

neither approves the merits of the offering nor the value of the property as an investment, if any.

Commissioner Hanford not participating.

IN THE MATTER OF
BRICK HOMES, INC., ET AL.

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

Docket C-2482. Complaint, Dec. 14, 1973—Decision, Dec. 14, 1973

Consent order requiring a Charlotte, N.C., seller, builder, and distributor of residential houses, among other things to cease misrepresenting the quality of materials used in its houses and their degree of completion, and from 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. Further, should respondent corporation merge with another corporation or transfer all or a substantial part of its business assets, respondents shall require a written agreement from its successor, to be filed with the Commission, that it will be bound by this order.

Appearances

For the Commission: *Robert L. Osteen, Jr.*

For the respondents: *pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Brick Homes, Inc., a corporation, and Richard C. Fulmer, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the implementing regulation 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 Brick Homes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina with its principal office and place of business located at 4901 Pineville Road, Charlotte, N.C.

Respondent Richard C. Fulmer is an officer of the corporate respon-

dent. He formulates, directs, and controls the 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.

PAR. 2. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale, sale, construction, and distribution of residential houses.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraph 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 State of North Carolina 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 aforesaid 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, respondents have made certain statements and representations with respect thereto in advertisements inserted in newspapers of general circulation, and through other advertising media, of which the following are typical and illustrative, but not all inclusive:

1. Standard brick of finest quality
Standard high quality brick
2. Plumbing complete
3. A fully completed Brick Home
Completely finished and ready to move into

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set forth herein, respondents have represented directly and by implication that:

1. The finest quality brick available is used in houses constructed by respondents.
2. The plumbing in houses constructed or sold by respondents is complete, including the installation of a well and septic tank or connection to the public water and sewer lines.
3. The houses constructed or sold by respondents are complete and finished, needing no additional work or fixtures.

PAR. 6. In truth and in fact:

1. The brick used in the houses is "Grade B" brick, which is not the finest quality brick available.

2. The plumbing in houses constructed or sold by respondents is not complete and does not include installation of a well and septic tank or the connection to the public water and sewer lines.

3. The houses constructed or sold by respondents are not complete or finished and need additional work and fixtures, including closet shelving, bathroom rods, installation of well and septic tank or connection to public water and sewer lines, and installation and connection of fuel oil containers.

PAR. 7. Respondents advertised an offer to construct completely finished houses into which purchasers could immediately move without disclosing that the said houses (1) are not connected to public or individual water or sewage systems; (2) are not furnished or connected to fuel oil containers; or (3) do not contain closet rods and shelving or bathroom towel and tissue racks. Knowledge of such facts would indicate the necessity of expending additional funds in order to make the houses habitable. Thus, respondents have failed to disclose a material fact, which if known to certain customers would likely affect their consideration of whether or not to respond to said advertising in order to obtain additional information concerning the offer and to enter negotiations with respondents which results, in many instances, in purchases of such houses.

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale and construction of houses of the same general kind and nature as those sold by respondents.

PAR. 9. 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 negotiations were, resulting in the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and the 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.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commis-

Complaint

sion 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, and for some time last past have regularly extended, consumer credit as "consumer credit" is defined by 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, in the ordinary course of their business, as aforesaid, and in connection with their credit sales, as referred to as "the contract," respondents have caused and are causing their customers to enter into contracts for the construction of the respondents' residential houses. On these contracts, hereinafter "credit sale" is defined by Regulation Z, respondents provide certain cost of credit information. Respondents do not provide these customers with any other consumer credit cost disclosures.

Respondents have caused and are causing certain customers to sign blank contracts, thereby failing to furnish these customers with any consumer credit cost disclosures before the consummation of the sale, as required by Section 226.8(a) of Regulation Z.

By and through the use of the contract, respondents:

1. Fail, in certain instances, to accurately disclose the "annual percentage rate" to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Retain a security interest in property in connection with the credit sale and fail to describe the type of security interest, as required by Section 226.8(b)(5) of Regulation Z.

PAR. 13. In the connection with credit transactions, respondents fail to preserve as required by Section 226.6(i) of Regulation Z, records evidencing compliance with the requirements of the Truth in Lending Act.

