

Consent order requiring a New York City furniture dealer, among other things to cease failing to make repairs on furniture delivered in damaged condition, and 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. Further, the order requires respondent to provide its customers with the right to submit grievances concerning merchandise to legally binding arbitration.

*Appearances*

For the Commission: *Carol H. Katz.*

For the respondents: *Norman D. Fiedler*, New York, N. Y.

## 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 Josephs Furniture Co., Inc., a corporation, and Fred Radelman and Jerome Radelman, individually and as officers 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 Josephs Furniture Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2233 Third Ave. New York, N. Y.

Respondents Fred Radelman and Jerome Radelman are individuals and officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of said corporate respondent including the acts and practices hereinafter set forth. Their 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 purchasing, offering for sale, sale and distribution of furniture, appliances and related products to the public at retail.

## COUNT I

Alleging violation of Section 5 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. 3. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been, and now are in substantial competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals in the sale of furniture, appliances and related products.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have purchased, and continue to regularly purchase, furni-

ture, appliances and other merchandise from suppliers, distributors and manufacturers in states other than New York for the purpose of offering for sale, maintaining an available inventory for sale and to fill special purchase orders received from their customers.

PAR. 5. In the further course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, furniture, appliances and other merchandise, when sold, to be shipped from their place of business within the State of New York and have caused, and are now causing, such merchandise to be delivered to purchasers residing in the State of New York and in other states.

PAR. 6. In the course and conduct of their business and pursuant to special customer orders for furniture, appliances and other merchandise, respondents have delivered said furniture, appliances and other merchandise directly to their customers in an unopened and crated condition as received by respondents from out-of-state manufacturers.

PAR. 7. By virtue of the aforesaid acts and practices, respondents 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.

PAR. 8. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale of their merchandise, respondents, in their salesrooms, have maintained, and are now maintaining, floor models and displays of furniture, and displays of appliances and other merchandise being offered for sale, on the basis of which their customers select and order such merchandise.

In this connection, respondents and their sales representatives have made, and are now making, numerous oral statements and representations to customers and prospective customers regarding the quality and durability of the furniture, appliances and other merchandise being offered for sale, the terms and conditions under which merchandise will be sold and delivered, and the services that will be provided by the respondents.

Moreover, subsequent to making sales and deliveries, respondents and their employees have made, and are now making, numerous oral statements, representations and promises to their customers regarding the time and the manner in which respondents will perform various adjustments, replacements and repairs.

PAR. 9. By and through the use of the aforementioned floor models and displays, together with the aforesaid oral statements, representations and promises made by respondents, their sales representatives and other employees, respondents have represented, and are now representing, directly or by implication, that:

1. Furniture and appliances sold by respondents will be delivered to the customer free from damages and defects.

2. Furniture and appliances which are delivered to purchasers with damages or defects will be repaired or replaced within a reasonable time.

3. Furniture and appliances which are delivered to purchasers with damages or defects will be repaired or replaced to the satisfaction of the purchaser.

PAR. 10. In truth and in fact:

1. In many instances, furniture and appliances sold by respondents are delivered to purchasers with damages and/or defects.

2. In many instances, furniture and appliances which are delivered to purchasers with damages and/or defects are not repaired or replaced within a reasonable length of time.

3. In many instances, furniture and appliances which are delivered to purchasers with damages and/or defects are not repaired or replaced to the satisfaction of the purchasers.

Therefore, the aforesaid statements, representations, acts and practices regarding respondents' products and services as set forth in Paragraphs Eight and Nine were, and are, false, misleading, unfair and deceptive.

PAR. 11. By virtue of respondents' aforementioned false, misleading, deceptive and unfair representations, acts and practices, customers have been induced to pay substantial sums of money to respondents for furniture and appliances. Respondents have received such sums and have failed to offer or agree to refund payments to purchasers, or cancel contractual obligations in regard thereto, when merchandise has been, or is delivered, in a damaged and/or defective condition or when such merchandise has not been repaired or replaced by respondents within a reasonable period of time.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

#### COUNT II

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Eleven are incorporated herein by reference as if fully set forth verbatim.

