

Consent order requiring four affiliated Shell Knob, Mo., developers of recreational or retirement home sites, among other things to cease using bait advertising and other deceptive selling practices, and 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.

698

Complaint

Appearances

For the Commission: *Michael L. DeBacker.*

For the respondents: *Robert Stemmons, Stemmons & Hager, Mount Vernon, Mo.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and 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 Turkey Mountain Estates, Inc., a corporation; Central Crossing Developers, Inc., a corporation; Lakeside Investment Company, Inc., a corporation; Tomahawk Developers, Inc., a corporation; and E. C. Shafer, individually and as an officer of said corporations; and J. B. Gum, individually and as an officer of said corporations, with the exception of Central Crossing Developers, Inc., 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 Turkey Mountain Estates, 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 Highway 39, Shell Knob, Mo.

Respondent Central Crossing Developers, 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 Highway 39, Shell Knob, Mo.

Respondent Lakeside Investment 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 Highway 39, Shell Knob, Mo.

Respondent Tomahawk Developers, 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 Highway 39, Shell Knob, Mo.

Respondents E.C. Shafer and J.B. Gum are officers of the corporate respondents. They formulate, direct, and control the acts and practices of the corporate respondents including the acts and practices hereinaf-

ter set forth. Their address is the same as that of the corporate respondent.

Respondent E.C. Shafer is president of Tomahawk Developers, Inc., secretary and treasurer of Lakeside Investment Company, Inc., Turkey Mountain Estates, Inc., and Central Crossing Developers, Inc., and is on the board of directors of all the corporate respondents.

Respondent J.B. Gum is president of Lakeside Investment Company, Inc., and an officer of Tomahawk Developers, Inc., and Turkey Mountain Estates, Inc., and is on the board of directors of these three corporations.

Respondents Shafer and Gum together control 65 percent of the stock of Lakeside Investment Company, Inc., and 1/3 interest in Turkey Mountain Estates, Inc. Respondents each own 1/4 interest in Central Crossing Developers, Inc.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and development of recreational or retirement home sites.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, a substantial volume of direct mail advertising to be mailed to prospective purchasers located in various States of the United States; and finance home site sales and collect payments from purchasers located in various States of the United States.

Accordingly, all of said respondents have maintained, and do now maintain, a course and conduct of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

COUNT I

Alleging violations of the Truth in Lending Act and the implementing regulations 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. 4. In the 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 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. 5. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with credit sales as "credit sale" is defined in Section 226.2(n) of Regulation Z, have caused and are causing their customers to execute installment contracts, or contracts for deed and Regulation Z disclosure forms.

PAR. 6. By and through the use of these contracts and forms, respondents, in a number of instances:

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

2. Have failed to state the due dates or period of payments scheduled to repay the indebtedness, and the sum of such payments, using the term, "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

3. Have failed to use the term, "cash downpayment" and "total downpayment," and "unpaid balance of cash price," and have failed to give the corresponding disclosures with those terms, as required by Sections 226.8(c)(1), 226.8(c)(2), and 226.8(c)(3) of Regulation Z.

4. Have failed to use the term, "deferred payment price," and to give the corresponding disclosure with that term, as required by Section 226.8(c)(8)(ii) of Regulation Z.

5. Have failed to disclose the "Finance Charge," as required by Section 226.8(c)(8)(i) of Regulation Z.

6. Have failed to disclose the amount of any "balloon payment," and have failed to use the term "balloon payment," as required by Section 226.8(b)(3) of Regulation Z.

7. Have failed to disclose the identity of the creditor as required by Section 226.8(a) of Regulation Z.

8. Have failed, on certain periodic statements to make the disclosures, and in the form required by Section 226.8(n) of Regulation Z.

9. Have failed to disclose discount for prompt payment and related disclosures, as required by Section 226.8(o) of Regulation Z.

PAR. 7. By and through the use of a contract for deed, respondents retain, create, or acquire a security interest, as "Security interest" is defined in Section 226.2(z) of Regulation Z, in real property which is expected or may be expected to be used as the principal residence of the purchaser. Respondents' retention or acquisition of a security interest in said real property gives their customers, who are extended consumer credit, as "consumer credit" is defined in Section 226.2(k) of Regulation Z, the right to rescind the transaction until midnight of the third business day following the date of consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later.

