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

GERSHON, J.
GO. M.J

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.)
)
FIDELITY FEDERAL BANK, FSB)
)
Defendant.)
_____)

CV 02 3906
Case No. FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
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BROOKLYN OFFICE

SETTLEMENT AGREEMENT AND ORDER

The United States of America filed this Action against defendant Fidelity Federal Bank, FSB ("Fidelity") alleging a pattern or practice of violations of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691, et seq. ("ECOA"), and its implementing regulation at 12 CFR Part 202 ("Regulation B"). Fidelity has denied the allegations and asserts that it is committed to compliance with the fair lending laws and regulations and that it has conducted its lending at all times in accordance with ECOA and Regulation B. The United States and Fidelity have agreed to enter into this Settlement Agreement simultaneously with the filing of this Action to resolve fully and finally all claims asserted, or that could have been asserted, in the Action.

**I
INTRODUCTION**

Beginning in 1997, Fidelity's prior management, operating under the auspices of the prior ownership of the Bank, entered into a new line of business of issuing and servicing credit cards. Fidelity entered into credit card marketing agreements with American Direct Credit LLC ("ADC"), Direct Furniture, Inc. ("Direct Furniture"), First Alliance Corp, and MMG Direct Inc. Under these agreements, Fidelity agreed to issue its MasterCard to qualified applicants who had applied to these service providers for credit. These service providers agreed to undertake certain processing, underwriting, and collection services.

Fidelity's regulator, the Office of Thrift Supervision ("OTS"), commenced a safety and soundness examination of Fidelity on June 15, 1998. That examination criticized the credit quality and internal controls of Fidelity's credit card operation. The OTS Report of Examination, delivered to Fidelity October 14, 1998, alleged that the Bank's then existing management had in place an infrastructure that was inadequate for effective credit card oversight prior to engaging in this activity, and that significant growth in credit cards had been achieved without adequate internal controls and oversight by the then existing management and the then existing Board of Directors.

On May 17, 1999, OTS began a regularly scheduled compliance

examination of Fidelity. The OTS concluded that the credit card programs had created a high level of compliance, legal, and reputation risk and focused the examination on the subprime credit card programs. On the basis of that examination as well as information voluntarily provided by Fidelity prior to the examination, OTS alleged numerous substantive violations of ECOA and other consumer protection laws. OTS referred the pattern or practice of possible ECOA and Regulation B violations by Fidelity to the Department of Justice on March 2, 2001.

II ALLEGATIONS AND RESPONSE

The United States alleges that Fidelity issued credit cards in violation of ECOA and Regulation B, both through its own policies and by failing to ensure that the above-mentioned service providers had policies in place which would ensure their compliance with ECOA and Regulation B. The United States further alleges that Fidelity is responsible, through its relationship with the service providers, for the following:

(1) engaging in abusive collection practices in its credit card program which harassed customers on the basis of their Hispanic national origin;

(2) discouraging applicants who received income from public assistance from applying for Fidelity credit cards and having 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;

(3) having a policy of requiring all members of a household to sign an application for a Fidelity credit card;

(4) failing 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;

(5) having a policy of denying credit to Fidelity credit card applicants unable to read and understand English;

(6) having a policy requiring that multiple Fidelity credit card applications from persons listed under the same telephone number be rejected;

(7) failing to provide complete adverse action notices in a timely fashion, containing the specific reasons for the adverse action and the applicants' rights under ECOA;

(8) pulling a credit report on a non-applicant spouse; and

(9) failing to comply with the record-keeping, data collection and reporting requirements of Regulation B.

Fidelity denies the allegations of the United States and denies specifically that it has violated ECOA, Regulation B or any other fair lending law or regulation. Fidelity asserts that its credit card programs were operated in a non-discriminatory manner, in compliance with ECOA, Regulation B, and other fair

lending laws and regulations, and provided access to credit to a generally-underserved population. Fidelity notes that it has cooperated voluntarily with the examinations by the OTS and the subsequent investigation by the United States Department of Justice.

**III
RESOLUTION OF DISPUTE**

The Parties have agreed that to avoid costly and protracted litigation this controversy should be resolved voluntarily. The Parties have also agreed that there should be no evidentiary hearing, trial or other adjudication on the merits, and that entry of this Settlement Agreement and Order is not to be construed as an admission by Fidelity of the validity of the claims asserted against Fidelity. The Parties intend that this Agreement shall resolve and discharge all claims that were or could have been brought by the United States against Fidelity in this Action.

Now therefore, on the basis of the foregoing representations of the United States and Fidelity, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

**IV
GENERAL NONDISCRIMINATION PROVISIONS**

A. Fidelity is permanently enjoined from engaging in, and from knowingly permitting any of its Service Providers (as defined below) from engaging in, any act or practice in

connection with its Credit Card Programs (as defined below) that violates ECOA or Regulation B. The term "Service Providers," as used in this Settlement Agreement, is defined as third parties who provide marketing, servicing and underwriting services for Credit Card Programs.

- B. Fidelity shall ensure that any program through which it originates, owns, or services credit card accounts (the "Credit Card Programs") is free from any violation of ECOA or Regulation B.

