

IN THE MATTER OF

AMERICAN EXPRESS COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS

Docket C-2821. Complaint, May 24, 1976—Decision, May 24, 1976

Consent order requiring a New York City credit card company, among other things to cease failing to disclose to those credit card applicants who are rejected because of information contained in consumer reports or obtained from a person other than a consumer reporting agency such information as required by the Fair Credit Reporting Act.

Appearances

For the Commission: *C. Lee Peeler and Hong S. Dea.*

For the respondent: *Arnold M. Lerman, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act 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 American Express Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, 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 American Express Company 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 65 Broadway, New York, New York.

PAR. 2. Respondent, in the ordinary course and conduct of its business, through its credit card division, extends credit by issuing to persons credit cards, hereinafter referred to as "American Express Cards," which enable those persons to purchase property or services and defer payment therefor. In a substantial number of instances American Express Cards are issued to consumers, as "consumer" is defined in Section 603(c) of the Fair Credit Reporting Act (15 U.S.C. §§1681, 1681(a)(c) (1970)), who use the American Express cards for personal, family or household purposes.

PAR. 3. Respondent, in the ordinary course and conduct of its business, obtains "consumer reports" from "consumer reporting

agencies" as these terms are defined in Sections 603(d) and 603(f), respectively, of the Fair Credit Reporting Act. Respondent uses in whole or in part information contained in these consumer reports to deny applications for American Express Cards.

Respondent, in the ordinary course and conduct of its business, also obtains "third party information," which for the purposes of this complaint, and as this term is hereinafter used, means information obtained from a third person other than a consumer reporting agency bearing upon a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Respondent uses this third party information in whole or in part to deny applications for American Express Cards.

PAR. 4. When an application for an American Express Card is received by respondent, it is reviewed to determine whether, on the basis of the information supplied on the face of the application, the applicant appears to meet respondent's minimum credit worthiness criteria. This procedure is hereinafter referred to as the "initial screening." If the applicant does not appear to meet the minimum criteria for an American Express Card, respondent rejects the application without seeking any additional information.

If the application is not rejected during the initial screening, additional information is sought. In most instances a consumer report is included among the items of additional information obtained by respondent to evaluate the applications that are not rejected in the initial screening. Third party information, as hereinabove defined, may also be obtained for use in evaluating these applications. No application for an American Express Card is approved solely on the basis of information supplied by the applicant.

PAR. 5. In a substantial number of instances subsequent to April 25, 1971, respondent has rejected applications for its American Express Card after obtaining consumer reports on the applicants, and has notified these applicants of their rejection by means of either the "N," "L," "H," or "K" form letters set forth in relevant part below.

(1) We are sorry that we cannot comply with your request for an American Express Card.

Because the American Express Card offers virtually unlimited service at establishments throughout the world, we are obligated to place unique requirements on its availability. After giving your application every consideration, we do not find that it meets our membership requirements.

(Hereinafter referred to as the "N" letter)

(2) We are sorry that we cannot comply with your request for an American Express Card at this time.

We can assure you that your application has been given every consideration and nothing which would reflect adversely on you has been found in our investigation. Your application is declined because it does not meet our membership requirements with respect to length of employment.

It has been our experience that applicants who do not meet these requirements at one time may qualify later on, after achieving additional residence and employment stability. We cordially invite you to submit a new application at a later date when your circumstances have changed.

(Hereinafter referred to as the "L" letter.)

(3) We are sorry but we cannot comply with your request for an American Express Card at this time.

We can assure you that your application has been given every consideration and that nothing which would reflect adversely on you has been found in our investigation. It is declined because your individual income does not meet our minimum requirements.

Perhaps you have other income sources that did not appear on your application and that were not readily apparent in our investigation. If you do, please give us this additional information in writing now so we can evaluate it. Or, if you do not have other sources of income just now, we cordially invite you to submit a new application at a later date when your circumstances have changed.

(Hereinafter referred to as the "H" letter.)

(4) We are sorry that we cannot comply with your request for an American Express Card.

Because the American Express Card offers virtually unlimited service at establishments throughout the world, we are obliged to place unique requirements on its availability. After giving your application every consideration, we do not find that it meets our membership requirements.

Our decision is based upon information obtained not from a consumer report, but from other sources we deem to be reliable. If you write to us within sixty (60) days after receipt of this letter, we will be pleased to provide you with the nature of the information upon which our decision was based.

(Hereinafter referred to as "K" letter.)

Respondent sends no other notice of rejection to rejected applicants receiving "N," "L," "H" or "K" form letters.

PAR. 6. In certain instances the applications referred to in Paragraph Five, above, were rejected based in whole or in part on adverse or derogatory information contained in a consumer report. In other instances the applications were rejected based in whole or in part on

information contained in a consumer report which varied, contradicted or failed to confirm information on the face of the application. In other instances the applications were rejected based in whole or in part on the fact that the consumer report failed to provide sufficient affirmative information regarding the applicant's credit worthiness.

