

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DELTA FUNDING CORPORATION, and  
DELTA FINANCIAL CORPORATION

Defendants.

Civil No.

*CV*

*ROF NSI*

**SIFTON, J.  
GO, M.**

COMPLAINT

The United States of America alleges:

1. This action is brought by the United States to enforce the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619 ("Fair Housing Act"), and of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f ("ECOA"). This action is also brought on behalf of the Secretary of Housing and Urban Development to enforce the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607 ("RESPA"), and, acting upon notification and authorization to the Attorney General by the Federal Trade Commission, under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 108(c) of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1607(c).

2. This court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345; 42 U.S.C. § 3614; 15 U.S.C.

§§ 53(b), 1607(c), and 1691(h); and 12 U.S.C. § 2614. Venue is appropriate pursuant to 28 U.S.C §§ 1391(b) and (c) and 1392(a), as well as 15 U.S.C. § 53(b).

3. Defendant, Delta Funding Corporation ("Delta Funding"), is a wholly owned subsidiary of defendant Delta Financial Corporation, a publicly held company traded on the New York Stock Exchange (except where otherwise noted, both defendants are collectively referred to as "Delta"). Delta is incorporated under the laws of the State of Delaware, with its principal place of business in Woodbury, New York.

4. From at least 1982 until the present, Delta's business has included regularly engaging in residential real estate-related transactions and regularly extending credit to persons. Delta's home mortgage loans are residential real estate-related transactions within the meaning of the Fair Housing Act, 42 U.S.C. § 3605 and are federally related mortgage loans as defined in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2602. Delta is a creditor as that term is defined by section 702(e) of the Equal Credit Opportunity Act, 15 U.S.C. § 1692a(e), and is, therefore, subject to the requirements of the Equal Credit Opportunity Act and its implementing Regulation B, as amended, 12 C.F.R. Part 202, in effect on or after March 23, 1977. Further, Delta Funding is a creditor as that term is defined by Section 103(f) of TILA, 15 U.S.C. § 1602(f), and Section 226.2(a)(17) of its implementing Regulation Z, 12 C.F.R. § 226.2(a)(17). At all times relevant to this complaint, Delta Funding has maintained a

substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. Delta's brokers are entities that bring borrowers and Delta together for the borrower to obtain home mortgage loans. Delta solicits and receives applications for credit, primarily through mortgage brokers who submit home mortgage loan applications from potential borrowers. Such broker submissions are referrals under the Real Estate Settlement Procedures Act and its implementing regulations, 24 C.F.R. 3500.14(f).

6. The persons on whose behalf such credit applications are submitted are applicants as that term is defined by section 702(b) of the Equal Credit Opportunity Act, 15 U.S.C. §1691(b).

7. Delta underwrites each loan submitted to it by its brokers; if it approves the application, the loan is funded in Delta's name. The actions by Delta and its brokers in the origination and making of the mortgage loan constitute a settlement service as defined by the Real Estate Settlement Procedures Act, 12 U.S.C. § 2602(3).

8. Delta's lending operations are concentrated in New York State, particularly in Kings and Queens Counties, but are not limited thereto. In recent years, Delta has been expanding its home mortgage lending activities to other states. In 1998, Delta funded at least 8,561 loans. Almost half (4,170) were on homes located in New York State, and of those, 2,040 were in Kings and Queens Counties. According to the 1990 Census, the majority of

the residents of these two counties are African American or Hispanic. Delta's mortgage lending operations in the two counties are concentrated in the minority residential areas.

9. In conducting its home mortgage lending operations, Delta has chosen to serve the "subprime" or "B/C" mortgage loan market. As a subprime lender, Delta holds itself out as willing to approve and fund loans to borrowers who have flawed credit histories and/or debt-to-income ratios that are higher than those deemed acceptable in the "A" or "conforming" mortgage market.

