

IN THE MATTER OF

EXCELL MORTGAGE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TRUTH IN LENDING ACT, REGULATION Z, AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3371. Complaint, Feb. 26, 1992--Decision, Feb. 26, 1992*

This consent order prohibits, among other things, a New Jersey corporation to accurately calculate and disclose the annual percentage rate, finance charge, payment schedule and other information required by Regulation Z. The order also requires respondent to make adjustments to the accounts of consumers extended an adjustable rate mortgage on or after January 1, 1987, and before January 1, 1990, and who had an open loan as of April 1, 1991, to whom it disclosed annual percentage rates (APRs) that were miscalculated by more than 1/4 of one percentage point below the APR determined in accordance with Regulation Z.

Appearances

For the Commission: *Carole L. Reynolds* and *Rolando Berrelez*.

For the respondent: *Morton R. Covits* (President), Englewood Cliffs, N.J.

COMPLAINT

The Federal Trade Commission, having reason to believe that Excell Mortgage Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR Part 226, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges:

PARAGRAPH 1. Excell Mortgage Corporation is a corporation organized, existing and doing business under and by virtue of the

laws of the State of New Jersey, with its principal place of business at 550 Sylvan Avenue, Englewood Cliffs, New Jersey.

PAR. 2. Respondent has been and is now engaged in the business of offering "consumer credit" to the public and is a "creditor," as those terms are defined in the TILA and Regulation Z.

PAR. 3. The acts and practices of respondent alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in the FTC Act.

PAR. 4. Respondent, in the course and conduct of its business, on numerous occasions, has failed to disclose accurately a composite annual percentage rate and, thus, has underdisclosed the annual percentage rate and finance charge in its TILA disclosures for discounted adjustable rate mortgages.

PAR. 5. Respondent's aforesaid practice violates Sections 106, 107 and 128 of the TILA, 15 U.S.C. 1605, 1606 and 1638, respectively, and Sections 226.4, 226.22 and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4, 226.22 and 226.18(d) and (e), respectively, and Section 226.17(c)(1) of Regulation Z, 12 CFR 226.17(c)(1), as more fully set out in Section 226.17(c)(1)-8 and 226.17(c)(1)-10 of the Federal Reserve Board's Official Staff Commentary to Regulation Z (Commentary), 12 CFR 226.17 (c)(1)-8 and 226.17(c)(1)-10, formerly Sections 226.18(f)-2 and 226.18(f)-8 of the Commentary, 12 CFR 226.18(f)-2 and 226.18(f)-8, and constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

PAR. 6. Respondent, in the course and conduct of its business, on numerous occasions, has failed to disclose accurately the number, amount, and timing of payments scheduled to repay the obligation in its TILA disclosures.

PAR. 7. Respondent's aforesaid practice violates Sections 128 of the TILA, 15 U.S.C. 1638, and Sections 226.18(g) of Regulation Z, 12 CFR 226.18(g), and constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Commissioner Yao not participating.

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 complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge the respondent with violation of the Truth in Lending Act, 15 U.S.C. 1601, *et seq.*, and its implementing Regulation Z, 12 CFR Part 226, and the Federal Trade Commission Act, 15 U.S.C. 45 *et seq.*; 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 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 considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts and Regulation, 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 Excell Mortgage Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey, with its principal office and place of business located at 550 Sylvan Avenue, Englewood Cliffs, New Jersey.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions apply:

1. "*Composite APR*" means a blend of interest rates as described in Section 226.17(c)(1)-10 of the Federal Reserve Board's Official Staff Commentary to Regulation Z;
2. "*First adjustment date*" is the date on which the consumer's monthly payment of principal and interest is first changed, in accordance with the terms set forth in the consumer's note or adjustable rate rider;
3. "*Original TILA disclosure*" is the last TILA disclosure given to a consumer by respondent before consummation of the loan.
4. "*Open loan*" is any loan that has not been paid off or refinanced.

I.

It is ordered, That respondent Excell Mortgage Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any extension of consumer credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to disclose accurately in its discounted adjustable rate mortgages the finance charge and the annual percentage rate by failing to disclose accurately the composite annual percentage rate, as required by Sections 106, 107 and 128 of the Truth in Lending Act, 15 U.S.C. 1605, 1606 and 1638 and Sections 226.4, 226.22 and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4, 226.22 and 226.18(d) and (e), and Section 226.17(c)(1) of Regulation Z, 12 CFR 226.17(c)(1), as more fully set out in Sections 226.17(c)(1)-8 and 226.17(c)(1)-10 of the Federal Reserve Board's Official Staff

Commentary to Regulation Z, 12 CFR 226.17(c)(1)-8 and 226.17(c)(1)-10.

