

Complaint

119 F.T.C.

IN THE MATTER OF

FELSON BUILDERS, INC., ET AL.

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-3578. Complaint, May 15, 1995--Decision, May 15, 1995

This consent order requires, among other things, three California firms and an officer to comply with the full disclosure requirements of the Truth in Lending Act and Regulation Z, its implementing regulation, in advertising credit terms, and requires the respondents to make full written disclosure of the true costs and terms of the financing prior to consummation of credit agreements.

Appearances

For the Commission: *Jeffrey A. Klurfeld* and *Harold G. Sodergren*.

For the respondents: *Kenneth A. Cheitlin, McShane & Felson*, Walnut Creek, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Felson Builders, Inc., a corporation; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding; Elmhurst Partners, L.P., a limited partnership, dba Elmhurst Funding; and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., hereinafter sometimes referred to as respondents, have violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667e, as amended, and its implementing Regulation Z, 12 CFR 226, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41-58., 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. (a) Felson Builders, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

(b) Diamond Crossing Associates, L.P., dba D.C. Funding, is a limited partnership, organized, existing and doing business under and by virtue of the laws of the State of California.

(c) Elmhurst Partners, L.P., dba Elmhurst Funding, is a limited partnership, organized, existing and doing business under and by virtue of the laws of the State of California.

(d) Each of the above entities has its principal place of business at 1290 B Street, Suite 210, Hayward, California.

(e) Joseph L. Felson is an officer of Felson Builders, Inc. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal place of business is the same as that of the corporate respondent.

PAR. 2. Respondent Felson Builders, Inc. has been and is now engaged in the construction, advertising, and offering for sale of homes to the public. In the course and conduct of its business, respondent Felson Builders, Inc. has, on numerous occasions, disseminated, or caused to be disseminated, advertisements in Chinese-language and in English, which offer "consumer credit," as that term is defined in the TILA and Regulation Z, to prospective purchasers of its homes.

PAR. 3. Respondents Diamond Crossing Associates, L.P., and Elmhurst Partners, L.P. have been and are now engaged in the selling of said homes, and in the advertising, offering and extending of "consumer credit" to the public for the purchase of said homes, and are "creditors," as those terms are defined in the TILA and Regulation Z.

PAR. 4. The acts and practices of respondents alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in the FTC Act.

PAR. 5. Respondents Diamond Crossing Associates, L.P., and Elmhurst Partners, L.P., in the course and conduct of their business, have failed to furnish consumers the disclosures as required by Sections 226.17(a) and 226.18 of Regulation Z, 12 CFR 226.17(a) and 226.18.

PAR. 6. The aforesaid practice of respondents Diamond Crossing Associates, L.P., and Elmhurst Partners, L.P., violates Section 128 of the TILA, 15 U.S.C. 1638, and Sections 226.17(a) and 226.18 of Regulation Z, 12 CFR 226.17(a) and 226.18, 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. 7. Respondents Diamond Crossing Associates, L.P., and Elmhurst Partners, L.P., in the course and conduct of their business, have failed to furnish consumers prior to the consummation of a consumer credit transaction the disclosures as required by Sections 226.17(b) and 226.18 of Regulation Z, 12 CFR 226.17(b) and 226.18.

PAR. 8. The aforesaid practice of respondents Diamond Crossing Associates, L.P., and Elmhurst Partners, L.P., violates Section 128 of the TILA, 15 U.S.C. 1638, and Sections 226.17(b) and 226.18 of Regulation Z, 12 CFR 226.17(b) and 226.18, 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. 9. At all times material to this complaint, Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), required that if any of the following terms is set forth in an advertisement:

- (i) The amount or percentage of any downpayment;
- (ii) The number of payments or period of repayment;
- (iii) The amount of any payment;
- (iv) The amount of any finance charge;

then it shall state the following terms, as applicable:

- (i) The amount or percentage of the downpayment;
- (ii) The terms of repayment;
- (iii) The "annual percentage rate," using that term or the abbreviation "APR," and if the rate may be increased after consummation, that fact.

PAR. 10. Respondents Felson Builders, Inc., Diamond Crossing Associates, L.P., Elmhurst Partners, L.P., and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., in the course and conduct of their business, in connection with the advertising of consumer credit, have, on numerous occasions, disseminated, or caused to be disseminated, advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, but fail to state all of the terms required by Section

226.24(c) of Regulation Z, 12 CFR 226.24(c), including the amount of any balloon payment.

PAR. 11. The aforesaid practice of respondents Felson Builders, Inc., Diamond Crossing Associates, L.P., Elmhurst Partners, L.P., and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., violates Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), 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. 12. At all times material to this complaint, Section 226.24(b) of Regulation Z, 12 CFR 226.24(b), required that if an advertisement states a rate of a finance charge, it shall state the rate as an "annual percentage rate," using that term or the abbreviation "APR."