By and through the use of the aforementioned contract for deed, respondents in all instances since July 1, 1969:

1. Have failed to provide the "Notice of Opportunity to Rescind" to the customer on one side of a separate statement which identifies the

transaction to which it relates, as required by Section 226.9(b) of Regulation Z.

2. Have failed to set out the "Effect of Rescission," Section 226.9(d) of Regulation Z in the manner and form required by Section 226.9(b) of Regulation Z.

PAR. 8. In the ordinary course of their business as aforesaid, respondents cause to be published advertisements of their home sites, as the term "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 these home sites. By and through the use of the advertisements, respondents:

State the amount of monthly installment payments which can 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 required 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; and
- (v) The deferred payment price.

PAR. 9. 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(c) thereof, respondents 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, Two, and Three hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of retirement and recreational home sites and inducing prospective purchasers to view such land, respondents have made and are now making numerous statements and representations in direct mail advertising, with respect to the price of said home sites and the benefits and facilities available for those who purchase the home sites.

Typical and illustrative of said statements and advertising representations, but not all inclusive thereof, are the following:

You can purchase beautiful site valued at \$550.00 for a total of only \$50.00.

A valuable piece of property in Turkey Mountain Estates can now be yours for a total cost to you of only \$50.00 by using the enclosed \$500.00 voucher.

We are making this offer only to selected families.

Water to Lots.

Paved Roads.

Electricity.

Air Conditioned Club House.

Upon inspection of the property, we must ask you to either accept or reject this offer so that our advertising budget can be adjusted.

PAR. 11. By and through the use of said advertisements, and others of similar import and meaning, but not expressly set out herein, respondents have represented and are now representing directly or by implication that:

1. They are making bona fide offers to sell retirement and recreational home sites "valued at \$550.00 for a total of only \$50.00."

2. The prices of home sites which are being offered are discount prices available for a limited period of time or to a selected number of people.

3. All home sites which are being offered include paved roads, water and electricity to lot boundaries and use of club house facilities.

PAR. 12. In truth and in fact:

1. The advertised home sites for "A total of only \$50.00," are not bona fide offers to sell the home sites at the advertised price, but are advertised for the purpose of inducing prospective purchasers to journey to the area to inspect the land. After inducing prospective purchasers to respondents' sale location, respondents' sales personnel disparage the advertised \$50 lots by acts or words, or both, and attempt to sell or do sell different and more expensive home sites.

2. The prices at which home sites are sold are not reduced by the \$500 advertising voucher for only a limited period of time or to a selected number of persons. The \$500 advertising discount has been offered in the usual and customary operation of the respondents' business, and purchasers have been allowed to utilize the \$500 discount later than the day of the sales presentation.

3. The \$50 home sites do not include paved roads, water and electricity to lot boundaries, or use of club house facilities.

Therefore, the statements and representations as set forth in Paragraphs Ten and Eleven were, and are false, misleading and deceptive.

PAR. 13. In the ordinary course and conduct of their aforesaid business, and for the purpose of obtaining a declaration from customers of an intention not to reside permanently on land purchased, so as to avoid the requirements of Section 226.9 of Regulation Z, respondents have inserted the following provision in their land sale contracts:

Buyers (DO) (DO NOT) intend permanent residence.

Respondents have made certain deceptive and misleading statements concerning the aforementioned contract provision, in an attempt to circumvent customer's right to a notice to rescind, as required by Section 226.9 of Regulation Z.

PAR. 14. The acts and practices of the respondents as set forth above, were, and are, all to the prejudice and injury of the public 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of 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 Turkey Mountain Estates, 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 Highway 39, Shell Knob, Mo.

Respondent Central Crossing Developers, 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 Highway 39, Shell Knob, Mo.

Respondent Lakeside Investment 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 Highway 39, Shell Knob, Mo.

Respondent Tomahawk Developers, 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 Highway 39, Shell Knob, Mo.

