

IN THE MATTER OF
BENEFICIAL CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3032. Complaint, August 5, 1980—Decision, August 5, 1980

This consent order requires, among other things, a Wilmington, Del. firm and Beneficial Management Corp. of Morristown, N.J. to cease, in connection with the extension of consumer credit and purchase of consumer contracts, from misrepresenting the effect of state laws and consumer's right to assert against contract holder any claim or defense arising from the contract. The order further bars respondents from using past notice to defeat any valid consumer claim and requires them to notify all active account consumers who received the notice that their claims and defenses have not been waived.

Appearances

For the Commission: *Ivan L. Orton and Randall H. Brook.*

For the respondents: *John P. Howland*, for Beneficial Management Corporation, Morristown, N.J.

COMPLAINT

The Federal Trade Commission, having reason to believe that Beneficial Corporation and Beneficial Management Corporation have violated Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding is in the public interest, issues this complaint.

PARAGRAPH 1. Respondent Beneficial Corporation ("Beneficial") is a Delaware corporation with its office and principal place of business at 1300 Market St., Wilmington, Delaware.

Respondent Beneficial Management Corporation ("Beneficial Management") is a Delaware corporation with its office and principal place of business at 200 South St., Morristown, New Jersey.

Beneficial directs and controls the Beneficial Finance System comprised of wholly owned subsidiaries including local loan offices and Beneficial Management. Beneficial Management provides centralized accounting, auditing and legal services to these consumer finance subsidiaries.

Allegations below stated in the present tense include the past tense.

PAR. 2. Beneficial through Beneficial Finance System is engaged in the extension of consumer credit to the general public. It purchases

installment contracts and other consumer credit agreements from retailers in addition to making direct consumer loans.

PAR. 3. In connection with the extension of consumer credit and purchase of contracts, Beneficial and Beneficial Management has supervised the dissemination of legal forms and other printed materials throughout the country. This is done through the United States mails. Beneficial and Beneficial Management maintain a substantial course of trade in extending consumer credit and purchasing retail contracts in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course of purchasing consumer credit contracts, the Beneficial Finance System becomes a holder of these consumer credit contracts as "holder" is used in the FTC Trade Regulation Rule, Preservation of Consumer Claims and Defenses, 16 C.F.R. 433 (the "Holder Rule").

PAR. 5. These contracts usually, if not always, contain the following notice as required by the Holder Rule.

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

This notice is required by the FTC to preserve the consumer's legally sufficient claims and defenses so that they may be asserted against a creditor where a seller fails to keep its side of the bargain.

PAR. 6. Upon purchasing these contracts, the Beneficial Finance System sends "Notification of Purchase" forms to the consumers whose contracts were purchased. These notices contain the following language or language to the following effect:

THE FOLLOWING REFERENCES MAY APPLY TO THE STATE(S) INDICATED

ARIZONA—YOU HAVE NINETY (90) DAYS FROM THE DATE OF RECEIPT OF THE GOODS OR RENDERING OF SERVICES WITHIN WHICH TO NOTIFY US IN WRITING OF ANY COMPLAINTS, CLAIMS OR DEFENSES WHICH YOU MAY HAVE AGAINST THE SELLER. SUCH WRITTEN NOTICE MUST BE SENT BY CERTIFIED MAIL TO THE SELLER AND YOU SHOULD FORWARD A COPY TO US. IF SUCH WRITTEN NOTICE IS NOT RECEIVED WITHIN THE NINETY (90) DAY PERIOD, THE ASSIGNEE WILL HAVE THE RIGHT TO ENFORCE THE CONTRACT FREE OF ANY CLAIMS OR DEFENSE THE BUYER OR LESSEE MAY HAVE AGAINST THE SELLER OR LESSOR WHICH HAS ARISEN BEFORE THE END OF THE NINETY (90) DAY PERIOD.

DELAWARE—WITHIN 15 DAYS OF THE DATE OF MAILING OF THIS NOTICE YOU MUST NOTIFY THIS OFFICE IN WRITING OF ANY FACTS GIVING RISE TO ANY CLAIM OR DEFENSE THAT YOU MAY HAVE AGAINST THE SELLER OR ELSE SUCH CLAIM IS WAIVED.

IDAHO—. . . THREE (3) MONTHS . . .

Decision and Order

96 F.T.C.

INDIANA AND SOUTH DAKOTA—. . . 60 DAYS . . .*IOWA, NORTH CAROLINA, OKLAHOMA AND TENNESSEE*—. . . 30 DAYS . . .*MARYLAND*—. . . NINETY (90) DAYS . . .*PENNSYLVANIA AND WYOMING*—. . . 45 DAYS . . .*TEXAS*—. . . 3 DAYS . . .*WEST VIRGINIA*—. . . 180 DAYS . . .*WISCONSIN*—. . . 12 MONTHS . . .

PAR. 7. The representation that the consumer waives the right to assert claims or defenses if the Beneficial Finance System is not notified is false. Consumers continue to have this right as stated in the contract.

State laws like those referenced by the Beneficial Finance System on the "Notification of Purchase" forms might apply to contracts not governed by the Holder Rule. However, some of the references themselves misrepresent state law. All of the references misrepresent the impact of state law on contracts governed by the Holder Rule.

PAR. 8. The notice has the tendency and capacity to deter consumers from asserting valid claims and defenses against the Beneficial Finance System.

For example, consumers with valid warranty claims against a seller might feel that they had no claim against the Beneficial Finance System and had to continue making payments. This would undermine the purpose of the Holder Rule.