10. Within the subprime market, Delta further specializes in refinancing rather than purchase-money loans. In New York State and within the state in Kings and Queens Counties, more than 75% of Delta's loans are refinancings. Many of Delta's subprime refinancings are for homeowners who obtain loans that are secured by their homes and are used to pay off unsecured debts or to pay for home improvements. Approximately 20% of Delta's mortgage loans are high-rate or high-fee loans within the meaning of the Home Ownership and Equity Protection Act of 1994 ("HOEPA"), which amended TILA by adding Section 129 of TILA, 15 U.S.C. § 1639, and is implemented by, inter alia, Sections 226.31 and 226.32 of Regulation Z, 12 C.F.R. §§ 226.31 and 226.32. Among other things, HOEPA, which took effect on October 1, 1995, applies to high cost refinancing and home equity loans that are secured by the borrower's principal dwelling and where the total points and fees payable by the borrower at or before loan closing will exceed eight percent of the total loan amount.

11. The Delta brokers' fees are paid in three different ways, with all costs ultimately borne by the borrower: (a) through "up-front" charges, fees, or points, with points being a percentage of the loan amount paid to the broker (usually at loan closing from the proceeds of the loan); (b) through "back-end" fees (also called "yield spread premiums"), whereby the borrower accepts an interest rate that is higher than Delta's par interest rate and Delta makes a direct payment to the broker for securing the higher-than-par loan; and (c) through "miscellaneous" fees, which are usually paid out of loan proceeds. During the 1996-1998 period, almost all of Delta's borrowers in King's and Queens Counties incurred front fees, one-third incurred both front and back fees, and one-tenth incurred all three kinds of fees.

12. Delta is responsible for the fees charged to borrowers for its loans. It individually underwrote and funded each loan, it approved each loan fee paid to a broker, and it aided its brokers in obtaining unearned fees described herein. With respect to a substantial portion of the loans, Delta was aware that little or no services were being performed in exchange for the broker charges. Further, Delta knew that the total of the broker compensation did not bear a reasonable relation to the level of the goods and services that the brokers provided or performed. In fact, Delta aided its brokers in obtaining the unearned fees described herein by performing many of the services for the brokers.

13. Delta's brokers typically charged fees ranging from one to 10 percent or more of the total amount borrowed. Delta's borrowers, particularly those who were charged high fee amounts, seldom had the cash on hand with which to pay all of the brokers' fees. Therefore, the borrowers' loan amounts were increased to cover the high fees. The increased loan proceeds provided Delta with additional profit and with a mechanism through which to pay its brokers. In doing so, Delta directly or indirectly gave a portion of the loan proceeds to its mortgage brokers to pay charges for which no or nominal services were rendered.

14. Delta also frequently gave its broker a portion of the broker fees in connection with a mortgage loan in the form of a yield spread premium, when no or nominal services were actually performed. In addition, such payments constituted the giving of a thing of value in exchange for the referral of loan business.

15. Delta's payments to brokers, the performance of services for the brokers by Delta for which the brokers received payment, and the approval and assistance given to brokers by Delta that provided an opportunity to charge unearned fees, constituted things of value in exchange for the brokers' referrals of loan business to Delta.

16. Delta's brokers received their fees without regard to risk that the borrower would default on the loan, and no part of the broker fees referred to herein related to the credit risk presented by the borrower.

17. Delta Funding has often approved loans without regard to a borrower's ability to repay when prudent underwriting criteria, such as debt-to-income ratios, residual income, and repayment history, would have indicated that the borrower would likely have difficulty repaying the loan. Delta Funding has approved loans where the borrower's debt payments would consume more than half of the borrower's total pre-tax income, and in many instances would leave the borrower with less than adequate income for living expenses. In many instances, Delta Funding has relied on unverified income of the borrower with no reasonable basis for believing that such income exists and would support the loan. Delta Funding also has approved mortgage loans that cause the borrower's monthly debt payments to increase, despite Delta Funding's knowledge of the borrower's past inability to meet the lower prior monthly payments. In many cases, there was no change in the borrower's circumstances or other evidence to suggest that the borrower would be able to meet the newer and more onerous requirements. Delta's practice of approving loans without regard to borrowers' ability to repay has exposed borrowers to unwarranted risk of default and foreclosure.

