

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

GERSHON, J.

GO, M.J.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUL - 8 2002 ★
BROOKLYN OFFICE

UNITED STATES OF AMERICA

Plaintiff,

v.

FIDELITY FEDERAL BANK, FSB

Defendant.

Case No. **CV 02 3906**

COMPLAINT

The United States of America alleges:

1. The United States brings this action to enforce provisions of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691, et seq. ("ECOA"), and its implementing regulations located at 12 CFR Part 202 ("Regulation B").

2. Defendant Fidelity Federal Bank, FSB ("Fidelity") has engaged in a pattern or practice of discrimination in its subprime credit card programs in violation of ECOA and Regulation B.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 15 U.S.C. § 1691e(h), and venue is appropriate pursuant to 28 U.S.C. § 1391(b) and (c).

4. Fidelity is incorporated under the laws of California with its principal place of business in Glendale, California.

5. Fidelity is a wholly-owned subsidiary of First Bank of Oak Park, a multibank holding company.

6. Fidelity is a creditor as defined by section 702(e) of ECOA, 15 U.S.C. § 1691a(e), and by Regulation B, 12 CFR 202.2(1).

7. Fidelity's primary regulator is the Office of Thrift Supervision ("OTS"). In May 1999, the OTS conducted a compliance examination of Fidelity's subprime credit card lending practices to evaluate compliance with ECOA, Regulation B, and other consumer protection laws and regulations.

8. Based on information gathered in its examination, the OTS determined that it had reason to believe that Fidelity and its business partners ("service providers") had engaged in a pattern or practice of discrimination in violation of ECOA and Regulation B. On March 2, 2001, the OTS referred the matter to the United States Attorney General pursuant to 15 U.S.C. § 1691e(g).

9. Fidelity offers a broad range of financial services including demand and time deposits, mortgage loans and credit cards.

10. In 1997, Fidelity entered the subprime credit card market. Fidelity issued and owned subprime credit cards marketed pursuant to contractual agreements between Fidelity and third-party service providers.

11. Fidelity entered into agreements with four service providers to market its subprime credit cards:

a. On or about February 24, 1997, Fidelity entered into an

agreement with First Alliance Corporation and its affiliates ("FACO") to provide home equity secured subprime credit cards. Fidelity was the issuer and owner of the credit cards.

- b. On or about March 5, 1997, Fidelity entered into an agreement with American Direct Credit, LLC ("ADC") to market subprime credit cards through a network of dealer-distributors conducting in-home sales of various household products. Fidelity was the issuer and owner of the credit cards.
- c. On or about November 21, 1997, Fidelity entered into an agreement with MMG Direct, Inc. ("MMG") to market subprime credit cards to members of African-American and other church groups. On or about December 10, 1997, Fidelity entered into an agreement with MMG to market subprime credit cards through automobile dealerships. Fidelity was the issuer and owner of the credit cards.
- d. On or about March 31, 1998, Fidelity entered into an agreement with Direct Furniture, Inc. ("Direct Furniture") to market subprime credit cards to Hispanics in the greater New York Metropolitan area through in-home furniture sales. Fidelity was the issuer and owner of the credit cards.

12. Fidelity, prior to executing these marketing agreements, failed to perform adequate due diligence on the service providers and failed to ensure that the service providers had policies in place which would ensure compliance with fair lending laws.

13. Fidelity, through its relationship with Direct Furniture, engaged in abusive collection practices in its credit card program which harassed customers on the basis of their Hispanic national origin. For example, debt collectors made threats relating to deportation and immigration-related issues. This violated ECOA, 15 U.S.C. § 1691(a)(1), and Regulation B, 12 C.F.R. 202.4.

14. Fidelity, through its relationship with Direct Furniture, (a) discouraged applicants who received income from public assistance from applying for Fidelity credit cards; and (b) had a policy of offering applicants who received income from public assistance less favorable terms on Fidelity credit cards than similarly situated applicants who did not receive public assistance. This discriminated against applicants on the basis of their receipt of public assistance in violation of ECOA, 15 U.S.C. § 1691(a)(2), and also violated Regulation B, 12 C.F.R. 202.4, 202.5, and 202.6.

