

IN THE MATTER OF
ANDREW A. SILANI, T/A ANDY SILANI, REALTOR
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket C-2652. Complaint, Mar. 17, 1975 - Decision, Mar. 17, 1975

Consent order requiring a Klamath Falls, Oreg., real estate broker, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Thornton Percival.*

For the respondent: *Theodore B. Jensen, Davis, Jensen, DeFranco & Holmes, Portland, Oreg.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the

implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Andrew A. Silani, an individual trading and doing business as Andy Silani, Realtor, hereinafter sometimes referred to as respondent, has 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 in that respect as follows:

PARAGRAPH 1. Respondent Andrew A. Silani is an individual trading and doing business as Andy Silani, Realtor, with his principal office and place of business located at 314 S. Seventh St., Klamath Falls, Oreg.

PAR. 2. Respondent is now and for some time last past has been engaged in the business of a real estate broker. In such capacity, he offers for sale and arranges sales of real property to the general public, and provides various other services to persons who engage him directly or indirectly to sell such property. Fees for respondent's services are payable by such persons, hereinafter referred to as "clients."

PAR. 3. In the ordinary course of business as aforesaid, respondent regularly extends consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course of business as aforesaid, has extended and is extending consumer credit to purchasers of real property by causing such purchasers to execute promissory notes, hereinafter referred to as the "purchaser note," in the amount of the purchaser's downpayment or a portion thereof. Respondent does not provide these purchasers with any consumer credit cost disclosures other than those in the promissory note.

PAR. 5. Subsequent to July 1, 1969, respondent, in the ordinary course of business as aforesaid, has extended and is extending consumer credit to clients by causing them to execute promissory notes, hereinafter referred to as the "client note," in the amount of respondent's fee or a portion thereof. These extensions of credit to clients are credit sales, as "credit sale" is defined in Regulation Z. Respondent does not provide such clients with any consumer credit cost disclosures other than those in the client note.

PAR. 6. By and through the use of the purchaser note and the client note, respondent:

1. Fails to use the term "annual percentage rate" to describe the annual percentage rate of the finance charge, computed in accordance

with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Fails in some instances to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

3. Fails to use the term "amount financed" to describe the amount of credit extended, as required by Sections 226.8(c)(7) and 226.8(d)(1) of Regulation Z.

4. Fails to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included therein, and to describe that sum as the "finance charge," as required by Sections 226.8(c)(8)(i) and 226.8(d)(3) of Regulation Z.

5. Fails in credit sales to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe respondent's fee or price for the services purchased, as required by Section 226.8(c)(1) of Regulation Z.

6. Fails in credit sales to disclose the downpayment, as required by Section 226.8(c)(2) of Regulation Z.

7. Fails in credit sales to 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.

8. Fails to furnish to the customer a duplicate of the instrument or other statement containing the disclosures prescribed by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter

executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Andrew A. Silani is an individual trading and doing business as Andy Silani, Realtor, with his principal office and place of business located at 314 S. Seventh St., Klamath Falls, Oreg.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Andrew A. Silani, an individual trading and doing business as Andy Silani, Realtor, or under any other name or names, and respondent's successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or 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, 15 U.S.C. § 1601, *et. seq.*), do forthwith cease and desist from:

1. Failing to use the term "annual percentage rate" to describe the annual percentage rate of the finance charge, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
2. Failing to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.
3. Failing to use the term "amount financed" to describe the amount

of credit extended, as required by Sections 226.8(c)(7) and 226.8(d)(1) of Regulation Z, as applicable.

4. Failing to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included therein, and to describe that sum as the "finance charge," as required by Sections 226.8(c)(8)(i) and 226.8(d)(3) of Regulation Z, as applicable.

5. Failing in credit sales to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe respondent's fee or price for the services purchased, as required by Section 226.8(c)(1) of Regulation Z.

6. Failing in credit sales to disclose the downpayment, as required by Section 226.8(c)(2) of Regulation Z.

7. Failing in credit sales to 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.

8. Failing to furnish to the customer, before the transaction is consummated, a duplicate of the instrument or other statement containing the disclosures required by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

9. 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, at the time and in the manner, form and amounts required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future agents and/or employees of respondent engaged in the consummation of any extension of consumer credit or in any aspect of the preparation, creation or placing of advertising, and that respondent secure from each such person a signed statement acknowledging receipt of said order.

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

NOTICE TO SELLERS AND PURCHASERS

IF THE REALTOR IS FINANCING ANY FEE YOU MAY OWE HIM FOR HIS SERVICES, OR ANY OTHER AMOUNT CONNECTED WITH THE SALE

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85 F.T.C.

TRANSACTION, 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 A PROMISSORY NOTE OR ANY OTHER DOCUMENT OR PAPERS WHICH WOULD BIND YOU TO SUCH FINANCING.

It is further ordered, That respondent 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 herein shall within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.