PAR. 7. By and through the use of the practices described in Paragraph Five and Six, above, respondent has denied consumers credit for personal, family or household purposes based in whole or in part on information contained in a consumer report without so advising the consumer and without supplying the name and address of the consumer reporting agency making the report. Therefore, respondent has violated the provisions of Section 615(a) of the Fair Credit Reporting Act.

PAR. 8. In a substantial number of instances subsequent to April 25, 1971, respondent has rejected applications for its American Express Card after obtaining third party information, as that term is hereinabove defined. Respondent has notified these applicants of their rejection by means of either the "N," "L" or "H" form letter referred to in Paragraph Five (1) through (3), above, or by means of the "J" form letter set forth in relevant part below.

We are sorry that we cannot comply with your request for an American Express Card.

Because the American Express Card offers virtually unlimited service throughout the world, we are obligated to place unique requirements on its availability. After giving your application every consideration, we do not find that it meets with our membership requirements.

We regret that the Credit Bureau listed below through which your credit application was processed has been unable to provide us with information of a nature which would enable us to approve your application. If you wish to discuss your record in that bureau, it is suggested that you communicate with the Customer Relations Department of that organization. (Hereinafter referred to as the "J" letter.)

Respondent sends no other notice of rejection to rejected applicants receiving "N," "L," "H" or "J" form letters.

PAR. 9. In certain instances the applications referred to in Paragraph Eight above, were rejected based in whole or in part on third party information which was adverse or derogatory. In other instances, the applications were rejected based in whole or in part on third party information which varied, contradicted or failed to confirm informa-

tion on the face of the application. In other instances, the applications were rejected based in whole or in part on the fact that the third party information failed to provide sufficient affirmative information regarding the applicant's credit worthiness.

PAR. 10. By and through the use of the practices described in Paragraphs Eight and Nine, above, respondent denied consumers credit for personal, family or household purposes based in whole or in part on third party information without clearly and accurately disclosing to the consumer his right to make a written request for the reasons for such adverse action within sixty days after learning of such adverse action. Therefore, respondent has violated Section 615(b) of the Fair Credit Reporting Act.

PAR. 11. By its aforesaid failures to comply with Sections 615(a) and 615(b) of the Fair Credit Reporting Act, and pursuant to Section 621(a) thereof, respondent has thereby engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) (1) of 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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Fair Credit Reporting Act 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 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 respondent has violated the said Acts, 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 procedures 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 American Express Company 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 65 Broadway, New York, New York.

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, American Express Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any application for a credit card that is primarily for personal, family or household purposes, and in connection with either the receipt or consideration of any consumer report, as "consumer report" is defined in the Fair Credit Reporting Act (15 U.S.C. §1681 (1970)), or the receipt or consideration of any third party information other than a consumer report, do forthwith cease and desist from:

(1) Failing whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to so advise the consumer against whom such adverse action has been taken and to supply the name and address of the consumer reporting agency making the report.

(2) (a) Failing whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, to disclose the nature of the information to the consumer within a reasonable period of time, upon the consumer's written request for the reasons for the adverse action received by respondent within sixty days after the consumer learns of such adverse action; and,

(b) Failing to clearly and accurately disclose to the consumer his right to make such written request pursuant to subsection 2(a) above at the time such adverse action is communicated to the consumer.

It is further ordered, That respondent shall preserve evidence of compliance with the requirements imposed under this order for a

period of not less than two years after the date each required disclosure is made. Respondent shall upon request permit the Commission through its duly authorized representatives to inspect such records.

It is further ordered, That respondent shall deliver a copy of this order to cease and desist to all present and future employees engaged in reviewing or evaluating consumer reports or other third party information in connection with applications for credit cards to be used for personal, family or household purposes.

It is further ordered, That respondent 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.

It is further ordered, That respondent 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.

FEDERAL TRADE COMMISSION DECISIONS

Complaint

87 F.T.C.

IN THE MATTER OF

J. KURTZ & SONS, INC., ET AL.

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

Docket C-2822. Complaint, May 24, 1976—Decision, May 24, 1976

Consent order requiring a Brooklyn, N.Y. furniture and appliance retailer, among other things to cease advertising falsely and misleadingly; violating the Truth in Lending Act; failing to make material disclosures regarding products' warranties, composition, condition and content; delivery and assembly terms, procedures and limitations of sales, repairs, replacement, and refund policies; arbitration and other rights of customers as set out in the *Guides for the Household Furniture Industry*; and failing to make, in both English and Spanish, pertinent disclosure of customers' rights on prominently displayed signs, in sales contracts, invoices, and in booklets provided to purchasers. Further the order requires respondents to honor warranties, investigate complaints and make satisfactory adjustments within a specified time; advise customers when credit insurance is optional and that it may be declined; and establish an arbitration program, submitting, without cost and at customers' option, unresolved grievances to binding arbitration.

Appearances

For the Commission: *Carol H. Katz* and *Shirley F. Sarna*.

For the respondents: *Stroock, Stroock & Lavan*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 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 J. Kurtz & Sons, Inc., a corporation, and John Kurtz, 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 J. Kurtz & Sons, 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 773 Broadway, Brooklyn, New York.

Respondent John Kurtz is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of said corporate