15. Fidelity, through its relationship with Direct Furniture, had a policy of requiring younger applicants living

with their parents and not in charge of paying the bills in the household to have their parents co-sign an application for a Fidelity credit card, even where the younger applicants were of an age to contract. This discriminated against applicants on the basis of age in violation of ECOA, 15 U.S.C. § 1691(a)(1), and also violated Regulation B, 12 C.F.R. 202.4, 202.5, 202.6, and 202.7.

16. Fidelity, through its relationship with Direct Furniture, had a policy of requiring all members of a household to sign an application for a Fidelity credit card. This violated Regulation B, 12 C.F.R. 202.7.

17. Fidelity, through its relationship with Direct Furniture, failed to adjust applicants' nontaxable income to make it comparable to taxable income, which disadvantaged applicants receiving income from nontaxable sources such as child support, retirement benefits, social security, and disability payments. This violated Regulation B, 12 C.F.R. 202.6.

18. Fidelity, through its relationship with ADC, had a policy of denying credit to Fidelity credit card applicants unable to read and understand English. This discriminated against applicants on the basis of national origin in violation of ECOA, 15 U.S.C. § 1691(a)(1), and Regulation B, 12 C.F.R. 202.4, 202.5, 202.6, and 202.7.

19. Fidelity, through its relationship with ADC, required

that multiple Fidelity credit card applications from persons listed under the same telephone number be rejected. This violated Regulation B, 12 C.F.R. 202.6.

20. Fidelity, through its relationship with Direct Furniture, on at least one occasion pulled a credit report on a non-applicant spouse. This violated Regulation B, 12 C.F.R. 202.5.

21. Fidelity, through its relationship with ADC and MMG, failed to provide adverse action notices and failed to provide timely adverse action notices. This violated ECOA, 15 U.S.C. § 1691(d), and Regulation B, 12 C.F.R. 202.9.

22. Fidelity, through its relationship with Direct Furniture, failed to provide complete adverse action notices containing notification of applicants' rights under ECOA. This violated ECOA, 15 U.S.C. § 1691(d), and Regulation B, 12 C.F.R. 202.9.

23. Fidelity, through its relationships with Direct Furniture and FACO, failed to provide complete adverse action notices containing the specific reasons for the adverse action. This violated ECOA, 15 U.S.C. § 1691(d), and Regulation B, 12 C.F.R. 202.9.

24. Fidelity, through its relationship with Direct Furniture, retained data on applicants' race and sex by retaining photographic identification in applicant files. This violated

Regulation B, 12 C.F.R. 202.12.

25. Fidelity, through its relationship with MMG, collected data on applicants' age, ethnicity, marital status, and religious affiliation. This violated Regulation B, 12 C.F.R. 202.5, and 202.12.

26. Fidelity, through its relationship with Direct Furniture, ADC, and MMG failed to retain records from the Direct Furniture, ADC, and MMG programs. This violated Regulation B, 12 C.F.R. 202.12.

27. Fidelity's policies and practices, as described in the preceding paragraphs, constitute a pattern or practice of discrimination in violation of ECOA and Regulation B.

28. Fidelity's pattern or practice of discrimination continued from the first quarter of 1997 through at least the fourth quarter of 1999.

29. Persons who have been victims of Fidelity's pattern or practice of discrimination are aggrieved applicants under ECOA, 15 U.S.C. § 1691e. As a consequence of Fidelity's policies and practices described herein, these applicants have been denied their rights under ECOA and have suffered injury and damages.

30. The discriminatory policies and practices of Fidelity as described herein were intentional and willful, and were implemented with reckless disregard for the rights of credit applicants.

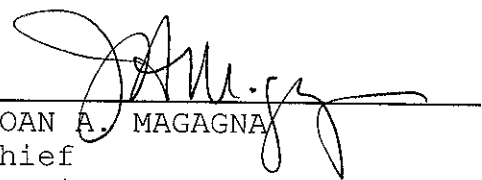
The United States further prays for such additional relief as the interests of justice may require.

JOHN ASHCROFT
Attorney General

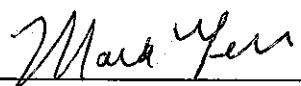


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