PAR. 13. In the course and conduct of their business, as aforesaid, respondents are engaging, and for some time last past have engaged, in

the collection of debts allegedly due and owing to Josephs Furniture Co., Inc. pursuant to contracts or other agreements relating to the purchase of respondents' merchandise.

PAR. 14. In attempting to induce and coerce payments of purportedly due or delinquent accounts, respondents and their representatives or agents have sent through the United States mails dunning letters, notices and similar material which contain statements and representations in the form of harassment or threats, including, but not limited to, the following statements and representations:

1. \* \* \* unless the arrears on your account are paid in full WITHIN THREE (3) DAYS of this date, the assignment of wages you signed will be filed with your employer \* \* \*.
2. you were not at home therefore our attorney will secure a legal warrant of seizure. The next one to call will be a City Marshal and the fact that you are not home will not stop him from repossessing the merchandise you failed to pay for.

PAR. 15. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not specifically set forth herein, respondents have represented, directly and by implication, that:

1. Failure to pay the amount claimed as owing within a stated period of time will result in the assignment of the debtor's wages.
2. Failure to pay the amount claimed as owing after notice of intent to repossess will result in the repossession of the merchandise.

PAR. 16. In truth and in fact:

1. Respondents' representations that wage assignments will be obtained are not bona fide representations in that assignment of wages, with respect to retail credit sale transactions, are prohibited by state law and respondents have not caused and cannot cause such assignments.

2. Failure to pay the amount claimed as owing after notice of intent to repossess, has not resulted in the repossession of the merchandise.

Therefore, the statements and representations as set forth in Paragraphs Fourteen and Fifteen are false, misleading and deceptive.

PAR. 17. In furtherance of their business in commerce, and to obtain payments of contractual obligations resulting from the aforesaid deceptive and unfair sales, respondents, in many instances, have engaged, and continue to engage, in the practice of instituting lawsuits without serving customers with a summons and complaint. As a result thereof, respondents have been granted default judgments against such customers.

Therefore, respondents' failure to insure that their customers are served with a summons and complaint and receive notice of legal proceedings, in furtherance of their deceptive sales practices, is an unfair

and deceptive practice, in violation of Section 5 of the Federal Trade Commission Act.

PAR. 18. The use by respondents of the aforesaid unfair, deceptive and misleading debt collection practices in conjunction with respondents' other deceptive and unfair sales and servicing practices in commerce as set forth in Count I has enabled respondents to unfairly receive remuneration and financial gain in their business. All of respondents' practices are intertwined and mutually supportive so as to comprise a totality of unfair and deceptive practices in commerce.

PAR. 19. The aforesaid acts and practices of respondents, as herein alleged, are inequitable, unfair, oppressive, exploitative and cause substantial injury to consumers, and constituted, and now constitute, unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 20. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

### COUNT III

Alleging violations of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 21. 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. 22. Subsequent to July 1, 1969, respondents Josephs Furniture Co., Inc., Fred Radelman and Jerome Radelman, in the ordinary course and conduct of their business and in connection with credit sales as "credit sales" is defined in Regulation Z, have caused and are now causing their customers to execute retail installment contracts, hereinafter referred to as "the contract."

PAR. 23. By and through the use of the contract set forth in Paragraph Twenty-two, respondents:

1. fail to disclose the annual percentage rate computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. fail to accurately disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

3. fail 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.

4. fail to disclose the number of payments and due dates scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

PAR. 24. 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 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 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 Josephs Furniture Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State

of New York, with its office and principal place of business located at 2283 Third Ave., New York, N. Y.

Respondents Fred Radelman and Jerome Radelman are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, 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

A. *It is ordered*, That respondents Josephs Furniture Co., Inc., a corporation, its successors and assigns, and its officers, and Fred Radelman and Jerome Radelman, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device in connection with the purchasing, advertising, offering for sale, sale and distribution of furniture and appliances, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

a. Respondents will cause an assignment of wages.

b. Respondents will cause repossession of merchandise after failure to pay the amount claimed as owing following notice of intent to repossess; or misrepresenting, in any manner, respondents' repossession procedures.

