
IN THE MATTER OF
MOORE REALTY CO., ET AL.

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

Docket C-2700. Complaint, July 21, 1975 - Decision, July 21, 1975

Consent order requiring a Denver, Colo., mortgage loan 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: *Tommie W. Wakefield.*

For the respondents: *Donald L. Giacomini, Rothberger, Appel and Powers, Denver, Colo.*

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 Moore Realty Co., a corporation, and William M. Moore, individually

and as an officer 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 Moore Realty Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 300 Speer Blvd., Denver, Colo.

Respondent William M. Moore is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, mortgaging, offering for sale and sale of new and used housing to the general public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit or offer to extend or arrange for the extension of such credit, as "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 of business as aforesaid and in connection with credit sales, have caused, and are causing, to be published, advertisements, as "credit sale" and "advertisement" are defined in Section 226.2 of Regulation Z, which advertisements aid, promote or assist, directly or indirectly, the extension of other than open end credit.

PAR. 5. Respondents, in certain of these advertisements have stated, and are stating, the amount of the downpayment (in dollars or as a percentage of the sales price) or that no downpayment is required, the amount of an instalment payment, or the period of repayment 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):

- (a) the cash price; [the amount of the loan;]
- (b) the amount of the downpayment required or that no downpayment is required, as applicable;
- (c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

(d) the amount of the finance charge expressed as an annual percentage rate.

PAR. 6. Respondents, in other advertisements, have stated, and are stating, 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 percentage rate" is defined in Section 226.2 of Regulation Z, in violation of Section 226.10(d)(1) of Regulation Z.

PAR. 7. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Section 226.2 of Regulation Z, have and are regularly extending consumer credit, as "consumer credit" is defined in Section 226.2 of Regulation Z.

PAR. 8. Respondents, in certain disclosure statements involving second mortgage loans to natural persons for personal, family or household purposes in which a finance charge is imposed or in which payment is to be made in more than four instalments, have and are violating the Truth in Lending Act disclosure requirements as follows:

(1) In some instances, the terms, "finance charge" and "annual percentage rate," are not printed more conspicuously in the disclosure statements than other required terminology as required by Section 226.6(a) of Regulation Z.

(2) In some instances, the disclosure statements, in violation of Section 226.8(d)(1) of Regulation Z, incorrectly use the term "amount financed" as a total figure computed by adding the finance charges to the amount of the loan.

(3) In some instances, the disclosure statements, in violation of Sections 226.5(b) and 226.8(b)(2) of Regulation Z, fail to accurately disclose the "annual percentage rate," to the nearest quarter of one percent.

(4) In some instances, the disclosure statements fail to disclose the number, amount and due dates or periods of payments scheduled to repay the indebtedness as required by Section 226.8(b)(3) of Regulation Z.

(5) In some instances, the disclosure statements fail to identify the amount of a "balloon payment" and state the conditions, if any, under which that payment may be refinanced if not paid when due as required in Section 226.8(b)(3) of Regulation Z.

(6) In some instances, the disclosure statements fail to state whether a rebate of the unearned finance charges upon prepayment in full is available, and, if available, the method of computing said rebate as required by Section 226.8(b)(7) of Regulation Z.

(7) In some instances, the disclosure statements fail to describe any

penalty charge for prepayment of the obligation, if any exists, as required by Section 226.8(b)(6) of Regulation Z.

(8) In some instances, the disclosure statements, in violation of Section 226.6(c) of Regulation Z, include the term, "interest per annum," as additional information in a way which obscures and detracts attention from the "annual percentage rate."

(9) In some instances, the disclosure statements fail to make required disclosures clearly, conspicuously and in meaningful sequence as required by Section 226.6(a) of Regulation Z.

PAR. 9. Subsequent to July 1, 1969, and in connection with the credit sales referred to in Paragraph Seven above, respondents have entered into consumer credit transactions in which they have retained or acquired a security interest in real property which was used or expected to be used as the principal residence of the customer. The customer thereby had the right to rescind the transaction as provided in Section 226.9 of Regulation Z. Respondents, while giving rescission notices, have failed and are failing to accurately disclose the date of the last day on which a customer may cancel the transaction and thereby exercise his right of rescission, as required by Section 226.9 of Regulation Z.

PAR. 10. 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 thereof, respondents have 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Kansas City Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; 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 aforesaid draft of complaint, 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have 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 (60) 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 Moore Realty Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 300 Speer Blvd., city of Denver, State of Colorado.

Respondent William M. Moore is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his 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

It is ordered, That respondents Moore Realty Co., a corporation, its successors and assigns, and its officers, and William M. Moore, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit, or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z (12 CFR §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. Representing in any such advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any instalment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of instalments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

(a) the cash price; [the amount of the loan;]

(b) the amount of the downpayment required or that no downpayment is required, as applicable;

(c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

(d) the amount of the finance charge expressed as an annual percentage rate.

2. Stating in any advertisement 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 and as required by Section 226.10(d)(1) of Regulation Z.

3. Failing, in any consumer credit transaction, to print in the disclosures the terms "finance charge" and "annual percentage rate" more conspicuously than other required terminology as required by Section 226.6(a) of Regulation Z.

4. Failing, in any consumer credit transaction, to accurately disclose the amount financed as required by Section 226.8 of Regulation Z.

5. Failing, in any consumer credit transaction, to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent as prescribed by Sections 226.5(b) and 226.8(b)(2) of Regulation Z.

6. Failing, in any consumer credit transaction, to accurately disclose the number, amount and due dates or periods of payments scheduled to repay the indebtedness as required by Section 226.8(b)(3) of Regulation Z.

7. Failing, in any consumer credit transaction, to accurately disclose the amount of a balloon payment and state the conditions, if any, under which that payment may be refinanced if not paid when due as required in Section 226.8(b)(3) of Regulation Z.

8. Failing, in any consumer credit transaction, to disclose whether a rebate of the unearned finance charges upon prepayment in full is available, and, if available, the method of computation as required by Section 226.8(b)(7) of Regulation Z.

9. Failing, in any consumer credit transaction, to disclose penalty charges for prepayment of the obligation, if any exist, as required by Section 226.8(b)(6) of Regulation Z.

10. Failing, in any consumer credit transaction, to provide information in addition to disclosures required by Regulation Z without contradicting, obscuring or detracting attention from the required disclosures or misleading or confusing the customer, as prescribed by Section 226.6(c) of Regulation Z.

11. Failing, in any consumer credit transaction, to make all required

disclosures clearly, conspicuously and in meaningful sequence as required by Section 226.6(a) of Regulation Z.

12. Failing, in any consumer credit transaction subject to Section 226.9 of Regulation Z, to accurately state the date by which the customer must give notice of his desire to exercise his right of rescission, as prescribed by Section 226.9(b) of Regulation Z.

13. Failing, in any advertisement or consumer credit transaction, to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the form, manner and amount prescribed by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in any 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.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

PERL-MACK ENTERPRISES, CO., ET AL.

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