

CLOSED
CIVIL
CASE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 03-60021-CIV-LENARD-SIMONTON

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

30 MINUTE MORTGAGE INC.,

a Florida corporation,

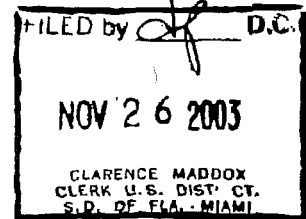
GREGORY P. ROTH,

individually and as President of
30 Minute Mortgage Inc., and

PETER W. STOLZ,

individually and as National Sales
Director of 30 Minute Mortgage Inc.,

Defendants.



~~Proposed~~ **FINAL DEFAULT JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE RELIEF AS TO DEFENDANT
30 MINUTE MORTGAGE INC.**

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed a Complaint for Injunctive and Other Equitable Relief pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) & 53(b); Section 108(c) of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1607(c); and Sections 505(a)(7) and 522(a) of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. §§ 6805(a)(7) & 6821(a). Default was entered as to

65/BA

Defendant 30 Minute Mortgage Inc. by the Clerk of the Court on May 30, 2003. The Commission now seeks the entry of default judgment on all counts of the complaint against Defendant 30 Minute Mortgage Inc. pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. The Commission's Motion for Entry of Default Judgment Against Defendant 30 Minute Mortgage Inc. is hereby granted, and **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and the parties hereto.
2. Venue lies properly with this Court.
3. The activities of Defendants 30 Minute Mortgage Inc., Gregory P. Roth, and Peter W. Stolz are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Plaintiff's Complaint states a claim upon which relief may be granted against Defendants 30 Minute Mortgage Inc., Gregory P. Roth, and Peter W. Stolz under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); TILA, 15 U.S.C. § 1601 et seq.; its implementing Regulation Z, 12 C.F.R. Part 226; Title V of the GLB Act, 15 U.S.C. §§ 6801-09, 6821-27; and the FTC's Privacy of Consumer Financial Information Rule ("Privacy Rule"), 16 C.F.R. Part 313.
5. Defendant 30 Minute Mortgage Inc. was properly served on January 10, 2003, pursuant to Rule 4 of the Federal Rules of Civil Procedure.
6. Defendant 30 Minute Mortgage Inc. failed to file an answer or other response to the Complaint within the time set forth in Rule 12(a) of the Federal Rules of Civil Procedure.

7. The Clerk of the Court, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, entered default as to Defendant 30 Minute Mortgage Inc. on May 30, 2003.

8. Defendant 30 Minute Mortgage Inc. is not an infant or an incompetent or in military service or otherwise exempted under the Soldiers' and Sailors' Civil Relief Act of 1940.

9. Defendant 30 Minute Mortgage Inc. has misrepresented the nature of its business, the mortgage loans available through its websites, and the security measures that it has taken. Defendant 30 Minute Mortgage Inc. has also fraudulently obtained "customer information of a financial institution," as defined in Section 527(2) of the GLB Act, 15 U.S.C. § 6827(2), by posing as a lender and advertising mortgage loans that are not available through it.

10. 30 Minute Mortgage Inc. has also disclosed to nonaffiliated third parties nonpublic personal information about consumers without providing the consumers accurate privacy notices and a reasonable opportunity to opt out, as required by Title V of the GLB Act, 15 U.S.C. §§ 6801-09, and the FTC's Privacy of Consumer Financial Information Rule ("Privacy Rule"), 16 C.F.R. Part 313.

11. Defendant 30 Minute Mortgage Inc. has violated Section 5 of the FTC Act, 15 U.S.C. § 45(a); TILA, 15 U.S.C. § 1601 et seq.; its implementing Regulation Z, 12 C.F.R. Part 226; Title V of the GLB Act, 15 U.S.C. §§ 6801-09, 6821-27; and the Privacy Rule, 16 C.F.R. Part 313.

12. Defendant 30 Minute Mortgage Inc. is likely to continue to engage in the activities alleged in the Complaint or otherwise violate Section 5 of the FTC Act, 15 U.S.C. § 45(a); TILA, 15 U.S.C. § 1601 et seq.; its implementing Regulation Z, 12 C.F.R. Part 226; Title

V of the GLB Act, 15 U.S.C. §§ 6801-09, 6821-27; and the Privacy Rule, 16 C.F.R. Part 313, unless it is prohibited from doing so by order of the Court.

