

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO. 5:14-cv-292-MTT
)	
v.)	
)	
FIFTH THIRD MORTGAGE COMPANY,)	
CRANBROOK MORTGAGE)	
CORPORATION)	
d/b/a CRANBROOK LOANS,)	
and MICHAEL AYOUB,)	
)	
Defendants.)	
_____)	

COMPLAINT

The United States of America alleges:

1. This action is brought pursuant to Section 812(o) of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. § 3612(o) by the United States on behalf of Robert Carruthers and Marilyn Carruthers. This action is also brought by the United States to enforce the provisions of the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (“ECOA”).

Jurisdiction and Venue

2. This Court has jurisdiction over this action under 28 U.S.C. § 1345, 42 U.S.C. § 3612(o) and 15 U.S.C. § 1691(h).
3. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in the Middle District of Georgia and a substantial part of property that is the subject of the action is situated there.

Complainants and Defendants

4. Robert Carruthers resides with his wife, Marilyn Carruthers, in Macon, Georgia. Mr. and Ms. Carruthers receive Social Security Disability Insurance (hereinafter “SSDI”) income and each has a “handicap” as defined by the Fair Housing Act, 42 U.S.C. § 3602(h).¹
5. Defendant Fifth Third Mortgage Company (“Fifth Third Mortgage”) is a mortgage company headquartered at 38 Fountain Square Plaza, Cincinnati, Ohio. Fifth Third Mortgage is indirectly owned by Fifth Third Bancorp, and purchases and funds mortgage loans for Fifth Third Bank. Fifth Third Mortgage is engaged in the financing of residential housing.
6. Defendant Cranbrook Mortgage Corporation, d/b/a Cranbrook Loans (hereinafter “Cranbrook Mortgage”) is a mortgage broker located at 41800 Hayes Road, Clinton Township, Michigan. At the time of the Carruthers’ mortgage application, Cranbrook Mortgage was an approved mortgage broker for Defendant Fifth Third Mortgage and was authorized to originate loans on Defendant Fifth Third Mortgage’s behalf. At all relevant times, Cranbrook Mortgage was an agent of Fifth Third Mortgage.
7. Defendant Michael Ayoub is the CEO and President of Cranbrook Mortgage and a loan officer for the Carruthers’ loan application. Mr. Ayoub is and was at all times relevant, engaged in residential real estate-related transactions as defined by the Fair Housing Act. 42 U.S.C. § 3605(b)(1); 24 C.F.R. § 100.115.

¹ Hereafter, the word “disability” is used interchangeably with “handicap,” as defined in 42 U.S.C. § 3602(h).

Factual and Legal Background

8. Robert Carruthers and Marilyn Carruthers applied for a 30-year, fixed-rate mortgage loan insured by the Federal Housing Administration (“FHA”) through Cranbrook Mortgage in or about July 2010. The loan was to refinance the existing mortgage of their house located at 127 Northridge Drive, Macon, Georgia.
9. The property located at 127 Northridge Drive, Macon, Georgia is a dwelling within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).
10. During the application process, Mr. Carruthers spoke by telephone several times to David Ambo, a loan officer and loan processor employed by Cranbrook Mortgage. During the application process Mr. Carruthers and Mr. Ambo corresponded via e-mail.
11. David Ambo was an employee of Cranbrook Mortgage and his communications with Robert and Marilyn Carruthers were within the scope of his employment. Michael Ayoub directly supervised David Ambo.
12. Mr. Carruthers provided Cranbrook Mortgage with the Social Security award letter, bank statements, tax documents, and other relevant documents that documented the SSDI income and other income for Robert and Marilyn Carruthers. None of the documents indicate that the SSDI benefits have an expiration date.
13. SSDI is a monthly benefit for people who have worked in the past and paid Social Security taxes. SSDI benefits may be paid to people who are unable to work for a year or more because of their disability.
14. Social Security benefits, including SSDI, are “public assistance benefits” for purposes of ECOA and its implementing regulation, Regulation B, 12 C.F.R. § 202.1, et seq.

15. All recipients of SSDI have been determined have a disability within the meaning of 42 U.S.C. § 423(d)(1) by the Social Security Administration.
16. Cranbrook Mortgage submitted the Carruthers' loan application to Fifth Third Mortgage's Wholesale Division for underwriting.
17. The Carruthers' loan application was underwritten using the Federal National Mortgage Association ("Fannie Mae") automated underwriting system, Desktop Underwriter, and using the FHA Technology Open to Approved Lenders, known as TOTAL Scorecard.
18. On or about July 23, 2010, Fifth Third Mortgage issued a "Notice of Loan Approval" to Cranbrook Mortgage regarding the Carruthers' loan application. The Notice included specific loan conditions; one condition was "receipt of most recent documentation evidencing three year's continuance" of the Carruthers' SSDI income.
19. From August 31, 2009, until May 17, 2012, it was the regular policy and practice of Fifth Third Mortgage to require borrowers with a disability to document the continuation of SSDI or other disability income by providing a letter from a physician.
20. Fifth Third Mortgage provides its employees that are involved in lending with written policies. The "Fifth Third FHA Lending Manual," in use from August 31, 2009, until May 17, 2012, required borrowers receiving disability-related income to verify that their income would continue for three years by one of the following: "*statement from physician, statement from insurance company, copy of award letter or distribution letter including income and continuance*" (emphasis added). In the category of Social Security income, the "Fifth Third FHA Lending Manual" required three years of income continuation.

21. A recipient of SSDI would not be able to provide a statement from an insurance company. A recipient of SSDI would not be able to provide an “award letter or distribution letter including income and continuance,” because the Social Security Administration will not provide any document that shows “continuance” of income. Therefore, Fifth Third Mortgage’s written “Fifth Third FHA Lending Manual” required recipients of SSDI to provide a physician’s statement to show that income would continue for at least three years as a condition of receiving a loan.
22. The requirement that borrowers with a disability provide a letter from a doctor to show that income would continue is an intrusive and burdensome requirement that Fifth Third imposed on borrowers with a disability. Fifth Third did not require wage earners to provide personal information to show that their income would continue for three years and did not ask wage earners to provide a letter from their employer stating that employment would continue for at least three years.
23. On or about July 24, 2010, and on or about July 26, 2010, David Ambo requested that Mr. Carruthers provide documentation establishing that the SSDI income of Robert Carruthers and Marilyn Carruthers would continue for at least three years. David Ambo told the Carruthers that their Social Security Award letters were not sufficient because the letters do not indicate that the income will continue for at least three years.
24. David Ambo told the Carruthers to get a letter from a doctor verifying that they would continue to receive income for at least three years due to a diagnosed disability.
25. Mr. Carruthers did not provide a letter from a doctor and told David Ambo via email that the request was “unfair, unreasonable, and prejudicial.”

26. Because the Carruthers did not provide the letter from a doctor, Cranbrook Mortgage denied the Carruthers' loan application.
27. The Carruthers were otherwise qualified for the mortgage loan.
28. The requirement that borrowers with a disability provide a letter from a doctor to show that income would continue is an intrusive and burdensome requirement that Fifth Third imposed on borrowers with a disability. Cranbrook did not require wage earners to provide personal information to show that their income would continue for three years and did not ask wage earners to provide a letter from their employer stating that employment would continue for at least three years.
29. On or about August 4, 2010, Cranbrook Mortgage issued a notice of denial indicating that the Carruthers' loan application had been denied because Cranbrook Mortgage was "unable to verify income."
30. On or about October 25, 2010, Defendant Fifth Third Mortgage's underwriting platform automatically closed the Carruthers' file due to inactivity and coded the application as "Approved/Not Accepted."
31. As a result of the actions of Defendants, Robert and Marilyn Carruthers suffered actual damages, including emotional distress.
32. On May 12, 2011, Robert Carruthers and Marilyn Carruthers filed a timely complaint with the United States Department of Housing and Urban Development (hereinafter "HUD"), pursuant to Section 810(a) of the Fair Housing Act, as amended 42 U.S.C. § 3610(a). In the complaint, Mr. and Ms. Carruthers allege that the Defendants discriminated against Mr. and Ms. Carruthers on the basis of their disabilities in violation of subsections 804(f)(2) and 805 of the Fair Housing Act.

33. On August 15, 2013, the Secretary of HUD issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Defendants with engaging in discriminatory housing practices in violation of the Fair Housing Act.
34. On August 23, 2013, Robert Carruthers and Marilyn Carruthers elected to have the charge resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a).
35. The Secretary of HUD has authorized the Attorney General to commence a civil action pursuant to 42 U.S.C. § 3612(o).
36. From at least August 31, 2009, until May 17, 2012, Defendant Fifth Third Mortgage did not properly train its underwriters, loan officers, and other employees regarding appropriate documentation for SSDI income.
37. From August 31, 2009, until May 17, 2012, Fifth Third required some mortgage loan applicants who relied on SSDI income to provide a letter from a doctor to show that their income would continue. Most if not all of these applicants have a disability as defined by the Fair Housing Act, 42 U.S.C. § 3602(h).
38. Defendants are subject to the federal laws governing fair lending, including the Fair Housing Act and the Equal Credit Opportunity Act and their respective implementing regulations, the fair housing regulations of the Department of Housing and Urban Development, 24 C.F.R. § 100.1, et seq., and Regulation B of the Board of Governors of the Federal Reserve, 12 C.F.R. § 202.1, et seq. The Fair Housing Act prohibits financial institutions and others from, *inter alia*, discriminating on the basis of disability in their home-mortgage lending practices. The Equal Credit Opportunity Act prohibits financial institutions and others from, *inter alia*, discriminating on the basis of receipt of public assistance in their home-mortgage lending practices.

39. Among the written guidelines applicable to SSDI income published by the FHA and Fannie Mae, there is no written guideline that requires a lender to obtain a letter from a doctor and there was no such guideline during the relevant time period.
40. As described herein, Fifth Third Mortgage's policies and practices of requiring mortgage applicants who received SSDI income and other disability income to provide a letter from a doctor constitute discrimination on the bases of disability and receipt of public assistance. Fifth Third Mortgage's policies and practices were intended to deny and discourage, or had the effect of denying or discouraging, equal opportunity to persons who have disabilities and are receiving SSDI or other disability income, to obtain lending services.

COUNT I
(Discrimination on the Basis of Disability)

41. Defendants' actions as alleged herein constitute:
 - a. Making, printing, or publishing any notice or statement with respect to the sale of a dwelling that indicates a preference, limitation, or discrimination on the basis of disability, in violation of the Fair Housing Act, 42 U.S.C. § 3604(c);
 - b. Discrimination in the sale of, or otherwise making unavailable or denying, dwellings to buyers because of disability, in violation of the Fair Housing Act, 42 U.S.C. § 3604(f)(1);
 - c. Discrimination in the terms, conditions, or privileges of the sale of a dwelling, or in the provision of services in connection with such a dwelling, because of disability in violation of the Fair Housing Act, 42 U.S.C. § 3604 (f)(2);

- d. Discrimination in making available a loan for the purchase of a dwelling, or in the terms or conditions of such a loan, based on disability in violation of the Fair Housing Act, 42 U.S.C. § 3605;
- e. Making any inquiry to determine whether an applicant has a disability or making inquiry as to the nature or severity of a disability of such a person in violation of 24 C.F.R. § 100.202(c); and
- f. Using different policies, practices or procedures in evaluating or in determining creditworthiness on the basis of disability in violation of 24 C.F.R. § 130(b)(1).

COUNT II
(Discrimination on the Basis of Receipt of Public Assistance)

42. Defendants' actions as alleged herein constitute:

- a. Discrimination with respect to credit transactions, on the basis of receipt of public assistance, in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(2); and
- b. Discrimination against applicants with respect to credit transactions by taking receipt of public assistance into account in evaluating creditworthiness, in violation of the Equal Credit Opportunity Act, Regulation B, 12 C.F.R. 202.4, 202.5, and 202.6.

COUNT III
(Pattern or Practice of Discrimination)

43. Fifth Third Mortgage's actions as alleged herein constitute:

- a. A pattern or practice of resistance to the full enjoyment of rights secured by the Fair Housing Act, in violation of 42 U.S.C. § 3614(a); and/or

- b. A pattern or practice of violating the Equal Credit Opportunity Act, 15 U.S.C. § 1691e(h); and/or
 - c. A denial of rights granted by the Fair Housing Act to a group of persons that raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).
44. Persons who have been victims of Defendants' discriminatory policies and practices are aggrieved persons as defined in 42 U.S.C. § 3602(i) and as described in 15 U.S.C. § 1691(e)(i), and have suffered damages as a result of defendants' conduct in violation of both the Fair Housing and the Equal Credit Opportunity Acts, as described herein.

WHEREFORE, the United States prays that the Court enter an order that:

1. Declares that the discriminatory practices of Defendants, as set forth above, violate subsections 804(c), 804(f)(1)-(2), and 805 of the Fair Housing Act, 42 U.S.C. §§ 3604(c), 3604 (f)(1)-(f)(2), 3605, and the implementing regulations of the Fair Housing Act, 24 C.F.R. §§ 100.202(c), and 130(b)(1);
2. Declares that the discriminatory lending practices of Defendants, as set forth above, violate the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(2), and Regulation B, 12 C.F.R. §§ 202.4, 202.5, and 202.6;
3. Enjoins Defendants, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from:
 - a. discriminating because of disability or receipt of public assistance against any person in any aspect of home mortgage lending;
 - b. failing or refusing to take such affirmative steps as may be necessary to

restore, as nearly as practicable, Robert Carruthers and Marilyn Carruthers and any other aggrieved persons to the position in which they would have been but for Defendants' unlawful conduct;

- c. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any conduct that violates the Fair Housing Act or the Equal Credit Opportunity Act in the future and to eliminate, to the extent practicable, the effects of Defendants' unlawful conduct; and
4. Awards such monetary damages as would fully compensate Robert Carruthers and Marilyn Carruthers and any other aggrieved persons for injuries caused by Defendants' discriminatory conduct; and
5. Awards any additional relief as may be appropriate pursuant to 42 U.S.C. § 3612(g)(3).

The United States further prays for such additional relief as the interests of justice may require.

Dated: August 7, 2014

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