2. Failing to give notification of the commencement of legal action by respondents against a customer by mailing a summons and complaint to such customer's last known address, and failing to obtain from the post office a certificate of such mailing. Such notice shall be in addition to any other notification or service required by law, practice or custom. Such summons and complaint to be sent by first class mail by respondents or their attorney with instructions on the face of the envelope "Do not forward. Address Correction Requested." In the event that such mail is returned as undeliverable by the Post Office or if the residence address of the defendant is unknown, the summons is to be mailed to the customer, care of the employer or place of employment of the customer if known, in a sealed envelope not indicating on the outside thereof, directly or indirectly by the return address or otherwise, that the communication is from an attorney or concerns an alleged debt.

3. Failing to provide consumers with contracts, credit cost disclosures and other mandated written disclosures printed in English and Spanish when the sales presentation was made, either partially or wholly, in the Spanish language.

B. *It is further ordered*, That beginning the effective date of this order, respondents:

1. Inform all customers at the time of sale both orally and in writing that, if furniture and/or appliances are delivered in a defective or damaged condition, the customer has the right and option to cancel the contract and obtain a refund of all monies, by notifying respondents, in writing, within ten (10) days of the receipt of such damaged or defective merchandise. Written notice of this right of cancellation shall be furnished to all customers on the face of all order forms, sales contracts and invoices executed by the customer, with such conspicuousness and clarity as is likely to be read and understood; *Provided, however*, That the provisions of Paragraph "B," parts "1" and "2" of the order shall not apply to merchandise sold "as is," conspicuously designated as such on order forms, sales contracts and invoices executed by the customers, nor to sales of merchandise to customers who have knowledge of damage to, or defects in, particular merchandise and have given written consent to purchasing same.

2. Refund immediately all monies to customers who have requested contract cancellation in writing within ten (10) days from the date of actual delivery of defective or damaged merchandise except that in lieu of making such a refund, respondents may, with the written consent of, and with no additional cost to, a customer, replace or repair defective or damaged merchandise, such replacement or repair to be fully, satisfactorily, and promptly performed, in accordance with Paragraph B, Subpart 3, of this Order I. In such a case, the customer who consents to accept replacement or repair in lieu of a refund, may cancel the contract with a refund of all monies by notification to respondents in writing within ten (10) days from the date of actual delivery or redelivery of any replacement or repaired merchandise that is itself defective or damaged.

3. (a) For purposes of this order, respondents shall make all refunds or obtain the voluntary written consent of the customer for replacement or repair, as provided for in this order, within one (1) week of the receipt of the customer's request for cancellation; shall complete all repairs, pursuant to a written consent for repairs, within two (2) weeks from the date of such written consent and shall make full replacements, pursuant to a written consent for

replacement, within thirty (30) days from the date of such written consent. In all other instances, where a customer has requested repairs or replacements, orally or in writing, within ten days following the delivery of defective, damaged or nonconforming merchandise, respondents shall investigate such complaints forthwith and complete repairs within three (3) weeks and replacements within forty (40) days of the receipt of such request. For purposes of Paragraph B, Subpart 2, of this Order I, the term "satisfactorily" may be a subject of an arbitration held pursuant to this order.

3. (b) If the repair or replacement cannot be completed within the time specified by this order, respondents shall notify the customer, orally and in writing, at least five (5) business days prior to the scheduled completion date of respondents' inability to complete repairs or replacement by such date and shall cancel the contract with a full refund within one week; except that in lieu of making such refund, respondents may, at the option of the customer, obtain the customer's voluntary written consent for an extension of the date set for completion, setting forth a date certain for completion, which shall be a date by which respondents actually expect to complete performance.