13. Upon entry, this Final Default Judgment and Order for Permanent Injunction and Other Equitable Relief as to Defendant 30 Minute Mortgage Inc. ("Order") supplants the Stipulated Order of Preliminary Injunction entered herein on March 14, 2003 insofar as it applies to Defendant 30 Minute Mortgage Inc.

14. This Order is in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

15. Plaintiff is entitled to judgment pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure.

16. Entry of this Order is in the public interest.

DEFINITIONS

For purposes of this Order:

1. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

2. "Customer information of a financial institution" is synonymous in meaning and equal in scope to the usage of the term in Section 527(2) of the GLB Act, 15 U.S.C. § 6827(2).

3. "Defendant" means 30 Minute Mortgage Inc., and its officers, agents, servants, employees, subsidiaries, affiliates, successors, assigns, and all persons or entities in active concert or participation with it who receive actual notice of this Order by personal service or otherwise.

4. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

5. "Plaintiff" means the Federal Trade Commission.

6. "Privacy Rule" means the FTC's Privacy of Consumer Financial Information Rule, 16 C.F.R. Part 313. For purposes of Section IV of this Order, the terms "consumer," "financial institution," "nonaffiliated third party," and "nonpublic personal information" are defined as set forth in Section 313.3 of the Privacy Rule, 16 C.F.R. § 313.3.

7. "Regulation Z" means the regulation the Federal Reserve Board ("FRB") promulgated to implement TILA, 12 C.F.R. Part 226. The term also includes the FRB Official Staff Commentary on Regulation Z, 12 C.F.R. Part 226, Supp. 1. The terms "annual percentage rate," "consumer credit," and "finance charge" are defined as set forth in Sections 226.2, 226.4, and 226.22 of Regulation Z, 12 C.F.R. §§ 226.2, 226.4, & 226.22.

8. "Subtitle A of Title V of the GLB Act" means 15 U.S.C. §§ 6801-9, and "Subtitle B of Title V of the GLB Act" means 15 U.S.C. §§ 6821-27.

9. "TILA" means the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j.

10. "Unsolicited Commercial E-mail" means an electronic mail message that consists of or contains a communication advertising, promoting, soliciting, offering, or offering to sell any product or service, and that is not requested by the addressee or recipient or sent pursuant to a pre-existing business or personal relationship between the sender and the addressee or recipient of the e-mail.

CONDUCT PROHIBITIONS

I. BOND REQUIREMENTS

IT IS THEREFORE ORDERED that Defendant 30 Minute Mortgage Inc., whether acting directly or indirectly through any persons or entities under its control, is hereby permanently enjoined and restrained from engaging in the marketing, advertising, promotion, or sending of Unsolicited Commercial E-mail, unless, prior to engaging in such activities, it first obtains a performance bond ("Bond") in the principal sum of \$1,000,000 (One Million Dollars). The terms and conditions of the Bond are as follows:

- A. The Bond shall be conditioned upon compliance with Section 5(a) of the FTC Act and the provisions of this Order. The Bond shall be deemed continuous and remain in full force and effect as long as Defendant 30 Minute Mortgage Inc. is engaging in the marketing, advertising, promotion, or sending of Unsolicited Commercial E-mail. Defendant 30 Minute Mortgage Inc. shall maintain the Bond

for a period of three (3) years after such defendant provides notice to the Commission that it has ceased engaging in the marketing, advertising, promotion, or sending of Unsolicited Commercial E-mail. The Bond shall cite this Order as the subject matter of the Bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Section 5 of the FTC Act, or the provisions of this Order, or to any other violation of law;

