

Complaint

91 F.T.C.

IN THE MATTER OF

SECURITY PACIFIC MORTGAGE CORPORATION, AS
SUCCESSOR TO KASSLER & CO.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS*Docket C-2917. Complaint, Feb. 17, 1978 — Decision, Feb. 17, 1978*

This consent order, among other things, requires a Denver, Colo. finance company to cease failing to provide consumers, in connection with the extension of credit, such material and disclosures as are required by Federal Reserve System regulations. Further, the company is required to make prescribed efforts to obtain information pertaining to third-party fees.

Appearances

For the Commission: *James T. Rohrer.*

For the respondent: *Gordon Greiner and Donald G. Palmer,
Holland & Hart, Denver, Colo.*

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 Security Pacific Mortgage Corporation, as successor in interest to Kassler & Co., a corporation, hereinafter 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 Kassler & Co. was 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 Diamond Hill Office Park, 2460 West 26th Ave., Denver, Colorado.

PAR. 2. Security Pacific Mortgage Corporation is a "successor and assign" of Kassler & Co., having merged with Kassler in 1974, after the acts and practices alleged in the complaint. Security Pacific Mortgage Corporation 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 2460 West 26th Ave. Denver, Colorado.

PAR. 3. Respondent is now and for some time last past has been engaged in the business of arranging for and providing to the public, for a fee, mortgage loans secured by real property.

PAR. 4. In the ordinary course and conduct of its business as aforesaid, respondent regularly arranges for the extension of consumer credit, as "arrange for 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 Board.

PAR. 5. Subsequent to July 1, 1969, respondent, in connection with its arrangement for the extension of consumer credit, has provided customers with required cost disclosure statements which:

A. Fail to include in the finance charge a charge imposed directly or indirectly by the creditor payable directly or indirectly by the customer to a third party, such charge being incident to the extension of credit, as required by Section 226.4(a) of Regulation Z, when such charges were within the actual or constructive knowledge of the respondent and within the purview of its relationship with the customer as required by Section 226.6(d) of Regulation Z.

B. Fail to state the finance charge accurately as required by Section 226.8(d)(3) of Regulation Z.

C. Fail to disclose, in accordance with Section 226.8(d)(2) of Regulation Z, any finance charge paid directly or indirectly with the creditor's knowledge to another person as required by Section 226.8(e)(1).

D. Fail to state accurately the amount of credit by failing to exclude from such amount financed the items set forth in Section 226.8(e)(1) of Regulation Z as required by Section 226.8(d)(1) of Regulation Z.

E. Fail to disclose the annual percentage rate computed in accordance with the requirements of Section 226.5 of Regulation Z accurately to the nearest quarter of one percent, as required by Section 226.8(b)(2) of Regulation Z.

PAR. 6. Subsequent to July 1, 1969, in the ordinary course and conduct of its business as aforesaid, respondent arranged for the extension of credit in transactions in which a security interest is acquired in real property which is used as a principal residence of the customer. The customers thereby have the right to rescind the transaction, as provided by Section 226.9 of Regulation Z. As set out in Paragraph Five herein, respondent has failed and continues to fail to deliver to some of its customers the material disclosures required by Regulation Z. Therefore, some of the respondent's customers have not been afforded the three (3) day right of rescission from the date

of consummation of the transaction or date of delivery of material disclosures, whichever is later, as set out in Section 226.9(a) of Regulation Z. Respondent has not given notice of this right to rescind as required by Section 226.9(b) of Regulation Z, in the manner and form specified therein.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the requirements of Regulation Z constitute a violation of that Act and, pursuant to Section 108(c) thereof, respondent 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 Atlanta 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 Federal Trade Commission Act, as amended; and

The respondent and its attorney 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 (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Proposed respondent Kassler & Co. was, at the time of the acts alleged in the Commission's complaint, 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 Diamond Hill Office Park, 2460 West 26th Ave., Denver,

2. Security Pacific Mortgage Corporation is a successor and assign of Kassler & Co., having merged with Kassler in 1974, after the acts and practices alleged in the complaint. Security Pacific Mortgage Corporation 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 2460 West 26th Ave., Denver, Colorado. Security Pacific Mortgage Corporation is thus bound by this order.