18. A comparison of Delta's broker fees paid by 1,328 African American females and 262 white males in Kings and Queens Counties during the 1996-1998 period show that the mean broker fee for African American females was 6.24% of the loan amount, whereas the broker fee for similarly situated white males was 4.64% of the loan amount. This means, for example, that for a

loan in the \$100,000 to \$125,000 range, African American females paid over \$1,500 more in broker fees than did white males. There is virtually no possibility that this difference in the group means could have occurred by chance. In statistical terms, when controlling for loan size, the probability that the difference occurred by chance is less than .0001. The difference in price between the African American female borrowers was unrelated to the qualifications of the borrowers or the risk to the lender.

19. Delta has subjected its African American female borrowers to terms and conditions for home mortgage loans that resulted in those borrowers paying more for their loans than similarly situated white male borrowers.

20. Delta's policies and practices, as alleged herein, constitute:

- a. Discrimination on the basis of race and sex in making available residential real estate-related transactions in violation of Section 805 of the Fair Housing Act, 42 U.S.C. § 3605(a); and
- b. Discrimination against applicants with respect to credit transactions, on the basis of race and sex in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1).

21. The defendants' policies and practices constitute:
- a. A pattern or practice of resistance to the full enjoyment of rights secured by the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619, and the Equal Credit



Opportunity Act, 15 U.S.C. §§ 1691-1691f; and

b. A denial of rights granted by the Fair Housing Act, as amended, to a group of persons that raises an issue of general public importance.

22. This pattern or practice and denial of rights occurred at least between January 1, 1996 and December 31, 1998.

23. Persons who have been victims of Delta's discriminatory policies and practices are aggrieved persons as defined in the Fair Housing Act and the Equal Credit Opportunity Act, and have suffered damages as a result of the Delta's conduct as described herein.

24. Delta's discriminatory policies and practices were intentional and willful, and were implemented with deliberate disregard for the rights of African American women.

25. In the course of offering and extending credit to borrowers, Delta Funding has violated HOEPA by engaging in asset-based lending and including loan terms prohibited by HOEPA. Specifically:

a. Delta Funding has violated, and continues to violate, the requirements of HOEPA and Regulation Z by engaging in a pattern or practice of extending such credit to a borrower based on the borrower's collateral rather than considering the borrower's current and expected income, current obligations, and employment status to determine whether the borrower is able to make the scheduled payments to repay the obligation, in

violation of Section 129(h) of TILA, 15 U.S.C. § 1639(h), and Section 226.32(e)(1) of Regulation Z, 12 C.F.R. § 226.32(e)(1);

b. Delta Funding in numerous instances has violated, and continues to violate, the requirements of HOEPA and Regulation Z by including a prohibited "prepayment penalty" provision, in violation of Section 129(c) of TILA, 15 U.S.C. § 1639(c), and Section 226.32(d)(6) of Regulation Z, 12 C.F.R. § 226.32(d)(6); and

c. Delta Funding in numerous instances has violated, and continues to violate, the requirements of HOEPA and Regulation Z by including a prohibited "increased interest rate after default" provision, in violation of Section 129(d) of TILA, 15 U.S.C. § 1639(d), and Section 226.32(d)(4) of Regulation Z, 12 C.F.R. § 226.32(d)(4).

26. Delta's policies and practices, as alleged herein, constitute:

a. The giving of a kickback or thing of value for the referral of settlement service business involving a federally related mortgage loan in violation of Section 8(a) of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607(a); and

b. The giving of a portion or percentage of a settlement service charge involving a federally related mortgage loan other than for services actually

performed in violation of Section (8)(b) of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607(b).

