

RELIABLE MORTGAGE CORPORATION, ET AL.

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

Docket 8956. Complaint, Mar. 5, 1974 - Decision, Jan. 8, 1975

Order requiring a Los Angeles, Calif., loan company, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Complaint

85 F.T.C.

Appearances

For the Commission: *David G. Cameron* and *Kendall H. MacVey*.
For the respondents: *Alvin F. Howard*, *Horowitz*, *Howard* and *Bloom*, Los Angeles, Calif.

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 Reliable Mortgage Corporation, a corporation, and Edward Siegel, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and implementing regulation and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Reliable Mortgage Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 320 N. Vermont Ave., Los Angeles, Calif.

Respondent Edward Siegel is an individual and is the principal corporate officer of Reliable Mortgage Corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for many years have been, engaged in the business of arranging loans secured by real property for a fee.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit, as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business as aforesaid, have caused to be published, advertisements, as "advertisement" is defined in Section 226.2 of Regulation Z, which advertisements aided, promoted, or assisted, directly or indirectly, the extension of other than open end credit. Respondents, in certain of these advertisements, have stated the rate of a finance charge, as "finance charge" is defined in Section 226.2 of Regulation Z, and have not expressed said rate as an annual percentage rate, using the term "annual percentage rate," as "annual

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percentage rate" is defined in Section 226.2 of Regulation Z, in violation of Section 226.10(d)(1) of Regulation Z.

PAR. 5. By and through the acts and practices set forth above, 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 Act, such failure to comply constitutes a violation of the Truth in Lending Act, and, pursuant to Section 108 thereof, respondents have violated the Federal Trade Commission Act.

INITIAL DECISION BY HARRY R. HINKES, ADMINISTRATIVE LAW
JUDGE

November 11, 1974

PRELIMINARY STATEMENT

In a complaint issued by the Federal Trade Commission on Mar. 5, 1974, respondents Reliable Mortgage Corporation and Edward Siegel were charged with failing 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 that act, such failure to comply constitutes a violation of the Truth in Lending Act and pursuant to Section 108 thereof respondents were charged to have violated the Federal Trade Commission Act. In their answer to the complaint respondents denied Paragraphs Four and Five of the complaint which charge a violation of law. In addition, as an affirmative defense, respondents alleged that any order issued herein would injure the consuming public and interfere with competitive conditions. Respondents, however, made no answer to Paragraphs One, Two or Three of the complaint which establish the identity of the respondents and the nature of their business. Paragraphs One, Two and Three of the complaint are, therefore, deemed to have been admitted pursuant to Section 3.12(b)(1)(ii) of the Rules of Practice of the Federal Trade Commission.

On May 13, 1974, respondents were served by complaint counsel with a request for admissions. Respondents did not respond to this request. Indeed, counsel for the respondents in a letter dated June 17, 1974, stated:

We will not reply to your request for admissions, and they will be automatically admitted under the rules.

Indeed, Section 3.31 of the Commission's Rules of Practice dealing with admissions states:

(b) The matter is admitted unless within 10 days after the service of the request . . . the party to whom the request is directed serves upon the party requesting the admission . . . a sworn written answer or objection addressed to the latter* * *.

After unsuccessful attempts at settlement, complaint counsel filed a Motion for Summary Decision on Sept. 24, 1974, alleging that there was no genuine issues as to any material fact and that a decision should be rendered as a matter of law. Counsel for the respondent then withdrew from this proceeding and, with the consent of the respondents, substituted the respondents *in propria persona*. Nevertheless, oral argument was set on complaint counsel's Motion for Summary Decision and respondents were advised of the date and place for said oral argument. By letter dated Oct. 7, 1974, respondents indicated their intention not to appear at oral argument. Oral argument was held on Oct. 15, 1974. Respondents did not appear nor were they represented.

On the basis of the complaint, respondents' answer to the complaint and complaint counsel's request for admissions which went unanswered by respondents, I make the following:

FINDINGS OF FACT

1. Respondent Reliable Mortgage Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 320 N. Vermont Ave., Los Angeles, Calif.

Respondent Edward Siegel is an individual and is the principal corporate officer of Reliable Mortgage Corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of the corporate respondent. (Par. 1 of the Comp.)

2. Respondents are now, and for many years have been, engaged in the business of arranging loans secured by real property for a fee. (Par. 2 of the Comp.)

3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arranged for the extension of consumer credit, as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. (Par. 3 of the Comp.)

4. Respondents caused to be published an advertisement stating "At Reliable Mortgage your loan will cost you a lot less. Our interest rate is 8-1/2 percent." The ad does not contain the words "annual percentage rate." (Comp. Counsel's unanswered request for admissions.)

5. The above ad was published in the following newspapers on the dates indicated:

Los Angeles Times: Feb. 19, 20, 25, Mar. 4, 11, 18 and 25, 1973.

Orange County Metro Group: Feb. 19 and 20, 1973.

Santa Ana Register: Feb. 25, 26, 27, 28, Mar. 4, 11, 18 and 25, 1973.