4. For a period of two (2) years, maintain and produce for inspection and copying, adequate records to disclose the facts pertaining to the receipt, handling and disposition of each and every communication from a customer, oral or written, requesting contract cancellation, refund, replacement or repair.

C. *It is further ordered*, That in addition to other rights given to a customer pursuant to this order, if the respondents and a customer are unable to agree upon a settlement of any controversy involving the delivery or repair of any damaged or defective furniture, appliances, or other merchandise, or the failure to replace or repair such damaged or defective merchandise or to make cancellations with refunds with respect thereto, then, at the option of the customer, such customer shall have the right to submit the issues to an impartial arbitration procedure entailing no mandatory administrative cost or filing fee to the consumer, which shall be conducted in accordance with the arbitration procedures annexed to this order, as Appendix "A," and the procedures for arbitration adopted in Appendix "A" are to be considered as incorporated within the terms of this order.

D. *It is further ordered*, That respondents comply with and abide by any award or decision rendered pursuant to the arbitration procedures of Subparagraph C.

Furthermore, respondents shall not be entitled to prevent arbitration pursuant to any provision of this order by reason of having obtained a default judgment against any customer in an action for money allegedly due the respondents or their assignees.

E. (1) *It is further ordered*, That respondents shall provide adequate notification to customers of their right to submit such controversy to arbitration and that respondents incorporate the following statement on the face of all sales contracts with such conspicuousness and clarity as is likely to be read and understood by customers.

#### NOTICE

Any right or claim which the customer may have arising out of or relating to this contract or any breach thereof shall be settled, at the option of the customer, by arbitration. Such arbitration shall be conducted in accordance with Arbitration Rules of the Consumer Business Arbitration Tribunal of the Better Business Bureau of Metropolitan New York, Inc. Consumers seeking arbitration should contact the Better Business Bureau of Metropolitan New York, Inc., whose offices are located at 110 Fifth Avenue, New York, New York 10011, telephone (212) 989-6150.

Under New York State law, arbitration, if undertaken, is legally binding and final.

E. (2) Respondents are authorized and directed to change the instructions, contained in the notice set forth in Order I, Paragraph E(1), as to how to secure arbitration if circumstances require.

#### ORDER II

*It is further ordered*, That respondents Josephs Furniture Co., Inc., a corporation, its successors and assigns, and its officers, and Fred Radelman and Jerome Radelman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any 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, 12 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the annual percentage rate in accordance with the requirements of Section 226.5 of Regulation Z, as prescribed by Section 226.8(b)(2) of Regulation Z.

2. Failing to accurately disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

3. Failing 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.

4. Failing to disclose the number of payments and due dates scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

5. 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, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

#### ORDER III

A. *It is further ordered*, That for a period of one year, respondents post in a prominent place in each salesroom or other area wherein respondents sell furniture or other products and services, a copy of this cease and desist order, with a notice that any customer or prospective customer may receive a copy on demand.

B. *It is further ordered*, That respondents prominently display the following notice in two or more locations in that portion of respondents' business premises most frequented by prospective customers, and in each location where customers normally sign consumer credit documents or other binding instruments. Such notice shall be considered prominently displayed only if so positioned as to be easily observed and read by the intended individuals:

#### NOTICE TO CREDIT CUSTOMERS

IF THE DEALER IS FINANCING OR ARRANGING THE FINANCING OF YOUR PURCHASE, YOU ARE ENTITLED TO CONSUMER CREDIT COST DISCLOSURES AS REQUIRED BY THE FEDERAL TRUTH IN LENDING ACT. THESE MUST BE PROVIDED TO YOU IN WRITING BEFORE YOU ARE ASKED TO SIGN ANY DOCUMENT OR OTHER PAPERS WHICH WOULD BIND YOU TO SUCH A PURCHASE.

C. *It is further ordered*, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

D. *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 consumer credit transaction or in any aspect of preparation, creation, or placing of advertising, and to all personnel of respondents responsible for the sale or offering for sale of all products covered by this order, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

E. *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.

F. *It is further ordered*, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment. Such notice shall include respondents' current business or employment in which they are engaged as well as a description of their duties and responsibilities.

