

CV 96

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

KORHAN, J.

FILED

UNITED STATES OF AMERICA,

Plaintiff,

v.

FLEET MORTGAGE CORP.

Defendant.

CIVIL ACTION NO.

SETTLEMENT AGREEMENT ✓

I. INTRODUCTION

The parties, acting by and through their counsel, jointly enter into and file this Settlement Agreement in order to fully and finally resolve the lawsuit filed contemporaneously herewith by the United States against Fleet Mortgage Corp. ("FMC" or the "lender") alleging violations of the Fair Housing Act, 42 U.S.C. §§ 3601-3619 and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f, which allegations FMC denies.

A. The Claims Made By The United States

1. The United States alleges that from August 1, 1993, through June 30, 1994, FMC's predecessor, Fleet Real Estate Funding Corp. ("FREF") engaged in discriminatory treatment of African-American and Hispanic borrowers at its branch offices in

Woodbridge, New Jersey, and Westbury, New York, by charging them higher prices in the form of greater "overages" and fewer "underages" on home mortgage loans than it charged white borrowers. An overage occurs when a loan closes with higher points than are required on the price sheet for the applicable loan product or when a premium interest rate is obtained and then retained by the lender. An underage occurs when the loan officer obtains fewer points than the price sheet baseline.¹ These higher prices were not based on differences in risk or other neutral factors such as local market conditions.

2. During the period in question, overages were used by FREF to allow regional branches to adjust loan prices to local market conditions and as an incentive to loan officers to originate more profitable loans. FREF furnished its branches with daily, national price sheets that established baseline prices (in the form of interest and/or points) for the various loan products offered. The prices on these sheets were not ordinarily made public. Loan officers had an incentive to obtain overages because part of the increased loan value was paid to the officer in the form of a commission enhancement.

¹ Underages are only permitted in certain circumstances, such as to secure or maintain market share, and the officer is not penalized for an authorized underage.

3. In 1994 and 1995 the staff of the Federal Reserve Bank of Boston and of the Federal Reserve Board (collectively, "the Federal Reserve") analyzed FREF loan file data and loan officer compensation records in the mid-Atlantic region for loans closed in the period August through December 1993. The Federal Reserve conducted a statistical analysis and conducted an on-site inspection, including interviews with FREF loan officers and borrowers and concluded that there were statistically significant racial and ethnic disparities in the frequency of overages and underages as to certain home mortgage loans originated by FREF in the two branches. The Federal Reserve reported its findings to FREF in April 1994. Shortly thereafter, FREF voluntarily discontinued the practice of permitting overages company-wide, pending resolution of the issues raised by the Federal Reserve's analysis. In September 1995, the Federal Reserve transmitted its concerns about the fair lending impact of FREF's pricing practices at the two branches in the August-December 1993 period to the Department of Justice.

4. The Department of Justice thereafter conducted its own analysis of data on loans originated at the two branches during the August-December 1993 period and found that minority borrowers were charged higher prices than were non-minority borrowers.

B. The Defense Asserted By Fleet

FMC has undertaken its own statistical analysis of its overages practices in the relevant period. Based on that analysis, FMC does not believe there is any pattern of unlawful lending discrimination by FREF. While the overall variances in loan pricing at the two branches during the period in question favored non-minority borrowers, some of the variation within loan products favored minorities. In addition, some of the loans that closed with overages and that were included in the government's analysis were originated through special New York State or federally subsidized loan programs that benefitted minority borrowers.

II. RESOLUTION OF THE DISPUTE

The parties have agreed that, in order to avoid costly litigation, this controversy should be settled without an evidentiary hearing, trial or other adjudication on the merits, and that entry of this Order should not be construed as an admission by FMC of any of the allegations made by the United States.

Now therefore, on the basis of the foregoing representations of the United States and FMC, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

A. General Injunctive Provision

FMC, its officers and employees, and any successor entity, are enjoined from engaging in any act or practice that discriminates on the basis of race or national origin in the provision of home mortgages, or in the provision of services or facilities in connection with any such transactions; and from imposing on the basis of race or national origin different terms or conditions for the availability of home mortgage loans. Fair Housing Act, 42 U.S.C. §§ 3604 and 3605; Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1).

B. Record-Keeping Requirements

For a period of three years from the date of the filing of this Settlement Agreement with the Court, FMC will retain all loan application materials submitted to the Westbury or Woodbridge branches for home mortgage loans and all documents and notices pertaining to loan pricing in the Mid-Atlantic Region. During this period, the lender will also retain for each approved loan,² complete loan price records including term, interest rate, and discount points charged to the borrower. Upon reasonable notice, FMC shall make available for inspection and

² The term "approved loan" includes all loans that were approved by the lender and either accepted or rejected by the applicant.

copying by the United States during the three-year term of this Settlement Agreement the information set forth above.

