

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 13 2004

GREGORY C. LANGHAM
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CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 04-F-1065 (MJW)

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PHILLIP W. RANNEY, individually;
ARMOR MORTGAGE;
ABACUS MORTGAGE;
COMMUNITY HOMEBANC MORTGAGE SERVICES, INC.;
HARBOR PACIFIC FUNDING, INC.;
HIGH CENTER, INC.;
LENDING STRATEGIES OF COLORADO, INC.;
LITE REALTY CORP.;
PWR PROCESSING, INC., dba First Source America Mortgage Corp. dba NexLoan;
PWR PRESS, INC.; and
SOURCE FUNDING COMPANY, Colorado corporations;
KACE, LLC, dba Aristocrat Mortgage, a Colorado limited liability company; and
MORTGAGE WATCH, a California corporation;

Defendants; and

KATHLEEN A. RANNEY, individually,

Relief Defendant.

~~PROPOSED~~ ORDER FOR JUDGMENT BY DEFAULT AND PERMANENT
INJUNCTION AGAINST DEFENDANTS ARMOR MORTGAGE; ABACUS
MORTGAGE; COMMUNITY HOMEBANC MORTGAGE SERVICES, INC.; HARBOR
PACIFIC FUNDING, INC.; HIGH CENTER, INC.; LENDING STRATEGIES OF
COLORADO, INC.; LITE REALTY CORP.; PWR PROCESSING, INC.; PWR PRESS,
INC.; SOURCE FUNDING COMPANY; KACE, LLC; AND MORTGAGE WATCH

On May 26, 2004, the Plaintiff, the Federal Trade Commission ("FTC" or

“Commission”), filed its complaint for permanent injunction and other equitable relief in this matter pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, charging defendants with engaging in deceptive acts or practices in connection with the advertising, marketing and sale of home mortgage refinancing in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and in violation of the Truth-in-Lending Act, 15 U.S.C. §§ 1601-1661j (“TILA”), and Section 24(a) of its implementing regulation, Regulation Z, 16 C.F.R. § 226.24(a). Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Clerk of the Court entered defaults against defendants Armor Mortgage; Abacus Mortgage; Community Homebanc Mortgage Services, Inc.; Harbor Pacific Funding, Inc.; High Center, Inc.; Lending Strategies of Colorado, Inc.; Lite Realty Corp.; PWR Processing, Inc.; PWR Press, Inc.; Source Funding Company; KACE, LLC; and Mortgage Watch (collectively “defaulting defendants”). The Commission now moves this Court for entry of an Order for Judgment by Default and Permanent Injunction (“Order”) against the defaulting defendants, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. Having considered the memorandum, and all other pleadings and files in this action, and now being fully advised in the premises, the Court makes the following findings of fact and enters the following Default Judgment and Order for Permanent Injunction:

FINDINGS OF FACT

1. This is an action by the Commission instituted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b). The complaint seeks both permanent injunctive relief and consumer redress for alleged deceptive acts or practices by the defaulting defendants in connection with the marketing of home mortgage refinancing.

2. The Commission has the authority under Section 13(b) of the FTC Act to seek the relief it has requested.

3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over the defaulting defendants. Venue in the District of Colorado is proper, and the complaint states a claim upon which relief may be granted against the defaulting defendants under Sections 5 and 13(b) of the FTC Act.

4. The activities of the defaulting defendants are in or affecting commerce, as defined in 15 U.S.C. § 44.

5. The Complaint was filed on May 26, 2004. The summons and complaint were served by personal service on defaulting defendants on May 27, 2004, and June 22, 2004. Defaulting defendants have failed to answer the complaint or otherwise defend themselves in this action. Accordingly, defaulting defendants are in default.

6. The defaulting defendants are either corporations or limited liability companies, and, therefore, are not infants, have not been declared incompetent, and are not currently in the military or otherwise exempted from default judgment under the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. § 520.

7. It is proper in this case to issue a permanent injunction prohibiting the defaulting defendants from making misrepresentations in connection with the marketing of home mortgage financing services, and to provide for monitoring by the Commission of the defaulting defendants' compliance with such a permanent injunction.

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

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. “Advertising” means any written or verbal statement, illustration or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging, package insert, label, film, slide, radio, television or cable television, audio program transmitted over a telephone system or program-length commercial (“infomercial”); Internet; or in any other medium.
2. “Home mortgage financing services” means the process of bringing a borrower and lender together to obtain a mortgage loan, and rendering settlement services.
3. “Settlement” means the process of executing legally binding documents regarding a lien on property that is subject to a mortgage loan. This process may also be called “closing” or “escrow” in different jurisdictions.
4. “Settlement service” means any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:
 - a. Origination of a mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);
 - b. Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan

processing and origination services, and communicating with the borrower and lender);

- c. Provision of any services related to the origination, processing or funding of a mortgage loan;
- d. Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;
- e. Rendering of services by an attorney;
- f. Preparation of documents, including notarization, delivery, and recordation;
- g. Rendering of credit reports and appraisals;
- h. Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;
- i. Conducting of settlement by a settlement agent and any related services;
- j. Provision of services involving mortgage insurance;
- k. Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;
- l. Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;

- m. Provision of services involving real property taxes or any other assessments or charges on the real property;
- n. Rendering of services by a real estate agent or real estate broker; and
- o. Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

5. "Defendants" mean Armor Mortgage; Abacus Mortgage; Community Homebank Mortgage Services, Inc.; Harbor Pacific Funding, Inc.; High Center, Inc.; Lending Strategies of Colorado, Inc.; Lite Realty Corp.; PWR Processing, Inc., dba First Source America Mortgage Corp., dba NexLoan; PWR Press, Inc.; Source Funding Company; KACE, LLC; and Mortgage Watch.

6. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable sentence or phrase inclusive rather than exclusive.

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that defendants and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise are hereby enjoined from

- A. Making, or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation in connection with the advertising, marketing, promotion, offer for sale, or sale of home mortgage

financing services, including, but not limited to:

1. Misrepresenting that they can provide home mortgage financing at interest rates competitive with the lowest rates currently available in the marketplace or at any specific interest rate;
 2. Misrepresenting that the fees and costs associated with processing consumers' loan applications, including but not limited to closing costs, application fees, credit report fees, appraisal fees, document preparation fees, points, origination fees, broker/lender fees, title insurance fees, underwriting fees, recording fees, and pre-payment penalties, will be paid at no cost to consumers;
 3. Misrepresenting that consumers will not be required to make any mortgage payments on an interim loan because a second, lower-interest loan will be funded before any payments are due on the interim loan or because any such payments will be covered by the fees paid by the lenders; and
 4. Misrepresenting that they are licensed to conduct business as mortgage brokers by an agency of any state; and
- B. Violating any provision of the Truth-in-Lending Act, 15 U.S.C. §§ 1601-1666j or Regulation Z, 16 C.F.R. Part 226, including but not limited to Section 24(a) of Regulation Z, 16 C.F.R. § 226.24(a), by advertising credit terms other than those that actually are or will be offered.

II.

RECEIVERSHIP

IT IS FURTHER ORDERED that the appointment of Harvey Sender as receiver (“Receiver”) for the business activities of the defendants pursuant to this Court’s Preliminary Injunction Order entered on June 16, 2004, is hereby continued as modified by this Section. The Receiver shall proceed to liquidate all assets of the defendants.

Upon liquidation of the assets of the defendants, the Receiver shall submit a report and application for fees and expenses, and upon approval of the same shall pay:

- A. The amounts allowed by the Court pursuant to his application for fees and expenses, including but not limited to professional fees and auctioneers’ fees;
- B. To the extent that funds remain, at his discretion, and after consultation with the Commission, the Receiver may pay claims for wages and salaries by defendants’ employees (other than owners, managers, supervisors, and all persons involved with sales or verifications); and
- C. To the extent that funds remain, to the FTC. All funds paid to the FTC pursuant to this Section shall be deposited into a fund administered by the FTC to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. If the FTC determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury as disgorgement or shall be used to educate consumers affected by the practices in the Commission’s complaint in this action. Defendants shall have no right to

contest the manner of distribution chosen by the FTC. The FTC, in its sole discretion, may use a designated agent to administer consumer redress.

Upon the filing of the Receiver's final report, the Court's approval of the same, and the Receiver's fulfillment of his payment obligations under this Section, the Receivership over the Receivership Defendants pursuant to this Court's Preliminary Injunction Order entered June 16, 2004, shall be terminated and the provisions of that Preliminary Injunction Order relating to the appointment of the Receiver shall be dissolved.

III.

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, defendants shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and 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 proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
 2. Posing as consumers and suppliers to: defendants, defendants' employees,

or any other entity managed or controlled in whole or in part by defendants, without the necessity of identification or prior notice; and

3. Defendants 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.

Provided, however, 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 the FTC Act.

IV.

COMPLIANCE REPORTING BY DEFENDANTS

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, defendants shall notify the Commission of any changes in its corporate structure that may affect its 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 entity; 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 such defendant learns less than thirty (30) days prior to the date such action is to take place, such 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, each defendant 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. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section VI; and
2. Any other changes required to be reported under subparagraph A of this Section.

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

Jeffrey Klurfeld
Western Region
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

Re: FTC v. Phillip W. Ranney. et. al., Civil Action No. 04-F-1065 (MJW).

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with defendants.

V.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, defendants and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are 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.

- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Section VI, and all reports submitted to the FTC pursuant to Section IV.

VI.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, defendants shall deliver copies of the Order as directed below:

- A. Each defendant must deliver a copy of this Order to all of its principals, officers, directors, and managers. Each defendant also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon each defendant. For new personnel, delivery shall occur prior to their assuming their responsibilities.
- B. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Part.

VII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

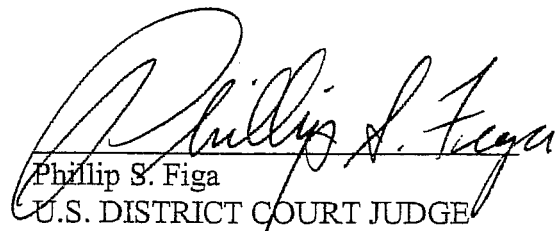
VIII.

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.

IT IS SO ORDERED.

Dated: August 10, 2004


Phillip S. Figa
U.S. DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE

Case No. 04-F-1065 (MJW)

The undersigned certifies that a copy of the foregoing **Order for Judgment by Default and Permanent Injunction Against Defendants** was served on August 13, 2004, by:

delivery to:

Magistrate Judge Michael J. Watanabe

e-mail to:

facsimile to:

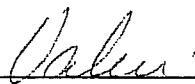
depositing the same in the U.S. Mail, postage prepaid, addressed to:

David Newman
Sarah Schroeder
Kerry O'Brien
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

Phillip W. Ranney
2913 Escapardo Place
Colorado Springs, CO 80917

Kathleen A. Ranney
5928 Crain Street
Morton Grove, IL 60053

GREGORY C. LANGHAM, CLERK

By 
Deputy Clerk/Secretary