G. *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.

#### APPENDIX A

AGREEMENT OF PARTIES—The parties shall be deemed to have made these Rules a part of their arbitration agreement. These Rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

ADMINISTRATOR—When parties agree to arbitrate under these Rules and an arbitration is initiated thereunder, they thereby constitute BBB the administrator of the arbitration. The authority and obligations of the administrator are prescribed in the agreement of the parties and in these Rules.

PANEL OF ARBITRATORS—The BBB shall establish and maintain a Panel of Arbitrators and shall appoint Arbitrators therefrom as hereinafter provided.

CHANGE OF CLAIM—After filing of the claim, if either party desires to make any new or different claim, such claim shall be made in writing and filed with the BBB, and a copy thereof shall be mailed to the other party who shall have a period of seven days from the date of such mailing within which to file an answer with the BBB. However, after the Arbitrator is appointed no new or different claim may be submitted to him except with his consent.

INITIATION UNDER A SUBMISSION—Parties to any existing dispute may commence an arbitration under these Rules by filing at the BBB two (2) copies of a written agreement to arbitrate under these Rules (Submission), signed by the parties. It shall contain a statement of the matter in dispute, the amount of money involved, if any, and the remedy sought.

**INITIATION UNDER AN ARBITRATION PROVISION IN A CONTRACT—**Arbitration under an arbitration provision in a contract may be initiated in the following manner:

(a) The initiating party may give notice to the other party of his intention to arbitrate (Demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and

(b) By filing at the office of the BBB two (2) copies of said notice, together with two (2) copies of the arbitration provisions of the contract.

The BBB shall give notice of such filing to the other party. If he so desires, the party upon whom the demand for arbitration is made may file an answering statement in duplicate with the BBB within seven days after notice from the BBB, in which event he shall simultaneously send a copy of his answer to the other party. If no answer is filed within the stated time, it will be assumed that the claim is denied. Failure to file an answer shall not operate to delay the arbitration.

**FIXING OF LOCALE—**The parties may mutually agree on the time and place where the arbitration is to be held. If any party requests that the hearing be held at a specific time and place and the other party files no objection thereto within seven days after notice of the request, the time and place shall be the one requested.

If the time and place is not designated within seven days from the date of filing the Submission the BBB shall have power to determine the time and place. Its decision shall be final and binding.

**QUALIFICATIONS OF ARBITRATOR—**No person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

**APPOINTMENT FROM PANEL—**The Arbitrator shall be appointed in the following manner: Immediately after the filing of the Submission, the BBB shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference, and return the list to the BBB. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the BBB shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the BBB shall have the power to make the appointment from other members of the Panel without the submission of any additional lists.

**NUMBER OF ARBITRATORS—**In disputes involving amounts of \$5000 or less, there shall be one Arbitrator. In all other cases there shall be one Arbitrator unless one or both the parties specifies three Arbitrators. If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the BBB, in its discretion, directs that a greater number of Arbitrators be appointed.

**NOTICE TO ARBITRATOR OF HIS APPOINTMENT—**Notice of the appointment of the Arbitrator, shall be mailed to the Arbitrator by the BBB, together with a copy of these Rules, and the signed acceptance of the Arbitrator shall be filed prior to the opening of the first hearing.

**DISCLOSURE BY ARBITRATOR OF DISQUALIFICATION—**Prior to accepting his appointment, the prospective Arbitrator shall disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial

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Arbitrator. Upon receipt of such information, the BBB shall immediately disclose it to the parties who, if willing to proceed under the circumstances disclosed, shall so advise the BBB in writing. If either party declines to waive the presumptive disqualification, the vacancy thus created shall be filled in accordance with the applicable provisions of these Rules.

**VACANCIES** -- If any Arbitrator should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of his office, the BBB may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules and the matter shall be reheard unless the parties shall agree otherwise.