C. Monitoring

FMC has developed a monitoring and compliance system to ensure uniform application of pricing criteria by FMC's loan originators. The monitoring program is attached hereto at Exhibit A. This monitoring program will permit detailed and ongoing monitoring of mortgage origination pricing practices. FMC will monitor overages to ensure that its practices regarding overages do not result in disparate impact or treatment. The monitoring will include regular analyses of overages by race and other prohibited characteristics. FMC has developed and implemented a new mandatory training program for all retail loan officers and branch managers. The United States believes that FMC has already undertaken meaningful remedial measures and that additional affirmative requirements are therefore unnecessary.

D. Compensatory Relief

FMC will place Four Million Dollars (\$4,000,000) into a Fleet Mortgage Corp. Settlement Agreement Fund (the "Settlement Fund"). The primary purpose of the Settlement Fund is to compensate those African-American and Hispanic borrowers identified by the Department whose FREF loans closed between August 1, 1993 and June 1, 1994, and who paid more for their loan than did the average non-minority borrower. Approximately \$200,000 from the

Settlement Fund shall be used for community outreach and education efforts related to home mortgage loans. The Settlement Fund shall be distributed as follows:

(1) There will be only one compensation amount per loan. The Settlement Fund will not be distributed in a pro rata manner. Rather, the amount of compensation paid to each

Settlement Fund recipient will range between \$2,000 and \$15,000 depending on the magnitude of the overage paid by such persons in excess of the average overage paid by non-minority borrowers during the relevant time period. Each borrower eligible for settlement funds shall execute a Release in the form attached hereto at Exhibit B as a condition to receipt of such funds.

(2) The Department and FMC agree that FMC will distribute the community outreach and education portion of the Settlement Fund to non-profit organizations engaged in efforts related to home mortgage loans.

III. RETENTION OF JURISDICTION

This Court will retain jurisdiction of this action for three years from the filing of this Settlement Agreement for the purpose of enforcing the Settlement Agreement. The parties will endeavor in good faith to resolve informally any differences regarding interpretation and compliance with this Settlement

Agreement prior to bringing such matters to the Court for resolution.

IV. COSTS


Each party to this litigation will bear its own costs and attorneys' fees.

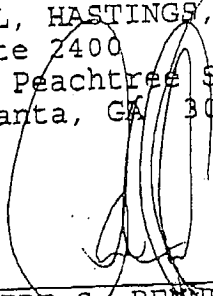
Approved this 7th day of May, 1996.

Edward R. Korman
UNITED STATES DISTRICT JUDGE

It is so agreed by the parties.

FOR FLEET MORTGAGE CORP.

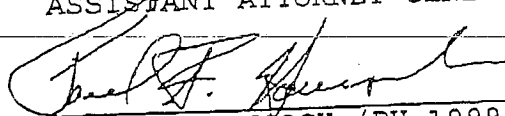

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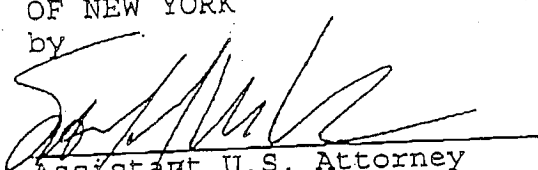

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EXHIBIT A

FLEET MORTGAGE GROUP OVERAGES POLICY FOR
RETAIL MORTGAGE LENDING ACTIVITIESObjective

The Fleet Mortgage Group ("Fleet") retail lending overages policy is intended to create a compensation incentive structure for loan officers and Branch/Sales Managers ("Managers") that allows Fleet to compete effectively with mortgage industry competitors in loan pricing, as well as in recruiting and retaining Managers and loan officers, while ensuring that overages are obtained in a manner consistent with Fleet's commitment to maintain the highest standards of fair lending practices in its business operations.

Permissible Overages

The current retail loan Daily Price Sheet shall set the highest interest rate and points that loan officers may quote to prospective mortgage loan applicants with respect to a Fleet loan product, except that loan officers shall have the discretion to quote a price incorporating an overage up to a total of two

points in the form of premium discount points or premium interest rates on certain loan products.¹

Equal Treatment of Borrowers

It is the policy of Fleet to conduct its business in a non-discriminatory manner and in compliance with legal and regulatory guidance concerning applicable fair lending laws. All loan officers and Managers are responsible for treating all borrowers in a fair and non-discriminatory manner. This includes not basing price quotes on stereotypical assumptions about applicants which may be related to race or gender. It is a part of Fleet's fair lending policy and its objective that the frequency and magnitude of permissible overages to minority and women borrowers not differ materially from the frequency and magnitude of permissible overages to non-minority and male borrowers, respectively. Loan officers and Managers are instructed that they will be permitted to continue to obtain permissible overages only

¹ Loan officers do not have the discretion to offer borrowers interest rates or points below those stated on the Daily Price Sheet ("Underages") without approval from a Manager. Underages will be authorized only where deemed necessary to obtain loan business and the cost of such Underages will be absorbed by Fleet. FMC will retain records of all Underages.

insofar as their lending record is consistent with this fair lending objective.

