

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 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: *John J. Hemrick.*

For the respondents: *John S. Patterson, Jr.,* of Gulf South Corporation, Oklahoma City, Okla.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promul-

gated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gulf South Corporation, Gulfco Investment Corporation and Family Loan, Inc., of Springfield, Mo., corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the 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 Gulf South Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Oklahoma with its principal office and place of business located at 5500 North Western Avenue, Oklahoma City, Okla.

Respondent Gulfco Investment Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Oklahoma with its principal office and place of business located at 5500 North Western Avenue, Oklahoma City, Okla. Respondent Gulfco Investment Corporation is a wholly-owned corporate subsidiary of respondent Gulf South Corporation.

Respondent Family Loan, Inc., of Springfield, Mo., 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 503 St. Louis Street, Springfield, Mo. Respondent Family Loan, Inc., of Springfield, Mo., is a wholly-owned corporate subsidiary of respondent Gulfco Investment Corporation.

PAR. 2. Respondents by and through their corporate subsidiary structure are now and for some time last past have been engaged in the offering to extend, and the extension of consumer credit to the public.

PAR. 3. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend 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. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, as aforesaid, have charged, and are now charging, a substantial number of consumers for credit life and credit disability insurance written in connection with consumer loans.

Typical and illustrative, but not all inclusive of the circumstances in which such insurance charges are incurred by consumers are the following:

1. Respondents automatically include charges for credit life and credit disability insurance on the Disclosure Statement of Loan, and, unless the consumer specifically objects to the inclusion of the charges for such insurance, the coverage becomes part of the credit transaction.

2. On that portion of the disclosure statement of loan which contains the statement "I desire Credit Life and Disability Insurance," respondents sometimes date and place an "X" or other mark on the line for the borrower's signature.

3. Respondents place the charges for credit life and disability insurance in the "Authorized Deductions" section of the disclosure statement of loan, and these charges become part of the amount financed, but are not included in the computation of the finance charge or the annual percentage rate.

PAR. 5. By and through the acts and practices described in Paragraph Four, and others of similar import, meaning and consequence, but not specifically set forth herein, respondents, in a substantial number of instances, induce their customers to incur charges for credit life and credit disability insurance by leading them to believe, directly or by implication, that the insurance coverage is required or that their signatures are necessary solely for the purpose of consummating the credit transaction. Therefore, the signatures of respondents' customers appearing on that portion of the loan disclosure statement representing their authorization for credit life and credit disability insurance coverage do not constitute a "specific dated and separately signed affirmative written indication of [their] desire" to obtain such insurance, as required by Section 226.4(a)(5) of Regulation Z, in spite of the existence of language to the contrary in the loan disclosure statement.

PAR. 6. By and through the acts and practices described in Paragraphs Four and Five hereof, respondents have failed to include the charges for credit life and credit disability insurance in the finance charge when a specific dated and separately signed affirmative written indication of the consumer's desire for such insurance has not been obtained, as required by Section 226.4(a)(5) of Regulation Z, and thereby respondents:

1. Failed to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z; and
2. Failed to compute and disclose the "annual percentage rate" to the nearest quarter of one percent, as required by Sections 226.5 and 226.8 of Regulation Z.

PAR. 7. In the further course and conduct of their business as aforesaid, respondents, in connection with their disclosure statement of loan, obtain a security interest and sometimes fail to identify the property to which the security interest relates as required by Section 226.8(b)(5) of Regulation Z.

PAR. 8. Pursuant to Section 103 (q) of the Truth in Lending Act, respondents' aforesaid failure to comply with Sections 226.4, 226.5 and

Decision and Order

226.8 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 thereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Dallas 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;

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 Gulf South Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 5500 North Western Avenue, city of Oklahoma City, State of Oklahoma.

Respondent Gulfco Investment Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 5500 North Western Avenue, city of Oklahoma City, State of Oklahoma.

Respondent Family Loan, Inc., of Springfield, Mo., 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 503 St. Louis Street, city of Springfield, State of Missouri.