- B. The Bond required pursuant to this Section shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each state in which 30 Minute Mortgage Inc., or any entity directly or indirectly under such defendant's control, is doing business and that holds a Federal Certificate of Authority As Acceptable Surety on Federal Bond and Reinsuring. The Bond shall be in favor of both: (1) the Federal Trade Commission for the benefit of any consumer injured as a result of any activities that required obtaining the Bond; and (2) any consumer so injured;
- C. The Bond required pursuant to this Section is in addition to, and not in lieu of, any other bonds required by federal, state, or local law;
- D. At least ten (10) days before commencing any activity that requires obtaining the Bond, Defendant 30 Minute Mortgage Inc. shall provide notice to the Commission describing in reasonable detail said activities, and include in such notice a copy of the Bond obtained;

- E. Defendant 30 Minute Mortgage Inc. shall not disclose the existence of any performance bond required by this Section to any recipient of Unsolicited Commercial E-mail, without also disclosing clearly and prominently, at the same time "AS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT IN SETTLEMENT OF CHARGES OF FALSE AND MISLEADING REPRESENTATIONS IN THE USAGE OF UNSOLICITED COMMERCIAL E-MAIL."

II. INJUNCTION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering or sale of goods or services in or affecting commerce that are advertised or sold using the Internet (including but not limited to e-mail or websites) or that relate directly or indirectly to residential mortgages, Defendant is hereby permanently restrained and enjoined from making any express or implied misrepresentation or omission of material fact that is false or misleading, in any manner, directly or indirectly, to any consumer or entity, including but not limited to misrepresenting, expressly or by implication:

- A. the mortgage terms or rates that are in fact available through it;
- B. that 30 Minute Mortgage Inc. is a mortgage lender;
- C. the security measures employed on any website; and
- D. any information material to a consumer's decision to provide personal financial information.

III. INJUNCTION AGAINST TILA AND REGULATION Z VIOLATIONS

IT IS FURTHER ORDERED that, in connection with any advertisement to promote directly or indirectly any extension of consumer credit, Defendant is hereby permanently restrained and enjoined from violating TILA and/or Regulation Z by:

- A. advertising credit terms other than those terms that actually are or will be arranged or offered by the creditor, in violation of Section 226.24(a) of Regulation Z, 12 C.F.R. § 226.24(a);
- B. stating a rate of finance charge without disclosing the accurate “annual percentage rate,” and, if the annual percentage rate may be increased after consummation, that fact, in violation of Sections 144(c) and 107 of TILA, 15 U.S.C. §§ 1664(c) & 1606, and Sections 226.24(b) and 226.22 of Regulation Z, 12 C.F.R. §§ 226.24(b) & 226.22;
- C. advertising a payment rate in a transaction where the consumer’s payments are based upon a lower interest rate than the rate at which interest is accruing, without also making all other disclosures required by Section 226.24(b)-4 of the FRB Official Staff Commentary on Regulation Z, 12 C.F.R. § 226.24(b)-4, Supp. 1 (including the rate at which the interest is in fact accruing and the annual percentage rate);
- D. stating the period of repayment, but failing to disclose: (1) the terms of repayment and (2) the annual percentage rate, using that term, and, if the rate may be increased after consummation, that fact, in violation of Section 144(d) of TILA,

15 U.S.C. § 1664(d), and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c); or

E. failing to comply in any other respect with TILA and/or Regulation Z.

IV. INJUNCTION AGAINST VIOLATIONS OF SUBTITLE A OF TITLE V OF THE GLB ACT

IT IS FURTHER ORDERED that Defendant is hereby permanently restrained and enjoined from violating, or assisting others in violating, any part of Subtitle A of Title V of the GLB Act or the Privacy Rule, including but not limited to:

- A. failing to provide privacy and opt out notices at the time and in the manner required by Sections 502 and 503 of the GLB Act, 15 U.S.C. §§ 6802-03, and Sections 313.4 to 313.9 of the Privacy Rule, 16 C.F.R. §§ 313.4-9;
- B. disclosing to any nonaffiliated third party any nonpublic personal information about a consumer in a manner that violates Section 502 of the GLB Act, 15 U.S.C. § 6802, or Section 313.10 of the Privacy Rule, 16 C.F.R. § 313.10; or
- C. reusing or redisclosing nonpublic personal information received from a nonaffiliated financial institution in a manner that is prohibited by Section 502(c) of the GLB Act, 15 U.S.C. § 6802(c), or Section 313.11 of the Privacy Rule, 16 C.F.R. § 313.11.

