

they have complied with this order.

IN THE MATTER OF

BRUCE M. BARNARD COMPANY OF SHIPROCK, INC.,
ET AL.

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

Docket C-2568. Complaint, Oct. 8, 1974—Decision, Oct. 8, 1974

Consent order requiring a Shiprock, N. M., general merchandise retailer, pawnbroker and money lender, among other things to cease failing to make immediate restitution for pawned items held as security in the event the item cannot be found at the time redemption is requested, and failing to make all disclosures required by Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *Paul R. Roark.*

For the respondent: *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 Bruce M. Barnard Company of Shiprock, Inc., a corporation doing business as Bruce M. Barnard Trading Post, and Bruce M. Barnard III, individually and as an officer of said corporation, hereinafter sometimes 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 Bruce M. Barnard Company of Shiprock, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Mexico and is licensed to conduct business on the Navajo Reservation by the Bureau of Indian Affairs, with its principal office and place of business located at Shiprock, N.M.

Respondent Bruce M. Barnard III is an officer of the corporate respondent. 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 buying, selling, ordering and exchanging and dealing generally in all classes of goods, wares, merchandise and articles of trade with consumers and in pawn broking and money lending.

PAR. 3. In the course and conduct of their business respondents have operated a trading post on the Navajo Reservation and maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

COUNT I

PAR. 4. In the further course and conduct of their business respondents have engaged, and are now engaging in numerous acts and practices. Typical of these acts and practices, but not all inclusive thereof, are the following:

1. In many instances respondents have refused to make restitution to consumers for the value of items pawned by consumers with respondents at the time the consumer wishes to effect redemption and the respondents are unable or unwilling to present the pledged item.

2. In many instances respondents have failed to clearly and conspicuously indicate on the receipt given to the consumer the market or replacement value of the item held by respondents as security in a pawn transaction.

PAR. 5. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals, in the furnishing of services of the same general kind and nature as those furnished by respondents.

PAR. 6. The aforesaid acts and practices of the respondents, as herein alleged, were, and are, all to the prejudice of the public and of 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

PAR. 7. The allegations of Paragraphs One through Three hereof are incorporated by reference herein as if set forth verbatim.

PAR. 8. In the ordinary course and conduct of their business as aforesaid respondents regularly arrange for the extension of consumer credit or offer to extend or arrange for the extension of such 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. 9. Subsequent to July 1, 1969, in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, and in connection with disclosures required before consummation, respondents:

1. Fail to make the required disclosures clearly, conspicuously, and in a meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.
2. Fail to disclose the conditions under which the finance charge may be imposed, including an explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge, as prescribed by Section 226.7(a)(1) of Regulation Z.
3. Fail to disclose the method of determining the balance upon which a finance charge may be imposed, as prescribed by Section 226.7(a)(2) of Regulation Z.
4. Fail to disclose the minimum periodic payment required, as prescribed by Section 226.7(a)(8) of Regulation Z.

PAR. 10. Subsequent to July 1, 1969, in the ordinary course and conduct of their business as aforesaid and in connection with their credit sales, as "credit sale" is defined in Regulation Z and in connection with the mailing or delivery of a periodic statement, respondents:

1. Fail to make the required disclosures clearly, conspicuously, and in a meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.
2. Fail to set forth the outstanding balance in the account at the beginning of the billing cycle, using the term "previous balance," as prescribed by Section 226.7(b)(1) of Regulation Z.
3. Fail to set forth the amount credited to the account during the billing cycle for payments, using the term "payments," and for other credits including returns, rebates of finance charges, and adjustments,

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using the term "credit," as prescribed by Section 226.7(b)(3) of Regulation Z.

4. Fail to set forth the amount of any finance charge, using the term "finance charge," debited to the account during the billing cycle, itemized and identified to show the amount, if any, due to the application of periodic rates and the amount of any other charge included in the finance charge such as a minimum, fixed, check service, transaction, activity, or similar charge, using appropriate descriptive terminology, as prescribed by Section 226.7(b)(4) of Regulation Z.