27. Delta's violations of RESPA, HOEPA and TILA have injured its borrowers and, absent injunctive and other relief entered by this court, are likely to continue to injure borrowers and harm the public interest.

WHEREFORE, the United States prays that the court enter an ORDER that:

A. Declares that the policies and practices of the defendants between 1996 and 1998 constitute a violation of the Fair Housing Act, 42 U.S.C. §§ 3601-3619, the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f; the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607; and the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j (including the Home Ownership and Equity Protection Act, 15 U.S.C. § 1639).

B. Enjoins defendants, their agents, employees, successors, and all other persons in active concert or participation with them, from discriminating on account of race, color, or sex in any aspect of their home mortgage lending activities; from violating the Real Estate Settlement Procedures Act, including but not limited to the anti-kickback and unearned fees provisions of the Act; and from violating any provision of the Home Ownership and Equity Protection Act, Truth in Lending Act, and Regulation Z, including but not limited to engaging in asset-based lending and including loan terms prohibited by HOEPA.

C. Requires defendants to develop and submit to plaintiff and the court for approval a detailed plan that: (1) remedies the vestiges of defendants' discriminatory policies and practices; (2) ensures that all future borrowers will be treated in a nondiscriminatory manner; and (3) ensures that all things of value and all payments made to defendants' brokers by borrowers and defendants are in exchange for actual services provided; are, in total, reasonably related to the goods and services provided; and are not for the referral of settlement business to defendants;

D. Awards such damages as would fully compensate the victims of defendants' discriminatory policies and practices for the injuries caused by the defendants;

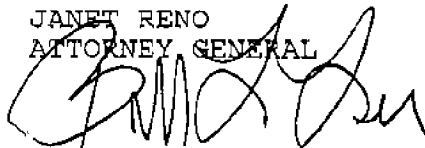
E. Awards punitive damages to the victims of defendants' discriminatory policies and practices;

F. Awards ancillary equitable relief in the form of restitution to the victims of defendants' unlawful policies and practices; and

G. Assesses a civil penalty against the defendants, in order to vindicate the public interest.

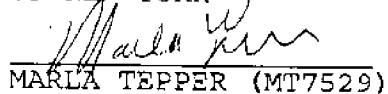
The United States further prays for such additional relief as the interests of justice may require.

JANET RENO  
ATTORNEY GENERAL

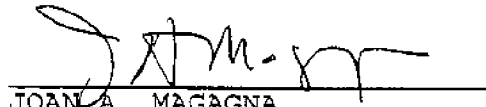


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MADAM:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the UNITED STATES DISTRICT COURT U.S. Courthouse, 225 Cathman Plaza East, EASTERN DISTRICT OF NEW YORK Brooklyn, New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at 10:30 o'clock in the forenoon.

Dated: Brooklyn New York, \_\_\_\_\_, 19\_\_\_\_

United States Attorney,  
Attorney for \_\_\_\_\_

Attorney for \_\_\_\_\_

MADAM:

PLEASE TAKE NOTICE that the within is a true copy of \_\_\_\_\_ duly entered herein on the \_\_\_\_\_ day of \_\_\_\_\_, in the office of the Clerk of the Eastern District of New York, Brooklyn, New York

\_\_\_\_\_, 19\_\_\_\_  
United States Attorney,  
Attorney for \_\_\_\_\_

To \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attorney for \_\_\_\_\_

Civil Action No. CV

UNITED STATES DISTRICT COURT  
Eastern District of New York

UNITED STATES,

Plaintiff,

- against -

DELTA FUNDING CORPORATION AND DELTA FINANCIAL CORPORATION,

Defendants.

COMPLAINT

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Due service of a copy of the within \_\_\_\_\_  
is hereby admitted.

Dated: \_\_\_\_\_, 19\_\_\_\_

Attorney for \_\_\_\_\_

CIVIL RIGHTS LITIGATION

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