution of mobile homes, to the public.

PAR 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit, as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of 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, respondents, in order to promote the sale of residential real estate, have caused advertisements to be published, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of residential real estate.

By and through the use of the advertisements, respondents:

1. Stated the rate of finance charge without describing that

rate as the "annual percentage rate," in violation of Section 226.10(d) (1) of Regulation Z.

2. Stated that no downpayment was required, without also stating all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d) (2) thereof:

- a. The cash price;
- b. The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- c. The amount of the finance charge expressed as an annual percentage rate.

PAR. 5. Subsequent to July 1, 1969, respondents, in order to promote the sale of mobile homes, have caused advertisements to be published, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of mobile homes.

By and through the use of the advertisements, respondents:

1. Stated the amount of the downpayment required, or that no down payment was required, the amount of installment payments, and the period of repayment to be made if the credit is extended, without also stating all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d) (2) thereof:

- a. The cash price;
- b. The number of payments scheduled to repay the indebtedness if the credit is extended;
- c. The amount of the finance charge expressed as an annual percentage rate;
- d. The deferred payment price.

2. Disclosed the add-on rate of the credit together with a rate expressing the amount of the finance charge, in violation of Section 226.10(d) (2) of Regulation Z, which requires the annual percentage rate to be disclosed, and Section 226.6(c) thereof, which prohibits additional disclosures that tend to mislead, confuse, contradict, obscure, or detract attention from disclosures required by Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have 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 San Francisco 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 the 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 hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hofmann Construction Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, under the name Hofmann Company, with its office and principal place of business located at 989 Detroit Avenue South, Concord, California.

Respondent Kenneth H. Hofmann 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

It is ordered, That respondents Hofmann Construction Co., a corporation, its successors and assigns, and its officers, and Kenneth H. Hofmann, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device (hereinafter, in this and other paragraphs of this order, referred to as "respondents"), in connection with any extension or arrangement of consumer credit or advertisement to aid, promote, or assist directly or indirectly any arrangement or 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 U.S.C. 1601 *et. seq.*), do forthwith cease and desist from:

1. Representing directly or by implication, in any advertisement to promote the sale of residential real estate, as "advertisement" is defined in Regulation Z:

a. The rate of any finance charge unless respondents state the rate of that charge, expressed as an "annual percentage rate," as required by Section 226.10(d) (1) of Regulation Z.

b. The amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are stated in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d) (2) thereof:

(1) The cash price;

(2) The amount of the downpayment required or that no downpayment is required, as applicable;

(3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(4) The amount of the finance charge expressed as an annual percentage rate.

2. Representing, directly or by implication, in any advertisement to promote the sale of mobile homes, as "advertisement" is defined in Regulation Z:

a. The amount of the downpayment required or that

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no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are stated in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d) (2) thereof:

- (1) The cash price;
- (2) The amount of the downpayment required or that no downpayment is required, as applicable;
- (3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (4) The amount of the finance charge expressed as an annual percentage rate;
- (5) The deferred payment price.

b. The rate of any finance charge other than the annual percentage rate.

3. 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, at the time and in the manner, form, and amount required by Sections 226.6, 226.8, and 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to each operating division and to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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 individual respondent named herein promptly notifies 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 respondent's 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 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.