5. Fail to set forth the balance upon which the finance charge was computed, and a statement of how that balance was determined, as prescribed by Section 226.7(b)(8) of Regulation Z.

6. Fail to set forth a closing date of the billing cycle and the outstanding balance in the account on that date, using the term "new balance", accompanied by the statement of the date by which, or the period, if any, within which payment must be made to avoid additional finance charges, as prescribed by Section 226.7(b)(9) of Regulation Z.

7. Fail to disclose on the face of the periodic statement the annual percentage rate and the amount of the balance to which each rate is applicable, as prescribed by Section 226.7(c)(1) of Regulation Z.

8. Fail to make a reference to the balance on which the finance charge was computed, in conjunction with the disclosures of the periodic rate and the annual percentage rate, either together on the face or reverse side of the periodic statement, or on the face of a single supplemental statement accompanying the periodic statement, as prescribed by Section 226.7(c)(2) of Regulation Z.

9. Fail to disclose periodic rates, the annual percentage rate, the statement of how the balance on which the finance charge was computed was determined, and the statement of the period within which payment must be made to avoid additional finance charges, on the reverse side of the periodic statement without incorporating verbatim on the face thereof the following notice: "NOTICE: See reverse side for important information," as prescribed by Section 226.7(c)(3) of Regulation Z.

PAR. 11. Subsequent to July 1, 1969, in the ordinary course and conduct of their business as aforesaid, respondents arrange for the extension of loans which are not a credit sale. In these transactions, respondents:

1. Fail to make the disclosures required by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.

2. Fail to print the terms "annual percentage rate" and "finance charge" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.
 3. Fail to disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as prescribed by Section 226.8(b)(2) of Regulation Z.
 4. Fail to disclose the number, amount, and due dates or periods of payments scheduled to repay the indebtedness and the sum of such payments using the term "total of payments," as prescribed by Section 226.8(b)(3) of Regulation Z.
 5. Fail to disclose a description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates, as prescribed by Section 226.8(b)(5) of Regulation Z.
 6. Fail to disclose identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as prescribed by Section 226.8(b)(7) of Regulation Z.
 7. Fail to disclose the amount of credit which will be paid to the customer including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge, using the term "amount financed," as prescribed by Section 226.8(d)(1) of Regulation Z.
 8. Fail to disclose the total amount of the finance charge, with description of each amount included, using the term "finance charge," as prescribed by Section 226.8(d)(3) of Regulation Z.
- PAR. 12. By the aforesaid failure to make disclosures, respondents have failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with Regulation Z constitutes violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

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 implementing regulation promulgated thereunder, 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 sixty (60) days, 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 Bruce M. Barnard Company of Shiprock, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Mexico, with its office and principal place of business located at Shiprock, N.M.

Respondent Bruce M. Barnard III is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

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 Bruce M. Barnard Company of Shiprock, Inc., a corporation doing business as Bruce M. Barnard Trading Post, its successors and assigns, and its officers, and Bruce M. Barnard III, 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 the offer for sale, sale or purchase of all classes of goods, wares, merchandise and articles of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to make immediate restitution for the market value of a pawned item held as security by the respondents in the event the respondents are unable to locate and deliver said item to the pledgor at the time the pledgor wishes to effect redemption.

2. Failing to clearly and conspicuously indicate on the receipt given to the consumer the market or replacement value of the item held by respondents as security in pawn transactions.

II

It is further ordered, That respondents Bruce M. Barnard Company of Shiprock, Inc., a corporation, its successors and assigns, and its officers, and Bruce M. Barnard III, 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 the extension of "consumer credit" or arranging for "consumer credit" as 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 make disclosures required by Section 226.7 of Regulation Z clearly, conspicuously and in a meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.

2. Failing to disclose the conditions under which the finance charge may be imposed, including an explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge, as prescribed by Section 226.7(a)(1) of Regulation Z.