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 Gulf South Corporation, a corporation, Gulfco Investment Corporation, a corporation, and Family Loan, Inc., of Springfield, Mo., a corporation, their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit, as "consumer credit" is 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, in any consumer credit transaction in which the charges for credit life insurance and/or credit disability insurance are not included in the finance charge:

(a) To quote monthly payments which exclude the cost of credit life insurance and/or credit disability insurance. Monthly payments which do reflect credit life insurance and/or credit disability insurance may be quoted only if:

(1) Monthly payments without insurance premiums are also quoted; and

(2) Respondents explain clearly that credit life insurance and/or disability insurance are optional and that insurance coverage is not considered in respondents' approval of the consumer's credit, using the following language, or language of similar import and meaning approved by the Commission.

Family Loan, Inc., of Springfield, Missouri [or other business extending consumer credit] does not require you to obtain credit life insurance or credit disability insurance in connection with the extension of credit you seek, and your decision regarding such insurance is not considered in the approval of your credit.

(b) To inform the consumer any time respondents describe, discuss, or comment on credit life and/or credit disability insurance, whether in response to a question from a consumer, or as part of respondents' employees' presentation, that credit life and/or credit disability insurance are not required in connection with the extension of credit and are not considered in respondents' approval of the consumer's credit, using the following language, or language of similar import and meaning approved by the Commission:

Family Loan, Inc., of Springfield, Missouri, [or other business extending consumer credit] does not require you to obtain credit life insurance and/or credit disability insurance in connection with the extension of credit you seek, and your decision regarding such insurance is not considered in the approval of your credit.

(c) To provide the following disclosure to every customer for every credit transaction:

[TO BE READ BY RESPONDENTS' EMPLOYEE]

I understand that Family Loan, Inc., of Springfield, Missouri [or other business extending consumer credit] does not require me to obtain credit life insurance or credit disability insurance in connection with this loan, and that my decision regarding such insurance is not considered in the approval of my credit. I have voluntarily decided to take — credit life insurance for \$—, — credit disability insurance for \$—.

I have read this statement to (customer's name)

Loan Closer's Signature _____

Dated _____

I ACKNOWLEDGE THAT THIS STATEMENT WAS READ TO ME.

Customer's Signature _____

Dated _____

Such disclosure shall be made on a separate document which contains no other printed or written material and shall be read to the customer by respondents and executed prior to respondents making any other cost of credit disclosures. Respondents shall maintain the original of the statement for two (2) years following its execution and provide the customer with a copy thereof.

2. In any consumer credit transaction in which the charges for credit life insurance and/or credit disability insurance are not included in the finance charge:

(a) Dating and/or placing an "X" or other mark on the signature line of that portion of the loan disclosure statement intended to serve as the consumer's affirmative written indication of his desire to obtain credit life insurance and/or credit disability insurance.

(b) Misrepresenting, orally or otherwise, directly or by implication, that credit life and/or credit disability insurance are required as a condition of obtaining credit from respondent, or discouraging, directly or by implication, the declination of credit life or credit disability insurance.

3. Failing to explain orally to every customer the purpose of each signature requested by respondents on any document directly related to the consummation of the credit transaction.

4. Failing to compute and disclose accurately the finance charge, as required by Sections 226.4 and 226.8 of Regulation Z.

5. Failing to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent, as required by Sections 226.5 and 226.8 of Regulation Z.

6. Failing to identify the property to which any security interest relates, as required by Section 226.8(b) (5) of Regulation Z.

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 deliver a copy of this order to cease and desist to all present and future personnel of respondents at their general offices in Oklahoma City, Okla., and Springfield, Mo., and in each of their subsidiary corporations who are engaged in the extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said copy of this 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 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 this 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 Hanford not participating.

IN THE MATTER OF

SOUTHERN STATES DISTRIBUTING COMPANY, ET AL.

Docket 8882. Interlocutory Order, Dec. 26, 1973

Order granting a joint motion to replace exhibits in the record.

Appearances

For the Commission: *W. Roland Campbell and John H. Bedford.*

For the respondents: *James B. Gurley of Carter, Ansley, Smith, McLendon & Quillian, Atlanta, Ga.*

ORDER GRANTING MOTION TO REPLACE EXHIBITS IN THE
RECORD

Respondents and counsel supporting the complaint having jointly moved, by motion received Dec. 7, 1973, that the Commission admit into the record of this case as exhibits certain true copies of documents which were admitted as exhibits during the trial of this matter before the administrative law judge, but which exhibits were never received