

Complaint

123 F.T.C.

IN THE MATTER OF

PROGRESSIVE MORTGAGE CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE TRUTH IN LENDING ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3724. Complaint, March 10, 1997--Decision, March 10, 1997

This consent order prohibits, among other things, the Ohio-based mortgage corporation and its president from misrepresenting any terms or conditions of financing, such as, the annual percentage rate and finance charges of consumer loans; the number, amount and timing of mortgage payments; and the total number of payments to repay consumer loans.

Appearances

For the Commission: *John Mendenhall* and *Brenda Doubrava*.

For the respondents: *Leonard Wolkov*, Russell, OH.

COMPLAINT

The Federal Trade Commission, having reason to believe that Progressive Mortgage Corporation, a corporation, has violated the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR 226, and that Sanford Cramer, individually and as an officer of Progressive Mortgage Corporation, has violated the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, issues this complaint and alleges as follows:

PARAGRAPH 1. Respondent Progressive Mortgage Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business at 5400 Transportation Boulevard, Cleveland, Ohio.

Respondent Sanford Cramer is the President of Progressive Mortgage Corporation. 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 Progressive Mortgage Corporation 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 respondents alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in the FTC Act, 15 U.S.C. 44.

PAR. 4. Respondent Progressive Mortgage Corporation, in the course and conduct of its business, on certain occasions, has failed to include the premiums for mortgage insurance, for so long as such insurance is required, in determining the finance charge and annual percentage rate for consumer credit transactions, and, thus, has understated the annual percentage rate and finance charge in its TILA disclosures.

PAR. 5. The aforesaid practice of respondent Progressive Mortgage Corporation violates Sections 106, 107 and 128 of the TILA, 15 U.S.C. 1605, 1606 and 1638, respectively, and Sections 226.4(b)(5); 226.22; and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4(b)(5); 226.22; and 226.18(d) and (e), respectively, 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 Progressive Mortgage Corporation, in the course and conduct of its business, on certain occasions, has failed to disclose accurately the number, amount, and timing of payments scheduled to repay the obligation in its TILA disclosures.

PAR. 7. The aforesaid practice of respondent Progressive Mortgage Corporation violates Section 128 of the TILA, 15 U.S.C. 1638, and Section 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).

PAR. 8. Respondent Progressive Mortgage Corporation, in the course and conduct of its business, on certain occasions, has failed to disclose accurately the total of payments scheduled to repay the obligation in its TILA disclosures.

PAR. 9. The aforesaid practice of respondent Progressive Mortgage Corporation violates Section 128 of the TILA, 15 U.S.C. 1638, and Section 226.18(h) of Regulation Z, 12 CFR 226.18(h), 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. 10. Respondent Sanford Cramer, in the course and conduct of his business, has provided written disclosures to customers and potential customers of Progressive Mortgage Corporation relating to the TILA that state, for mortgage loans, the annual percentage rate, the finance charge, the monthly payment amount, and the total of payments scheduled to repay the obligation.

PAR. 11. Through the use of these written disclosures, respondent Sanford Cramer has represented, directly or by implication, that the figures and amounts stated therein truthfully represent the annual percentage rate, the finance charge, the monthly payment amount, and the total of payments scheduled to repay the obligation.

PAR. 12. In truth and fact, on certain occasions, the figures and amounts contained in these written disclosures were less than the actual annual percentage rate, finance charge, monthly payment amount, and total of payments scheduled to repay the obligation. Therefore, the representations set forth in paragraph eleven were, and are, false and misleading.

PAR. 13. The aforesaid acts and practices of respondent Sanford Cramer constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents, Progressive Mortgage Corporation and Sanford Cramer, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Cleveland 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 ("TILA") and its implementing Regulation Z, and Section 5 of The Federal Trade Commission Act ("FTC 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 Acts, 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. Respondent Progressive Mortgage Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 5400 Transportation Boulevard, Cleveland, Ohio.

Respondent Sanford Cramer is president of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above address.

2. The 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 respondent, Progressive Mortgage Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, division, subsidiary 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 include premiums for mortgage insurance, for so long as such insurance is required, in determining the finance charge and annual percentage rate as required by Sections 106 and 107 of the TILA, 15 U.S.C. 1605 and 1606, and Sections 226.4(b)(5) and 226.22 of Regulation Z, 12 CFR 226.4(b)(5) and 226.22.