3. Failing to disclose the method of determining the balance upon which a finance charge may be imposed, as prescribed by Section 226.7(a)(2) of Regulation Z.

4. Failing to disclose the minimum periodic payment required, as prescribed by Section 226.7(a)(8) of Regulation Z.

5. Failing to set forth the outstanding balance in the account at the beginning of the billing cycle, using the term "previous balance," as prescribed by Section 226.7(b)(1).

6. Failing to set forth the amount credited to the account during the billing cycle for payments, using the term "payments," and for other credits including returns, rebates of finance charges, and adjustments, using the term "credits," as prescribed by Section 226.7(b)(3).

7. Failing to set forth the amount of any finance charge, using the term "finance charge," debited to the account during the billing cycle, itemized and identified to show the amount, if any, due to the

application of periodic rates and the amount of any other charge included in the finance charge such as a minimum, fixed, check service, transaction, activity or similar charge, using appropriate descriptive terminology, as prescribed by Section 226.7(b)(4) of Regulation Z.

8. Failing to set forth the balance upon which the finance charge was computed, and a statement of how that balance was determined, as prescribed by Section 226.7(b)(8) of Regulation Z.

9. Failing to set forth a closing date of the billing cycle and the outstanding balance in the account on that date, using the term "new balance," accompanied by the statement of the date by which, or the period, if any, within which payment must be made to avoid additional charges, as prescribed by Section 226.7(b)(9) of Regulation Z.

10. Failing to disclose on the face of the periodic statement the annual percentage rate and the amount of the balance to which each rate is applicable, as prescribed by Section 226.7(c)(1) of Regulation Z.

11. Failing to make a reference to the balance on which the finance charge was computed, in conjunction with the disclosures of the periodic rate and the annual percentage rate, either together on the face or reverse side of the periodic statement, or on the face of a single supplemental statement accompanying the periodic statement, as prescribed by Section 226.7(c)(2) of Regulation Z.

12. Failing to disclose periodic rates, the annual percentage rate, the statement of how the balance on which the finance charge was computed was determined, and the statement of the period within which payment must be made to avoid additional finance charges, on the reverse side of the periodic statement without incorporating verbatim on the face thereof the following notice: "NOTICE: See reverse side for important information," as prescribed by Section 226.7(c)(3) of Regulation Z.

It is further ordered, That respondents, their successors and assigns, in connection with the extension of credit other than open end, as defined in Section 226.8 of Regulation Z, do forthwith cease and desist from:

1. Failing to make disclosures required by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.

2. Failing to print the terms "annual percentage rate" and "finance charge" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

3. Failing to disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as prescribed by Section 226.8(b)(2) of Regulation Z.

4. Failing to disclose the number, amount, and due dates or periods of payments scheduled to repay the indebtedness and the sum of such payments using the term "total of payments," as prescribed by Section 226.8(b)(3) of Regulation Z.

5. Failing to disclose a description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates, as prescribed by Section 226.8(b)(5) of Regulation Z.

6. Failing to disclose identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as prescribed by Section 226.8(b)(7) of Regulation Z.

7. Failing to disclose the amount of credit which will be paid to the customer including all charges, individually itemized which are included in the amount of credit extended but which are not part of the finance charge, using the term "amount financed," as prescribed by Section 226.8(d)(1) of Regulation Z.

8. Failing to disclose the total amount of the finance charge, with description of each amount included, using the term "finance charge," as prescribed by Section 226.8(d)(3) of Regulation Z.

It is further ordered, That respondents, their successors and assigns, shall cease and desist from failing in any consumer credit transaction 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, 226.7, and 226.8 of Regulation Z.

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 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 respondent corporation, its successors and assigns, shall forthwith distribute a copy of this order to each of its operating divisions.

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 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.

IN THE MATTER OF

McGEE TRADERS INC. t/a PINON MERCANTILE TRADING
COMPANY, ETC., ET AL