3. 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 Security Pacific Mortgage Corporation, as successor in interest to Kassler & Co., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the extension of "consumer credit" or arranging for "consumer credit", as defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act [15 U.S.C. 1601-65 (1970), as amended, 15 U.S.C. 1601-65(a), (Supp. IV, 1974)], do forthwith cease and desist from:

1. Failing to include in the stated finance charge, as required by Section 226.4(a) of Regulation Z, any monies payable directly or indirectly by the customer to any third party who may have referred consumer loans to them or who may have assisted them in arranging for consumer credit, of which respondent is aware or should be aware through its reasonable effort.

2. Failing to disclose the amount of the finance charge accurately, as required by Section 226.8(d)(3) of Regulation Z.

3. Failing to disclose the amount of any "prepaid finance charge," as directed in Section 226.8(d)(2) of Regulation Z.

4. Failing to state accurately the amount of credit by failing to exclude from such amount the items set forth in Section 226.8(e)(1) of Regulation Z, as required by Section 226.8(d)(1) of Regulation Z.

5. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

6. Failing to make reasonable efforts to obtain or to estimate information required for disclosures as is allowed by Section 226.6(f) of Regulation Z, and thus failing to accurately disclose the finance charge, as required by Section 226.8(d)(3) of Regulation Z.

7. Failing in any consumer credit transaction or advertising 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 amount required by Sections 226.6, 226.8 and 226.10 of Regulation Z.

It is further ordered, That the respondent henceforth obtain from each person receiving consumer credit from it a completed and signed statement relating to monies or obligations to pay monies which are payable, directly or indirectly, by the customer to any third party who may have referred the customer to respondent or who may have assisted the customer in arranging for consumer credit with respondent. A sample of such a form is attached hereto as Appendix A. In each instance in which respondent has obtained such a completed form and in which a customer has indicated thereon that he is not liable for and has not paid a fee to any other person in connection with the loan, respondent shall be deemed to have made sufficient reasonable efforts as required by subparagraph 1 of this order, unless respondent otherwise has actual knowledge of monies or fees payable by the customer to any third party.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon respondent, file with the Commission a report showing the manner and form in which it has complied and is complying with each and every specific provision of this order.

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 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.

APPENDIX A

Customer Statement of Third Party Fees

1. Have you paid or are you liable for the payment of a fee to any person who has assisted you with or who has arranged for your application to Security Pacific Mortgage Corporation for this loan?

Yes

No

2. If your answer above was "Yes," please state the amount of the fee paid or to be paid to such person.

\$ _____

3. If your answer to question 1 was "Yes," please state the name and address of such person.

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Appendix

Address _____

I have read and understand this document, and affirm that the answers given are true to the best of my knowledge.

*Date**Customer**Customer*

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91 F.T.C.

IN THE MATTER OF

FRUEHAUF CORPORATION, INC.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE
CLAYTON ACT*Docket 8972. Complaint, June 21, 1974 — Final Order, Feb. 22, 1978*

This order, among other things, requires a Detroit, Mich. truck trailer manufacturer to divest itself, within one year from the date of the order, of Kelsey-Hayes, a Romulus, Mich. manufacturer of automotive components, excluding those operations unique to Kelsey-Hayes' Aerospace Group and R-V Agriculture Group; and to refrain, for a ten-year period, from acquiring any concern engaged in manufacturing, distributing, or selling heavy duty wheels, antiskid braking devices, or truck trailers.

Appearances

For the Commission: *K. Keith Thurman, George J. Wright, Richard L. Williams and Tom D. Smith.*

For the respondent: *John R. Ferguson, William H. Wentz, Phillip A. Proger, Janine H. Coward, Alan S. Ward and Warren Daane, Baker, Hostetler, Frost & Towers, Washington, D.C.*

COMPLAINT

The Federal Trade Commission having reason to believe that Fruehauf Corporation, a corporation subject to the jurisdiction of the Commission, has acquired the stock of Kelsey-Hayes Company, a corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45(a)(1)), and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45(a)(6)(b)), stating its charges in that respect as follows:

I. DEFINITIONS

1. For the purpose of this complaint, the following definitions shall apply:

(a) "Wheels" include wheels, rims, hubs and brake drums.

(b) "Heavy duty" refers to components for application on on-highway vehicles such as trucks, truck tractors, buses, truck trailers and container chassis having a gross vehicle weight (GVW) of 14,000