V. INJUNCTION AGAINST VIOLATIONS OF SUBTITLE B OF TITLE V OF THE GLB ACT

IT IS FURTHER ORDERED that Defendant is hereby permanently restrained and enjoined from violating, or assisting others in violating, any part of Subtitle B of Title V of the

GLB Act, including but not limited to obtaining or attempting to obtain "customer information of a financial institution" (including but not limited to monthly mortgage payment amounts and account/asset types and balances) by making false, fictitious, or fraudulent statements or representations to consumers or financial institutions.

VI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

- A. within ten (10) days of receipt of written notice from a representative of the Commission, Defendant 30 Minute Mortgage Inc. shall submit written reports in addition to those required by Section VII, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;
- B. in addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:
 - 1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
 - 2. posing as consumers and suppliers to: Defendant 30 Minute Mortgage Inc., Defendant 30 Minute Mortgage Inc.'s employees, or any other entity managed or controlled in whole or in part by Defendant 30 Minute

Mortgage Inc., without the necessity of identification or prior notice;

Provided that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)) or violations of TILA, Regulation Z, Subtitle A or B of Title V of the GLB Act, or the Privacy Rule.

- C. Defendant 30 Minute Mortgage Inc. shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative; agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

VII. COMPLIANCE REPORTING BY DEFENDANT

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order, Defendant 30 Minute Mortgage Inc. shall notify the Commission of any changes in corporate structure 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 filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendant 30 Minute Mortgage Inc. shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Order. This report shall include, but not be limited to:

1. any changes required to be reported pursuant to Subsection A above;
2. a copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Section IX; and
3. a copy of any performance bond obtained by Defendant pursuant to Section I.

C. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director, Division of Financial Practices
Federal Trade Commission
600 Pennsylvania Ave., NW, Mailstop NJ-3158

Washington, DC 20580

Re: FTC v. 30 Minute Mortgage Inc., Civil Action No. 03-60021-CIV

- D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendant 30 Minute Mortgage Inc.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, in connection with any business conducted directly or indirectly by 30 Minute Mortgage Inc., Defendant is hereby restrained and enjoined from failing to create and retain the following records:

- A. accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

- D. complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- E. copies of all sales scripts, training materials, advertisements, or other marketing materials.

IX. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant 30 Minute Mortgage Inc. shall deliver a copy of this Order to all principals, officers, directors, managers, 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. Defendant 30 Minute Mortgage Inc. shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that Defendant 30 Minute Mortgage Inc., within five (5) business days of receipt of this Order as entered by the Court, shall submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

XII. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that Defendant 30 Minute Mortgage Inc. is hereby permanently restrained and enjoined from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions (“salespersons”) comply with Sections I, II, III, IV, and V of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following: (1) listening to the oral representations made by salespersons; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each salesperson is involved;
- B. Failing promptly to investigate fully any consumer complaint received by any business to which this Section applies; and
- C. Failing to take corrective action with respect to any salesperson whom Defendant 30 Minute Mortgage Inc. determines is not complying with this Order, which may include training, disciplining, and/or terminating such salesperson.

XIII. PROHIBITIONS INVOLVING CONSUMER LISTS

IT IS FURTHER ORDERED that Defendant is hereby restrained and enjoined from:

- A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who submitted such information to 30

Minute Mortgage Inc. at any time prior to entry of this Order, in connection with the advertising, promotion, telemarketing, offering for sale, or sale of any product or service in or affecting commerce; and

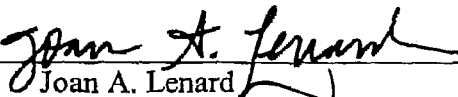
- B. Benefiting from or using the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying or financial information of any person who submitted such information to any defendant in this action as a result of, derived from, or otherwise related to the activities alleged in the Commission's complaint.

Provided however, that Defendant may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

XIV. ENTRY OF THIS JUDGMENT

IT IS FURTHER ORDERED that, as there is no just reason for delay of entry of this judgment, pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this Order immediately.

SO ORDERED, this 26 day of Nov., 2003, at 11:40 AM
W Miami Florida



Joan A. Lenard
United States District Judge