**REPRESENTATION BY COUNSEL** -- Any party may be represented by counsel. A party intending to be so represented shall notify the other party and the BBB of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or where an attorney replies for the other party, such notice is deemed to have been given.

**STENOGRAPHIC RECORD** -- The BBB shall make the necessary arrangements for the taking of a stenographic or electronic record whenever such record is requested by a party. The requesting party or parties shall pay the cost of such record, unless otherwise agreed.

**INTERPRETER** -- The BBB shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties, who shall assume the cost of such service if a volunteer interpreter cannot be secured.

**ATTENDANCE AT HEARINGS** -- Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other persons. The Arbitrator shall otherwise have the power to require the retirement of any witness or witnesses during the testimony of other witnesses.

**ADJOURNMENTS** -- The Arbitrator may take adjournments upon the request of a party or upon his own initiative and shall take such adjournment when all of the parties agree thereto.

**OATHS** -- Before proceeding with the first hearing or with the examination of the file, each Arbitrator may take an oath of his office, and if required by law, shall do so. The Arbitrator may, in his discretion, require witnesses to testify under oath administered by any duly qualified person or, if required by law or demanded by either party, shall do so.

**WITNESSES, SUBPOENAS, DEPOSITIONS** -- (a) The arbitrator may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the Court by a party or the Arbitrator, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the Arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

**MAJORITY DECISION** -- Whenever there is more than one Arbitrator, all decisions of the Arbitrators must be by at least a majority. The award must also be made by at least a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

**ORDER OF PROCEEDINGS** -- A hearing shall be opened by the filing of the oath of the Arbitrator, where required, and by the recording of the place, time and date of the

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hearing, the presence of the Arbitrator and parties, and counsel, if any, and by the receipt by the Arbitrator of the statement of the claim and answer, if any.

The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present his claim and proofs and his witnesses who shall submit to questions or other examination. The defending party shall then present his defense and proofs and his witnesses, who shall submit to questions and other examination. The Arbitrator may in his discretion vary this procedure but he shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator.

The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

**ARBITRATION IN THE ABSENCE OF A PARTY** -- Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as he may require for the making of an award.

**EVIDENCE** -- The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. When the Arbitrator is authorized by law to subpoena witnesses or documents, he may do so upon his own initiative or upon the request of any party. The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and of all the parties, except where any of the parties is absent in default or has waived his right to be present.

**EVIDENCE BY AFFIDAVIT AND FILING OF DOCUMENTS** -- The Arbitrator shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems it entitled to after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the BBB for transmission to the Arbitrator. All parties shall be afforded opportunity to examine such documents.

**INSPECTION OR INVESTIGATION** -- Whenever the Arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall direct the BBB to advise the parties of his intention. The Arbitrator shall set the time and the BBB shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

**CONSERVATION OF PROPERTY** -- The Arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

**CLOSING OF HEARINGS** -- The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of briefs. If documents are to be filed and the date set for their receipt is later than that set for the receipt of briefs, the later date

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shall be the date of closing the hearing. The time limit within which the Arbitrator is required to make his award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

**REOPENING OF HEARINGS** -- The hearings may be reopened by the Arbitrator on his own motion, or upon application of a party at any time before the award is made. If the reopening of the hearing would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened, unless the parties agree upon the extension of such time limit. When no specific date is fixed in the contract, the Arbitrator may reopen the hearings, and the Arbitrator shall have thirty days from the closing of the reopened hearings within which to make an award.

**WAIVER OF ORAL HEARING** -- The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the BBB shall specify a fair and equitable procedure.

**WAIVER OF RULES** -- Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

**EXTENSION OF TIME** -- The parties may modify any period of time by mutual agreement. The BBB for good cause may extend any period of time established by these Rules, except the time for making the award. The BBB shall notify the parties of any such extension of time and its reason therefor.

**COMMUNICATION WITH ARBITRATOR AND SERVING OF NOTICES** -- (a) There shall be no communication between the parties and the Arbitrator other than at oral hearings. Any other oral or written communications from the parties to the Arbitrator shall be directed to the BBB for transmittal to the Arbitrator.