PAR. 9. For the reasons stated above, the acts and practices of Beneficial and Beneficial Management are to the prejudice and injury of the public and constitute false, misleading, deceptive and unfair acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission has initiated an investigation of certain acts and practices of the respondents Beneficial Corporation and Beneficial Management Corporation. The respondents have been furnished with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration. This complaint, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended.

The respondents, their attorney, and counsel for the Commission have executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and other provisions as required by the Commission's Rules.

The Commission considered the matter and determined that it had reason to believe that the respondents have violated the Federal Trade Commission Act, as amended, and that complaint should issue. It then accepted the executed consent agreement and placed it on the public record for a period of 60 days. Part III of the Order has been modified to follow the complaint allegations. The correction notice required by Part III must be sent only to accounts in the 15 states whose laws were misrepresented by Beneficial's original notice. Now, in conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission issues its complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent Beneficial Corporation is a Delaware corporation. Its office and principal place of business is located at 1300 Market St., Wilmington, Delaware.

Respondent Beneficial Management Corporation is a Delaware corporation. Its office and principal place of business is located at 200 South St., Morristown, New Jersey.

Respondent Beneficial Corporation directs and controls the Beneficial Finance System comprised of wholly-owned subsidiaries including local loan offices and Beneficial Management.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

3. The proceeding is in the public interest.

ORDER

This order applies to respondents Beneficial Corporation ("Beneficial") and Beneficial Management Corporation ("Beneficial Management"), their successors, assigns, officers, agents and employees, whether acting directly or through any corporation, subsidiary, division or other device, including any part of the Beneficial Finance System.

I.

It is ordered, That Beneficial and Beneficial Management cease

and desist from representing, directly or by implication, that a consumer's right to assert claims or defenses against a holder of the consumer's contract:

A. is contingent upon the consumer giving notice of the claim or defense to the holder within a stated time after the holder purchases the contract;

B. is in any other way limited by state law unless this is true.

II.

It is further ordered, That Beneficial not assert any defect in a consumer's assertion of a claim or defense against the Beneficial Finance System (or any part of it) when that defect is based on the consumer's failure to give prior notice to the Beneficial Finance System (or any part of it).

III.

It is further ordered, That Beneficial Management, within 30 days after service of this order, send the following notice to all active installment sales contract accounts in Arizona, Delaware, Idaho, Indiana, Iowa, Maryland, North Carolina, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, West Virginia, Wisconsin and Wyoming:

Dear Customer:

When we purchased your contract, we sent you a notice. This notice said you might not have the right to assert claims or defenses against us unless you notified us within a certain time period.

This statement was not correct.

You have always had the right to assert claims or defenses against us that you could assert against the seller. You have this right even if you have not previously told us of your claim or defense.

Beneficial Finance System
Affiliated Companies

IV.

It is further ordered, That respondents maintain complete business records relative to the manner and form of their compliance with this Order. Respondents shall retain each record for at least three years. Upon reasonable notice, respondents shall make any and all

the records available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

V.

It is further ordered, That Beneficial forthwith distribute a copy of this Order to each office of its respective domestic consumer finance subsidiaries.

VI.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in a corporate respondent in which the respondent is not a surviving entity, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, or any other change in the corporation which may affect compliance obligations arising out of the Order.

VII.

It is further ordered, That respondents shall, within 60 days after service of this Order, file with the Commission a report setting forth in detail the manner and form in which they have complied with this Order.

IN THE MATTER OF
HERBERT R. GIBSON, SR., ET AL.

MODIFYING ORDER AND OPINION IN REGARD TO ALLEGED
VIOLATION OF SEC. 2 OF THE CLAYTON ACT AND THE FEDERAL
TRADE COMMISSION ACT

Docket 9016. Final Order, April 30, 1980—Modifying Order, Aug. 8, 1980

This order, granting in part, and denying in part, respondents' petitions for reconsideration, modifies the order issued on April 30, 1980, 45 FR 38352, 95 F.T.C. 564, by inserting the word "while" before the word "acting," in paragraph 1, line 2 of Section II; and by inserting a comma and the phrase "while acting as a buyer or acting for in behalf of or subject to the direct or indirect control of a buyer," after the word "respondent[s]," in paragraph 2, line 3 of Section II.

ORDER GRANTING IN PART, AND DENYING IN PART, RESPONDENTS'
PETITIONS FOR RECONSIDERATION

An opinion and final order in this matter having been issued on April 30, 1980; respondents having been served by mail with the said opinion and order on May 20, 1980 and May 21, 1980; respondents having petitioned for reconsideration of said opinion and order on June 12, 1980; and the Commission, for the reasons stated in the accompanying opinion, having determined to grant in part, and deny in part, respondents' petitions for reconsideration;

It is ordered, That the final order to cease and desist be, and hereby is, modified as follows:

In paragraph 1 of Section II of the Order, line 2, insert the word "while" in front of the word "acting"; and

In paragraph 2 of Section II of the Order, line 3, after the word "respondent[s]," insert a comma and the phrase "while acting as a buyer or acting for or in behalf of or subject to the direct or indirect control of a buyer,".

OPINION OF THE COMMISSION

BY CLANTON, *Commissioner*:

Respondents have filed two petitions for reconsideration of our recent opinion and order. Each petition asserts: (1) that the language and coverage of Section II of the Final Order should be changed; (2) that application of the opinion of the Court of Appeals in *Grolier, Inc. v. FTC*, 615 F.2d 1215 (9th Cir. 1980), requires disqualification of the administrative law judge ("ALJ"), Theodor P. von Brand, and hence