Monitoring Program

In order to ensure that Fleet's fair lending objective is achieved, Fleet will regularly monitor permissible overages. Specifically, Fleet will maintain an overages monitoring system that will include for every originated retail loan certain information including loan type, overage amount, borrower race and borrower gender. Fleet will use this information to track the frequency and magnitude of overages by borrower race and gender on a company-wide, branch office and loan officer basis. Fleet will undertake an overages analysis on at least a quarterly basis. Where this analysis finds a material variance on a branch or individual loan officer basis from Fleet's fair lending objective, the Manager or loan officer will be appropriately counseled and advised that if a material variance is found on loans in the calendar quarter following such counseling, the branch or loan officer shall have commissions on overages contributing to the material variance during this period deducted from future commission payments and shall be denied the discretion to charge overages for at least a six month

period. In addition, in such circumstances the branch or loan officer will be subject to monthly monitoring in the successive quarter.

Training

All Managers and loan officers, as well as other appropriate production associates, shall be required to attend a training session covering the Fleet Mortgage Group Overages Policy within three months of its implementation, and execute at that training session a certification in the form attached hereto as Exhibit A.

FLEET MORTGAGE GROUP
OVERAGES POLICY ACKNOWLEDGEMENT

I, _____, have read and understand Fleet Mortgage Group's Overages Policy for Mortgage Lending Activities ("Overages Policy"). I understand that Fleet is committed to the highest standards of fair lending in its business practices and will not tolerate any form of discrimination whatsoever in connection with either the making or pricing of mortgage loans. I understand that my employment with Fleet is contingent upon my willingness to become familiar with and to comply fully with applicable fair lending laws and regulations and to treat all credit applicants in a nondiscriminatory manner. I also understand that I may obtain overages only under the limited circumstances described in the Overages Policy and that my discretion to obtain overages may be removed if I violate that policy.

SEEN AND AGREED:

Date: _____

EXHIBIT B

GENERAL RELEASE

STATE OF _____)
)
 COUNTY OF _____) ss.

WHEREAS we, _____ and

_____ understand that the United States Department of Justice has conducted an investigation of Fleet Real Estate Funding Corp. ("FREF"), a predecessor to Fleet Mortgage Corp. ("FMC"), and has concluded that FREF violated provisions of the Fair Housing Act and the Equal Credit Opportunity Act;

WHEREAS, we understand that FMC categorically denies that FREF violated any provisions of the Fair Housing Act;

WHEREAS, we obtained a home mortgage loan with FREF in the period between August 1993 and June 1994;

WHEREAS, we understand that in order to avoid protracted and costly litigation, FMC and the United States have resolved the matter by entering into a Settlement Agreement and that we will be entitled to payment from the Settlement Fund established by FMC pursuant to the Settlement Agreement provided that we execute the General Release described below;

THEREFORE, we agree to the following:

In consideration of _____, to be paid to us out of the Settlement Fund established pursuant to the Settlement Agreement, we, _____ and _____ hereby agree, effective upon receipt of payment, to release and forever discharge FMC and its current, former, and future officers, directors, employees, agents, parent companies, affiliates, and successors-in-interest from all legal and equitable claims or causes of action that have been or might have been asserted by us or the United States, as of the date of execution of this General Release, that arise out of any alleged discrimination by FMC or FREF.

We understand that the payment to be made to us does not constitute an admission by FMC of the validity of any claims made by us or by the United States on our behalf.

We acknowledge that we understand and are waiving our right to pursue our own legal action instead of accepting payment from the Settlement Fund.

This General Release constitutes the entire agreement between FMC and us, without exception or exclusion.

This General Release may not be amended or modified by oral agreement.

We have read this General Release and understand the contents hereof, and we execute this General Release of our own free act(s) and deed(s).

Signed this ____ day of _____, 1996 at

Social Security No. _____

Other Identification _____

SWORN TO AND SUBSCRIBED before me on this ____ day of _____, 1996.

Notary Public _____

(SEAL)

Social Security No. _____

Other Identification _____

SWORN TO AND SUBSCRIBED before me on this ____ day of _____, 1996.

Notary Public _____

(SEAL)