PAR. 13. Respondents Felson Builders, Inc., Diamond Crossing Associates, L.P., Elmhurst Partners, L.P., and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., in the course and conduct of their business, in connection with the advertising of consumer credit, have, on numerous occasions, disseminated, or caused to be disseminated, advertisements that failed to state the rate of a finance charge as an "annual percentage rate," using that term or the abbreviation "APR."

PAR. 14. The aforesaid practice of Felson Builders, Inc., Diamond Crossing Associates, L.P., Elmhurst Partners, L.P., and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., violates Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(b) of Regulation Z, 12 CFR 226.24(b).

Chairman Pitofsky not participating.

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 San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Truth in Lending Act, as amended, and its

implementing Regulation Z, and the Federal Trade Commission Act, as amended; 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 a 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 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. (a) Respondent Felson Builders, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

(b) Respondent Diamond Crossing Associates, L.P., is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of California.

(c) Respondent Elmhurst Partners, L.P., is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of California.

(d) Each of the above respondents has its principal place of business in the City of Hayward, State of California.

(e) Respondent Joseph L. Felson is an officer of respondent Felson Builders, Inc. He formulates, directs and controls the acts and practices of said respondent, and his principal place of business is located at the above stated address.

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

I.

It is ordered, That respondents Felson Builders, Inc., a corporation, its successors and assigns, and its officers; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding, its successors and assigns, and its officers; Elmhurst Partners, L.P., a limited partnership, dba Elmhurst Funding, its successors and assigns, and its officers; and Joseph L. Felson, individually and as an officer of Felson Builders, Inc.; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any extension of consumer credit, or in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR 226) of the Truth in Lending Act ("TILA") (15 U.S.C. 1601-1667e, as amended) do forthwith cease and desist from:

1. Failing to furnish consumers with the disclosures, as required by Section 128 of the TILA, 15 U.S.C. 1638, and by Sections 226.17(a) and 226.18 of Regulation Z, 12 CFR 226.17(a) and 226.18.

2. Failing to furnish consumers prior to the consummation of a consumer credit transaction with the disclosures, as required by Section 128 of the TILA, 15 U.S.C. 1638, and by Section 226.17(b) and 226.18 of Regulation Z, 12 CFR 226.17(b) and 226.18.

3. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without stating, clearly and conspicuously, all of the terms required by Regulation Z, as follows:

(1) The amount or percentage of the downpayment,

(2) The terms of repayment, including the amount of any balloon payment, and

(3) The "annual percentage rate," using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c))

4. Stating a rate of finance charge without stating the rate as an "annual percentage rate," using that term or the abbreviation "APR," as required by Regulation Z. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(b) of Regulation Z, 12 CFR 226.24(b))

5. Failing to comply in any other respect with the Truth in Lending Act, 15 U.S.C. 1601-1667e, as amended, or its implementing regulation, Regulation Z, 12 CFR 226, as amended.

II.

It is further ordered, That respondents distribute a copy of this order to all their operating divisions, if any, and to all present or future personnel, agents or representatives having sales, advertising, or 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 notify the Commission at least thirty (30) days prior to any proposed change in any respondent which is a corporation or limited partnership, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or limited partnership, the creation or dissolution of subsidiaries, or any other change in the corporation or limited partnership which may affect compliance obligations arising out of the order.

IV.

It is further ordered, That, for a period of five (5) years following service upon him of this order, the individual respondent named herein shall notify the Commission of the discontinuance of his present business or employment and of his affiliation with any new business or employment involved in the advertising and/or extension of "consumer credit," as that term is defined in the Truth in Lending Act and its implementing Regulation Z, no later than thirty (30) days after such discontinuance and affiliation has occurred. Such notice shall include the respondent's current business address and telephone number and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities and financial interest in the business.

V.

It is further ordered, That for five (5) years after the date of service of this order respondents, their 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 the respondents 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.

Chairman Pitofsky not participating.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3579. Complaint, May 16, 1995--Decision, May 16, 1995*

This consent order requires, among other things, the Texas corporation to divest, to a Commission-approved acquirer, the Uniservice Corporation assets and businesses in Medford, Oregon, within twelve months or transfer responsibility for the divestiture to a trustee appointed by the Commission, and to obtain prior Commission approval, for a period of ten years, before acquiring any interest in funeral establishments or cemeteries in Jackson County, Oregon.

Appearances

For the Commission: *K. Shane Woods* and *Charles A. Harwood*.

For the respondent: *Michael H. Byowitx, Wachtell, Lipton, Rosen & Katz*, New York, N.Y.

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 Service Corporation International ("SCI"), a corporation, through its wholly-owned subsidiaries SCI Oregon Funeral Services, Inc., a corporation, and UC Acquisition Corp., a corporation, have entered into an agreement with Uniservice Corporation ("Uniservice"), a corporation, that violates 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 as follows:

I. DEFINITIONS

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