

IN THE MATTER OF

LOMAS & NETTLETON FINANCIAL CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3125. Complaint, Nov. 1, 1983—Decision, Nov. 1, 1983*

This consent order requires a Dallas, Texas mortgage banker, among other things, to establish and maintain procedures to ensure that it will timely pay all obligations due and payable from homeowners' escrow accounts. The company must maintain procedures to identify and correct any injury caused by its failure to pay obligations from a homeowner's escrow account when due. The company is prohibited from misrepresenting that funds have been withdrawn from escrow and the nature of any fee or obligation imposed upon a homeowner's escrow account.

Appearances

For the Commission: *David R. Flowerree.*

For the respondent: *John C. Fricano, Skadden, Arps, Slate, Meagher & Flom, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Lomas & Nettleton Financial Corporation, a corporation, and The Lomas & Nettleton Company, a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said 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:

Parties

PARAGRAPH 1. Respondent Lomas & Nettleton Financial Corporation, hereinafter "LNFC," 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 2001 Bryan Tower, Dallas, Texas.

Respondent The Lomas & Nettleton Company, hereinafter "L&N," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut. Its office and principal

place of business is the same as that of LNFC. L&N is a wholly-owned subsidiary of LNFC.

Commerce

PAR. 2. Respondents maintain and have maintained a substantial course of business, including the acts and practices hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent's Business

PAR. 3. Respondents are now and for some time have been engaged in the business of mortgage banking, including the origination of residential mortgage loans, the selling of these mortgages to institutional investors, and the servicing of residential mortgage loans for themselves and others.

PAR. 4. Respondents service mortgage loans by receiving periodic payments from mortgagors, hereinafter "homeowners," on behalf of lending institutions and other mortgage holders. These payments include the principal and interest due on mortgage notes and, in many instances, funds to be deposited into escrow accounts by respondents. Respondents undertake to pay from funds accumulated in escrow the premiums due on homeowners' hazard insurance policies and property taxes due to appropriate authorities.

Count I

PAR. 5. In 1979, L&N acquired National Homes Acceptance Corporation (hereinafter "National Homes"). The National Homes acquisition raised the number of residential mortgage loans serviced by respondents from approximately 300,000 to approximately 450,000.

PAR. 6. Respondents failed to make adequate preparations for the integration of the National Homes files onto the L&N computer system. Because of this inadequate preparation, and because of the difficulties L&N experienced with its computer facility during 1979-1980, a significant amount of homeowners' correspondence was not processed promptly by L&N during that time. While respondents took certain steps to halt or ameliorate the problem, they were inadequate.

PAR. 7. As a direct result of the events alleged in Paragraph Six, in numerous instances respondents, being on notice that premiums were due for homeowner-selected policies of hazard insurance, failed to make timely payments of such premiums.

PAR. 8. Respondents' acts and practices as described in Paragraphs Five through Seven constituted unfair acts or practices.

Count II

PAR. 9. Until February 1981, whenever, for any reason, a homeowner's hazard insurance policy lapsed, respondents mailed to the homeowner a letter advising the homeowner that respondents had obtained alternative hazard insurance coverage.

PAR. 10. By and through certain statements contained in the aforesaid letter, respondents represented to the homeowner, directly or by implication, that respondents had in their possession an alternative hazard insurance policy which was paid for by L&N out of the funds contained in the homeowner's escrow account, and, therefore, that funds were no longer available in that account to pay for the hazard insurance of the homeowner's choice. Other statements contained in the aforesaid letter represented, directly or by implication, that a "substitution fee" would be charged if the homeowner chose to replace the alternative hazard insurance obtained by L&N with a policy of that homeowner's choice.

PAR. 11. At the time said representations were made, however, respondents did not have in their actual possession the alternative hazard insurance policy, nor had they paid the premium for that policy out of the funds contained in the homeowner's escrow account. Thus, that account still contained sufficient funds to pay the premium on a hazard insurance policy of the homeowner's choice, and no "substitution fee" could be charged for substituting a homeowner-chosen policy for the alternative hazard insurance described in the aforesaid letter.

