

IN THE MATTER OF
WITKIN HOMES, INC., ET AL.

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

Docket C-2704. 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: *Daniel C. Smith, Arent, Fox, Kintner, Plotkin and Kahn, Wash., D.C.*

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 Witkin Homes, Inc., a corporation, and Jack A. Witkin and Philip D. Winn, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of

said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Witkin Homes, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 9725 E. Hampden Ave., Denver, Colo.

Respondents Jack A. Witkin and Philip D. Winn are officers and directors of the corporate respondent. They formulate, direct and control the acts and practices of the 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 advertising, offering for sale and sale of 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 the above-mentioned advertisements, have stated and are stating that no downpayment is required or the amount of the downpayment (in dollars or as a percentage of the sale price) without also stating, as required by Section 226.10(d)(2) of Regulation Z, all the following terms:

- (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. 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 Witkin Homes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 9725 E. Hampden Ave., city of Denver, State of Colorado.

Respondents Jack A. Witkin and Philip D. Winn are officers and directors 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

It is ordered, That respondents Witkin Homes, Inc., a corporation, its successors and assigns, its officers, and Jack A. Witkin and Philip D. Winn, individually and as officers of said corporation, and respondents' agents, representatives, salesmen and employees, directly or through any corporation, subsidiary, division or other device, in connection with any advertisement to aid, promote or assist, directly or indirectly, any arrangement or extension of consumer credit as "consumer credit" and "advertisement" 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 or the amount of the loan, as applicable;
- (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. Failing, in any advertisement, to make all disclosures as required by Section 226.10 in the manner prescribed by Sections 226.6, 226.8 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 respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

IT IS FURTHER ORDERED, That the 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.