Respondent E. C. Shafer is an officer of the corporate respondents. Respondent J. B. Gum is an officer of the corporate respondents, with the exception of Central Crossing Developers, Inc. They formulate, direct and control the policies, acts and practices of said corporations, and their 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 Turkey Mountain Estates, Inc., a corporation; Central Crossing Developers, Inc., a corporation; Lakeside Investment Company, Inc., a corporation; and Tomahawk Developers, Inc., a corporation; and their successors and assigns and their officers

and E. C. Shafer, individually and as an officer of said corporations; and J. B. Gum, individually and as an officer of said corporations, with the exception of Central Crossing Developers, Inc., respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the extension of consumer credit or advertisements to aid, promote or assist, directly or indirectly, in the 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 (15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to accurately disclose the date on which the finance charge begins to accrue, as required by Section 226.8(b)(1) of Regulation Z.
2. Failing to disclose the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.
3. Failing to accurately disclose the number, amount and due dates or periods of payment scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.
4. Failing to state the "cash price," and failing to state the "cash downpayment," and failing to state the "unpaid balance of cash price," as required by Sections 226.8(c)(1), 226.8(c)(2) and 226.8(c)(3) of Regulation Z.
5. Failing to use the term "unpaid balance of cash price" to describe the difference between cash price and the total downpayment, and failing to use the terms "cash price" and "cash downpayment," as required by Sections 226.8(c)(1), 226.8(c)(2) and 226.8(c)(3).
6. Failing to disclose the "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z.
7. Failing to disclose the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.
8. Failing to use the term "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.
9. Failing, in any transaction arising in the future in which a customer has the right to rescind, as provided in Section 226.9 of Regulation Z, to provide the customer with the notice of right to rescind, in the form and manner provided in that Section prior to consummation of the transaction, and in connection therewith to provide a question seeking a statement in writing, on a separate form, designating whether or not said customer expects to use the lot as his principal place of residence, at that time or in the future.

10. Failing to describe the amount of any "balloon payment" and failing to use the term "balloon payment," as required by Section 226.8(b)(3) of Regulation Z.

11. Failing to disclose the identity of the creditor on the instrument or statement on which required disclosures are made, as required by Section 226.8(a) of Regulation Z.

12. Failing to disclose the annual percentage rate and the period in which payment must be made to avoid late charges on any periodic statement and failing to transmit such a statement in a form which the customer may retain, as required by Section 226.8(n) of Regulation Z.

13. Failing to disclose discount for prompt payment and related disclosures, as required by Section 226.8(o) of Regulation Z.

14. Failing in any consumer credit transaction or advertising 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, 226.9 and 226.10 of Regulation Z.

15. Stating in any advertisement the amount of monthly installment payments which can 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 required or that no downpayment is required, as applicable;
- (iii) The number, amount and due dates or periods 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; and
- (v) The deferred payment price.

II

It is ordered, That respondents Turkey Mountain Estates, Inc., a corporation; Central Crossing Developers, Inc., a corporation; Lakeside Investment Company, Inc., a corporation; and Tomahawk Developers, Inc., a corporation, and their successors and assigns and their officers and E. C. Shafer, individually and as an officer of said corporations; and J. B. Gum, individually and as an officer of said corporations, with the exception of Central Crossing Developers, Inc., respondents' agents, representatives and employees, directly or through any corporation,

subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of recreational or retirement home sites or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations designed to obtain leads or prospects for the sale of other real property.
2. Discouraging the purchase of, disparaging in any manner or refusing to sell, any real property advertised by respondents.
3. Advertising or offering any property or products for sale for the purpose of obtaining leads or prospects for the sale of different property or products unless the respondents maintain an adequate and readily available stock of said property or products.
4. Representing, directly or indirectly, that any real property or services are offered for sale when such is not a bona fide offer to sell said real property or services.
5. Representing, directly or indirectly, that an advertising allowance voucher or discount is offered on the purchase of any real property unless such an allowance is actually a reduction in the advertising cost of the respondents.
6. Representing, directly or indirectly, or by implication, in any form of advertisement that a prospective purchaser may purchase an "advertising lot," or other section of land at a discounted or reduced price, unless in immediate connection with such representations respondents clearly and conspicuously disclose the improvements or benefits included in the price of such lots, or the lack thereof, if such improvements or benefits differ in any respect with the improvements or benefits which are advertised in connection with the remainder of the lots in the land developments.
7. Misrepresenting, directly or indirectly, or by implication, the purpose or effect of any provision in the contract for sale, or other forms, completed at the time of sale or thereafter, whereby the purchasers are required to declare their intention as to establishing a permanent or principal place of residence on the land.

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 or sale of any real property, or any aspect of 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 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 corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their 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 they are engaged as well as a description of their 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

NORTHWEST MARINE INDUSTRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2571. Complaint, Oct. 8, 1974—Decision, Oct. 8, 1974

Consent order requiring a Seattle, Wash., trade association promoting the interests of member firms in the marine industry, including manufacturers and distributors of