San Gabriel Valley Tribune: Feb. 19, 20, 25, Mar. 4, 11, 18, and 25, 1973. (Comp. Counsel's unanswered request for admissions.)

6. Respondents caused to be published an advertisement stating: "A second trust deed loan for less than 10 per cent interest." The ad does not contain the words "Annual percentage rate." (Comp. Counsel's unanswered request for admissions.)

7. The above ad was published in the following newspapers on the dates indicated:

Los Angeles Times: Apr. 8, 29, May 6, 13, 20, 27, June 3 and 10, 1973.

Santa Ana Register: Apr. 22, 29, May 13 and 20, 1973.

Long Beach Independent: Apr. 8, 1973.

Los Angeles Sentinel: Apr. 12, 19, 26, May 3 and 10, 1973. (Comp. Counsel's unanswered request for admissions.)

COMMENT

Section 226.10 of Regulation Z implementing the Truth in Lending Act states:

No advertisement to aid, promote or assist, directly, or indirectly, any credit sale . . . shall state (1) the rate of a finance charge unless it states the rate of that charge expressed as an "annual percentage rate" using that term* * *.

It is clear that here respondents advertised a finance charge of 8-1/2 percent interest without specifying the annual percentage rate. Such ads were, therefore, violative of Regulation Z. *Beauty-Style Modernizers, Inc.*, Docket No. 8898, June 11, 1974 [83 F.T.C. 1759].

Some comment may be appropriate with respect to respondents' affirmative defense. In it respondents allege that they ceased the advertisements to which the Commission had made objection even though they believed the Commission's objections were unjustified and that the unfavorable publicity of this proceeding has injured the consuming public by discrediting the respondents although their interest charges were lower than others in competition with them. The Commission has held, however, that:

the fact that past unlawful practices have ceased or been suspended is no assurance that they will not be resumed at some time in the future, absent the deterrent effect of a Commission order with the possibility of heavy civil penalties for violation. (*Koppers Co., Inc.* 77 F.T.C. 1675, 1684.)

See, also *Certified Building Products, Inc.* Docket 8875, Oct. 5, 1973 [83 F.T.C. 1004], CCH Trade Regulation Rep. ¶20,506 and *Zale Corporation*, 78 F.T.C. 1195, 1240.

I do not agree that compelling respondents to disclose their annual percentage rate would injure the public by discrediting them. If, indeed, respondents' annual percentage rate is lower than the rate charged by their competition it would appear advantageous to the respondent to advertise such annual percentage rate so that the consuming public may be able to compare the two easily.

ORDER

It is ordered, That complaint counsel's Motion for Summary Decision be, and the same hereby is, *granted*.

It is further ordered, That respondents Reliable Mortgage Corporation, a corporation, its successors and assigns and its officers and Edward Siegel, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub.L. 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Stating the rate of a finance charge unless said rate is expressed as an annual percentage rate, using the term "annual percentage rate," as "finance charge" and "annual percentage rate" are defined in Section 226.2 of Regulation Z, as prescribed by Section 226.10(d)(1) of Regulation Z.

2. Stating or utilizing any component of the annual percentage rate, such as the rate of interest, when such component is stated or utilized more conspicuously than the annual percentage rate.

3. Failing, in any advertisement, to make all disclosures as required by Section 226.10 of Regulation Z and in the manner prescribed therein.

It is further ordered, That 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 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.

FINAL ORDER

The administrative law judge filed his initial decision in this matter

on Nov. 11, 1974, finding respondents to have engaged in the acts and practices as alleged in the complaint and entering a cease-and-desist order against respondents. A copy of the initial decision and order was served on the respondents on Nov. 29, 1974. No appeal was taken from the initial decision.

The Commission having now determined that the matter should not be placed on its own docket for review, and that the initial decision should become effective as provided in Section 3.51(a) of the Commission's Rules of Practice.

It is ordered, That the initial decision and order contained therein shall become effective on Dec. 30, 1974.

It is further ordered, That Reliable Mortgage Corporation, a corporation, and Edward Siegel, individually and as an officer of said corporation, shall within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

GENERAL MOTORS CORPORATION, ET AL.

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

Docket 8907. Complaint, Dec. 11, 1972 - Decision, Jan. 10, 1975

Consent order requiring a Detroit, Mich., automobile manufacturer, among other things to cease making unsubstantiated comparative claims as to the handling characteristics of automobiles. Further, the order dismisses the allegations of the complaint relating to the "Lubed-for-life chassis" claim for the Opel automobile. The complaint is dismissed as to respondent McCann-Erickson, Inc., G.M.'s New-York-City-based advertising agent.

Consent order requiring a Detroit, Mich., advertising agency, among other things to cease making unsubstantiated comparative claims as to the handling characteristics of automobiles.

Appearances

For the Commission: *Matthew Daynard and Edward D. Steinman.*

For the respondent: *Covington & Burling and Howrey, Simon, Baker & Murchison, Washington, D.C. Edwin A. Kiernan, Jr., N.Y., N.Y. Hill, Lewis, Adams, Goodrich & Tait, Detroit, Mich.*