PAR. 14. In the ordinary course of their business, as aforesaid, respondents cause to be published advertisements of their goods and services, as "advertisement" is defined in Regulation Z, records consumer credit in connection with the sale of these goods and services. By and through the use of advertisements, respondents:

- State the amount of the downpayment and the amount of the monthly payments which could be arranged in connection with a consumer credit transaction, without 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:

- (i) The cash price;
- (ii) The amount of the downpayment or that no downpayment is required, as applicable;
- (iii) The number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (iv) The amount of the finance charge expressed as an "annual percentage rate."

PAR. 15. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z, constitute violations of that Act and pursuant to 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 Atlanta 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 of the Truth in Lending Act and the implementing regulation promulgated thereunder; 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 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 Brick Homes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 4901 Pineville Road, Charlotte, N.C.

Respondent Richard C. Fulmer 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 respondents Brick Homes, Inc., a corporation, its successors and assigns, and its officers, and Richard C. Fulmer, individually and as an officer of said corporation, respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, distribution, or construction, directly or through others, of residential houses or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally, visually, in writing or in any other manner, directly or by implication, that houses or other products sold or constructed by respondents are constructed of the finest quality materials unless such is the case; or misrepresenting, in any manner, the quality of materials used in the construction of houses or other products sold or constructed by the respondents.

2. Representing, orally, visually, in writing or in any other manner, directly or by implication, that the plumbing in houses sold or constructed by respondents is complete; or misrepresenting, in any manner, the degree to which any aspect of the houses or other products sold or constructed by respondents is complete.

3. Representing, orally, visually, in writing or in any other manner, directly or by implication, that houses or other products sold or constructed by respondents are complete; or misrepresenting, in any manner the degree to which the houses or other products sold or constructed by the respondents are complete.

4. Failing to disclose, clearly, conspicuously and in such a manner as will accurately reflect the facts in connection with any advertisement, direct mail piece or other promotional material that houses sold or constructed by respondents: (1) are not connected to either public or individual water or sewer systems; (2) are not furnished or connected to fuel oil tanks or containers; and (3) do not contain closet rods and shelving or bathroom towel and tissue racks.

It is further ordered, That the respondents, incident to selling or contracting for construction of houses or other products, cease and desist from:

1. Contracting for any sale which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of signing the contract.

2. Failing to orally disclose prior to the time of sale, and in writing conspicuously and clearly on any conditional sales contract, promissory note or other instrument executed by the buyer that the buyer may rescind or cancel the sale by written notice of cancellation to respondents' address prior to midnight of the third day, excluding Sundays and legal holidays, after the date of the sale. Upon such cancellation the burden shall be on respondents to collect any goods left in the buyer's home and to return any payments received from him. Nothing contained in this right-to-cancel provision shall relieve buyers of the responsibility for taking reasonable care of the goods prior to, and for a reasonable period following, cancellation.

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

4. Negotiating any conditional sales contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the date of execution by the buyer.

Provided, however, That nothing contained in this paragraph of this order shall relieve respondents of any contractual obligations required by federal law or that law of the state in which the contract is negotiated. When such obligations are inconsistent, respondents may apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required.

II

It is further ordered, That respondents Brick Homes, Inc., a corporation, its successors and assigns, and its officers, and Richard C. Fulmer, individually and as an officer of said corporation, 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 Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to furnish customers with all consumer credit cost

disclosures prior to the consummation of the sale, as required by Section 226.8(a) of Regulation Z.

2. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

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

4. Failing to keep records evidencing compliance with the consumer credit cost disclosure requirements of Regulation Z for two years, as required by Section 226.6(i) of Regulation Z.

5. Stating the amount of the downpayment or the amount of the monthly payments which could be arranged in connection with a consumer credit transaction, 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:

- (i) The cash price;
- (ii) The amount of the downpayment or that no downpayment is required, as applicable;
- (iii) The number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and
- (iv) The amount of the finance charge expressed as an "annual percentage rate."

6. 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, 226.8, 226.9, and 226.10 of Regulation Z.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of the preparation, creation, or placing of advertising, 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 in the event the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, respondents shall require said successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *Provided*, That if respondents wish to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, they shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

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 respondent's current 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.

IN THE MATTER OF

GULF SOUTH CORPORATION, ET AL.

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

Docket C-2483. Complaint, Dec. 19, 1973—Decision, Dec. 19, 1973

Consent order requiring three consumer credit companies in Oklahoma City, Okla. and Springfield, Mo., among other things to cease violating the Truth in Lending Act by