PAR. 12. Respondents' use of the representations set forth in Paragraph Ten had the capacity and tendency to mislead homeowners into the erroneous belief that such representations were true and complete and had the capacity to deter homeowners from purchasing hazard insurance of their choice.

Violation

PAR. 13. The acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and constituted unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of 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 Atlanta Regional Office

proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 5 of the Federal Trade Commission Act; and

The respondents, their attorneys, 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, and having duly considered the comments filed thereafter by interested persons 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. Respondent Lomas & Nettleton Financial Corporation, hereinafter "LNFC," 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 2001 Bryan Tower, Dallas, Texas.

Respondent The Lomas & Nettleton Company, hereinafter "L&N," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut. Its office and principal place of business is the same as that of LNFC. L&N is a wholly-owned subsidiary of LNFC.

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

For the purposes of this Order, the following definitions apply:

a. *Homeowner* means any person who is the mortgagor of residential real estate.

b. *Hazard insurance* means any insurance on mortgaged property for fire, theft, or other hazards, including homeowners' insurance.

I.

It is ordered, That respondents Lomas & Nettleton Financial Corporation, a corporation, and The Lomas & Nettleton Company, a corporation, their successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device in connection with the administering or servicing of any loan, including a home mortgage, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to maintain procedures designed reasonably to ensure timely payment of all obligations payable from homeowners' escrow accounts;

B. Failing to maintain procedures designed reasonably to ensure that any failure of respondents to make timely payment of any obligation payable from a homeowner's escrow account is identified and corrected, and any injury to the homeowner resulting therefrom is redressed;

C. Failing promptly to correct and to redress any injury to a homeowner caused by any failure of respondents to make timely payment of any obligation payable from the homeowner's escrow account once respondents are placed on notice of such an injury;

D. Misrepresenting, directly or by implication, that funds have or have not been withdrawn by respondents from a homeowner's escrow account;

E. Misrepresenting, directly or by implication, the nature of any charge or fee having been or to be imposed by respondents on a homeowner or against a homeowner's escrow account.

II.

It is further ordered, That respondents shall distribute a copy of this Order to all their operating divisions and to all present or future personnel, agents or representatives having policy responsibilities with respect to the subject matter of this Order and that respondents secure from each such person a signed statement acknowledging receipt of said Order.

III.

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

IV.

It is further ordered, That the respondents shall, within ninety (90) 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

AMREP CORPORATION

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9018. Complaint, March 11, 1975—Final Order, Nov. 2, 1983

This Final Order requires a New York City land sales company, among other things, to cease representing that the purchase of land is a sound investment; that resale is not difficult and that the price set by the company is the land's fair market value, unless such claims can be substantiated by competent and reliable data. The order requires that all advertising, promotional materials and sales contracts include prescribed disclosures advising purchasers of the risk involved in undeveloped land and of the importance of obtaining a property report and inspecting the land prior to purchase. Respondent is prohibited from misrepresenting the present or potential development of any land by others; the direction of population growth or other demographic factors; and the true nature and purpose of any promotional event or activity. Respondent is further prohibited from discouraging purchasers from consulting with a real estate specialist prior to purchase; using high pressure sales tactics; and utilizing certain contractual provisions, including one whereby defaulting purchasers forfeit all payments made. Additionally, respondent must provide customers with cooling-off periods; make specific disclosures regarding rights to cancellation and refunds; and maintain a surveillance program designed to ensure compliance with the order's provisions.

Appearances

For the Commission: *George E. Schulman, Perry W. Winston and Jon R. Calhoun.*

For the respondent: *Solomon H. Friend, Theodore R. Schreier, Michael E. Schoeman and Peter Williamson, Friend, Dorfman & Marks, New York City and Louis Barton, in-house counsel, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that AMREP Corporation, a corporation, hereinafter sometimes referred to as respondent, by itself and through its wholly-owned subsidiaries, has violated the provisions of said 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: