

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

CV 96 2279

FLEET MORTGAGE CORP.
Defendant.

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.^(a) 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.
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:

. 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).

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

B. 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.

C. 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.

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES:

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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.

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