(b) Each party to an agreement which provides for arbitration under these Rules shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or for the entry of judgment on any award made thereunder may be served upon such party by mail addressed to such party or his attorney at his last known address or by personal service within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

**TIME OF AWARD** -- The award shall be made promptly by the Arbitrator and, unless otherwise agreed by the parties, or specified by law, no later than thirty days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statements and proofs to the Arbitrator.

**FORM OF AWARD** -- The award shall be in writing and shall be signed either by the sole Arbitrator or by at least a majority if there be more than one. It shall be executed in the manner required by law.

**SCOPE OF AWARD** -- The Arbitrator may grant any remedy or relief which he deems just and equitable and within the scope of the agreement of the parties.

The award may require specific performance of a contract; require the acceptance or replacement of merchandise; fix allowances for defective merchandise; declare a contract breached in whole or in part; and/or award money damages in the alternative or otherwise; but the foregoing shall not limit the power of the arbitrators to grant any other remedy or relief which they deem just and equitable within the framework of the Submission or the contract before the arbitrators.

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**AWARD UPON SETTLEMENT** -- If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

**DELIVERY OF AWARD TO PARTIES** -- Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the BBB, addressed to such party at his last known address or to his attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.

**RELEASE OF DOCUMENTS FOR JUDICIAL PROCEEDINGS** -- The BBB shall, upon the written request of a party, furnish to such party, at his expense, certified facsimiles of any papers in the BBB's possession that may be required by judicial proceedings relating to the arbitration.

**APPLICATIONS TO COURT** -- No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

**EXPENSES** -- The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic or electronic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies unless they shall otherwise agree and shall be paid for by the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required travelling and other expenses of the Arbitrator and of BBB representatives, and the expenses of any witness or the cost of any proofs produced at the direct request of the Arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the Arbitrator in his Award assesses such expenses or any part thereof against any specified party or parties.

**ARBITRATOR'S FEE** -- Members of the Panel of Arbitrators serve without fee in arbitrations. In prolonged or in special cases the parties may agree to the payment of a fee. Any arrangements for the compensation of an Arbitrator shall be made through the BBB and not directly by him with the parties.

**INTERPRETATION AND APPLICATION OF RULES** -- The Arbitrator shall interpret and apply these Rules insofar as they relate to his powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules, it shall be decided by a majority vote. If that is unobtainable, either an Arbitrator or a party may refer the question to the BBB for final decision. All other Rules shall be interpreted and applied by the BBB.

Complaint

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IN THE MATTER OF

WEST COAST CREDIT CORPORATION t/a FIDELITY  
FINANCE CO., INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-2600. Complaint, Nov. 19, 1974 - Decision, Nov. 19, 1974*

Consent order requiring a Seattle, Wash., money lender, among other things to cease instituting collection lawsuits except in the county where the defendant either resides or where the contract was signed, and using promissory notes, etc., containing provisions governing the choice of forum county in the event of suit.

*Appearances*For the Commission: *Randall H. Brook.*For the respondent: *Betty B. Fletcher and Jonathan Blank, Preston, Thorgrimson, Ellis, Holman & Fletcher, Seattle, Wash.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that respondent West Coast Credit Corporation, a corporation doing business as Fidelity Finance Co., Inc., has violated Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint.

PARAGRAPH 1. Respondent is a Washington corporation with its principal office located at 2005 Fifth Ave., Seattle, Wash.

PAR. 2. Respondent is engaged in the business of extending loans to consumers at various offices located throughout the State of Washington. Allegations below of respondent's present acts and practices include past acts and practices.

PAR. 3. In the course of its business, respondent extends loans to persons resident in Wash. and Idaho, and receives payments from, pursues collection activities against, and institutes legal actions against, debtors resident in Wash., Idaho, Oreg. and other states. Thus respondent maintains a course of business in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course of collecting allegedly defaulted obligations, respondent regularly resorts to use of judicial process in matters not resolved by private settlement. The defendant debtors in such cases are