B. Failing to disclose accurately the number, amount, and timing of payments scheduled to repay the obligation, as required by Section 128 of the Truth in Lending Act, 15 U.S.C. 1638, and Section 226.18(g) of Regulation Z, 12 CFR 226.18(g).

C. Failing to make all disclosures determined in accordance with Sections 106 and 107 of the Truth in Lending Act, 15 U.S.C. 1605 and 1606, and Sections 226.4 and 226.22, 12 CFR 226.4 and 226.22, and in the manner, form and amount required by Sections 226.17, 226.18, 226.19, 226.20 of Regulation Z, 12 CFR 226.17, 226.18, 226.19 and 226.20.

II.

It is further ordered, That:

A. Respondent, its successors and assigns shall make adjustments to the accounts of each consumer who was extended an adjustable rate mortgage loan on or after January 1, 1987 and before January 1, 1990 and who had an open loan as of April 1, 1991, to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than 1/4 of 1 percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, so that each such consumer will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of the dollar equivalent of 1/4 of 1 percentage point; except, the adjustment shall be limited to the time period up to the first adjustment date.

B. Respondent, its successors and assigns shall have a three-year period in which to complete the adjustments described in paragraph A above; except, where the amount of the adjustment is \$200 or less, the adjustment shall be completed by the end of the first year. Each consumer shall receive payment from respondent, its successors and assigns for at least one third of the applicable adjustment for that

consumer no later than the last day of each calendar year beginning with the current year.

III.

It is further ordered, That all adjustments required by this order shall be made by mailing the consumer a check by first class mail to the current or last known address of each such consumer. For each consumer for whom a check is returned as undelivered, respondent, its successors and assigns shall make all reasonable efforts to obtain the current address of each such consumer, including contacting all subsequent holders and servicers of the loans that are not currently held or serviced by respondent. For each consumer for whom a new address is located, respondent, its successors and assigns shall re-mail the check by first class mail to the consumer at the new address.

IV.

It is further ordered, That respondent, its successors and assigns shall include with each check mailed pursuant to this order the letter contained in Appendix A. Respondent, its successors and assigns shall mail the check and letter in an envelope approved by the Federal Trade Commission Division of Credit Practices.

V.

It is further ordered, That for four years after the date of service of this order respondent, its successors and assigns shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

VI.

It is further ordered, That respondent, its successors and assigns shall distribute a copy of this order to any present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order and that respondent, its

successors and assigns shall secure from each such person a signed statement acknowledging receipt of said order.

VII.

It is further ordered, That respondent, its successors and assigns shall promptly notify the Commission at least thirty (30) days prior to any proposed change in the corporate entity 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.

VIII.

It is further ordered, That respondent, its successors and assigns shall, within ninety (90) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order. Within thirty (30) days of the end of each year for three years, starting with the current year, respondent, its successors and assigns shall forward a copy of all checks mailed to consumers in that year to the Federal Trade Commission, Enforcement Division, Washington, D.C.

Commissioner Yao not participating.

APPENDIX A

Dear [Consumer]:

Excell Mortgage Corporation made an error in determining the finance charge on your mortgage loan. For this reason, the Federal Trade Commission in Washington, D.C. ordered us to send this letter.

Because of this error, we are refunding to you \$ _____.

If you have any questions about this letter, you may contact the Federal Trade Commission at (202) 326-

Sincerely,

Morton Covitz, President
Excell Mortgage Corporation

IN THE MATTER OF
OWENS-ILLINOIS, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9212. Complaint, Jan. 11, 1989--Final Order, Feb. 26, 1992

This final order dismisses the complaint against the respondents because the record does not show that the acquisition of Brockway is likely to substantially lessen competition or to create a monopoly in the glass container industry.

Appearances

For the Commission: *Dennis F. Johnson and Ernest Nagata.*

For the respondents: *Richard C. Weisberg, Latham & Watkins,*
Washington, D.C. *Paul C. Warnke, John C. Calender, and Harold*
D. Murry, Jr., Howrey & Simon, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents Owens-Illinois, Inc. ("Owens") and its wholly-owned subsidiary, BI Acquisition Corporation ("BIAC"), corporations subject to the jurisdiction of the Commission, have entered into agreements with Brockway, Inc. ("Brockway") that violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, that pursuant to these agreements, Owens and BIAC have commenced a cash tender offer to acquire all outstanding common shares of Brockway and intend to merge with Brockway following the cash tender offer, which cash tender offer, acquisition and merger would, if consummated, violate 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, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of