B. Failing to disclose accurately, where mortgage insurance is required, the finance charge and the annual percentage rate as

required by Sections 106, 107 and 128 of the TILA, 15 U.S.C. 1605, 1606, and 1638, and Section 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).

C. Failing to disclose accurately, where mortgage insurance is required, the number, amount, and timing of payments scheduled to repay the obligation, as required by Section 128 of the TILA, 15 U.S.C. 1638, and Section 226.18(g) of Regulation Z, 12 CFR 226.18(g).

D. Failing to disclose accurately, where mortgage insurance is required, the total of payments scheduled to repay the obligation, as required by Section 128 of the TILA, 15 U.S.C. 1638, and Section 226.18(h) of Regulation Z, 12 CFR 226.18(h).

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

F. Misrepresenting any term or condition of financing for any consumer credit transaction.

II.

It is further ordered, That respondent Sanford Cramer, individually and as an officer of respondent Progressive Mortgage Corporation, and his agents, representatives and employees, directly or through any corporation, division, subsidiary 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. Misrepresenting the annual percentage rate and the finance charge in written disclosures provided to consumers relating to the TILA.

B. Misrepresenting the number, amount, and timing of payments scheduled to repay the obligation in written disclosures provided to consumers relating to the TILA.

C. Misrepresenting the total of payments scheduled to repay the obligation in written disclosures provided to consumers relating to the TILA.

D. Misrepresenting any term or condition of financing for any consumer credit transaction.

III.

It is further ordered, That for six (6) years after the date of service of this order, respondent Progressive Mortgage Corporation, its successors or assigns, and respondent Sanford Cramer, individually and as an officer of Progressive Mortgage Corporation, shall maintain and upon request make available to the Commission and its employees all records that will demonstrate compliance with the requirements of this order.

IV.

It is further ordered, That respondent Progressive Mortgage Corporation, and its successors and assigns, and respondent Sanford Cramer, shall deliver a copy of this order to all current and future principals, officers, directors and managers, and to all current and future employees, agents and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

It is further ordered, That respondent Progressive Mortgage Corporation and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take

place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this paragraph shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VI.

It is further ordered, That respondent Sanford Cramer shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this order, he shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include his business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of his duties and responsibilities in connection with the business or employment.

VII.

It is further ordered, That respondent Progressive Mortgage Corporation, its successors and assigns, and respondent Sanford Cramer shall, within sixty (60) 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 they have complied with this order. The report shall be forwarded to the Federal Trade Commission, Enforcement Division, Washington, D.C.

VIII.

It is further ordered, That this order shall terminate on March 10, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER

TRANS UNION CORPORATION

Docket 9255. Interlocutory Order, March 12, 1997

ORDER DIRECTING GENERAL COUNSEL TO
ENFORCE THIRD-PARTY SUBPOENA

In early November 1996, respondent Trans Union Corporation ("Trans Union") served a non-party, Experian Information Solutions Inc. ("Experian"), with a *subpoena duces tecum*. On January 24, 1997, Experian, which competes with Trans Union in providing services at issue in this case, filed a motion to quash this subpoena, which the Administrative Law Judge denied by order of February 19, 1997. On March 5, 1997, Trans Union filed a Motion for Enforcement of a Subpoena Duces Tecum Issued to Experian Information Solutions, Inc. On March 6, 1997, the Administrative Law Judge certified Trans Union's motion for enforcement of the subpoena to the Commission with a recommendation that the Commission seek enforcement.

The subpoena to Experian seeks documents falling into two categories: those relating to the source and makeup of Experian's target-marketing lists, and those relating to consent orders entered in 1991 and 1993 against Experian's predecessor, TRW. Trans Union and Experian have agreed, in a document signed on December 13, 1996, to limit the scope of the subpoena. The limitations agreed to reflect the objections and concerns later raised in Experian's Motion To Quash. After this agreement was reached, Experian produced certain documents in response to the subpoena.

The current dispute does not concern documents. The issue is whether, in further response to the subpoena, Experian will produce a representative for an oral deposition who can "authenticate any documents Experian produced in response to the Subpoena and . . . explain general background information that [is] either not contained in the documents or [is] not self-evident from the documents." Trans Union's Response to Motion To Quash at 7. Experian acknowledges that "negotiations ha[ve] broken down due to an impasse on [the] single issue . . . whether Experian voluntarily would produce a witness to testify regarding the documents requested in the Subpoena." Motion To Quash at 2.