V

CREDIT CARD PROGRAM OPERATIONS

- A. To promote the objectives of ECOA and Regulation B with respect to Fidelity's current or future Credit Card Programs, Fidelity shall:
1. inform its current and future credit card Service Providers that Fidelity will adhere to ECOA and Regulation B in all aspects of the credit process, including by ensuring that any activities undertaken by its credit card Service Providers comply with ECOA and Regulation B;
 2. ensure that all future applicants for credit cards issued by Fidelity are not placed in an underwriting risk classification on any basis that would violate ECOA or Regulation B;
 3. ensure that all underwriting standards for its current

- and future Credit Card Programs are developed in compliance with ECOA and Regulation B;
4. ensure that its current and future credit card programs comply with ECOA's regulatory notification, data collection and record retention requirements, including by ensuring that its credit card Service Providers comply with such requirements;
 5. ensure that all current and future collection activities performed by Fidelity, or on credit card accounts owned by Fidelity, comply with ECOA and Regulation B;
 6. ensure that all current and future program materials, including training material, credit application forms, and adverse action notice statements, used in Fidelity Credit Card Programs conform to the requirements and prohibitions of ECOA and Regulation B; and
 7. require its current and future credit card Service Providers to undergo fair lending training.

**VI
COMPLIANCE AND RISK MANAGEMENT PROGRAM**

- A. Within sixty days of the entry of this Settlement Agreement, Fidelity shall provide to the Department of Justice a comprehensive Compliance and Risk Management Program (the "Program"). The Parties shall endeavor in good faith to agree on the terms of the Program, which shall be

implemented within thirty days of the Parties' agreement on its terms.

- B. The Program shall be designed to confirm that, before Fidelity offers any new Credit Card Program that it does not currently offer or engages in such activity with a third party Service Provider (collectively, "New Activities"), Fidelity and any third party Service Provider involved in the New Activities will have in place policies, procedures, experienced personnel, and controls necessary to comply with ECOA and Regulation B.
- C. The Program shall specify the responsibilities and authority of management for compliance, and shall provide mechanisms to ensure accountability and establish standards for implementation of New Activities, including:
1. identification of applicable legal requirements;
 2. establishment of appropriate expertise within Fidelity and confirmation that third parties have appropriate levels of expertise;
 3. due diligence review of any third-party Service Provider prior to entering into any binding commitment with the third party;
 4. review of agreements with third-party Service Providers to ensure proper allocation of

- compliance responsibilities and mechanisms to monitor third-party performance;
5. development or review of policies and procedures;
 6. development of compliance tools to assist staff;
 7. testing of systems, including document preparation, servicing, and management information systems;
 8. review of documents and disclosures;
 9. adoption of non-discriminatory underwriting criteria and pricing guidelines;
 10. analysis of empirical data on which risk-based criteria are based;
 11. monitoring of the use of credit scoring systems and collection of information for periodic validation;
 12. review of marketing, advertising, and collections strategies;
 13. staff training in compliance responsibility or, for third parties, confirmation of the adequacy of such training;
 14. development of effective internal controls and meaningful reporting;
 15. periodic independent testing of internal controls and compliance; and

16. prompt post-implementation review and testing.

- D. The requirements of this Section shall be binding on Fidelity, its employees, successors and/or assigns.

**VII
IDENTIFICATION AND COMPENSATION
OF AGGRIEVED PERSONS**

- A. Within five business days after entry of this Settlement Agreement, Fidelity shall deposit the sum of \$1.6 million into the Fidelity Compensation Fund Trust Account (the "Compensation Fund"). The Compensation Fund shall be deposited in a separate interest bearing account. The Compensation Fund shall accrue interest at least equal to the coupon issue yield equivalent of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the entry of this Consent Decree, in accordance with 28 U.S.C. § 1961. Fidelity shall provide written verification to the Department of Justice of the deposit of this sum of money into such an account within three business days thereafter. The interest that accrues on the monies in the Compensation Fund shall become part of the Fund.
- B. The Department of Justice will have full and sole discretion in determining the identity of each aggrieved person eligible for relief and the amount of monetary compensation to be distributed to each such aggrieved person.

- C. The costs of locating, notifying, and paying aggrieved persons shall be paid from the Compensation Fund.
- D. Within thirty days of entry of this order, Fidelity shall provide to the Department of Justice any written information in its possession or custody (including, to the extent available, electronically stored data) relating to applications for credit cards submitted to Fidelity for the ADC and Direct Furniture credit card programs between January 1, 1997, and September 30, 2000, including information concerning originations and servicing for those programs, and collections logs and histories. In addition, Fidelity shall promptly make available to the Department of Justice any other information in its possession, custody or control which the Department may reasonably request in connection with the identification of aggrieved persons or the location of those persons after they have been identified.
- E. Fidelity shall have no ability to recover any of the monies deposited into the Compensation Fund.
- F. Within thirty days of receiving a written request from the Department of Justice identifying aggrieved persons (by providing, at a minimum, full name and social security number), Fidelity shall request that Equifax, Trans Union and Experian (the "Credit Bureaus") delete any adverse

credit notification for the identified aggrieved persons reported to the Credit Bureaus by Fidelity.

- G. The requirements of this Section shall be binding on Fidelity, its employees, successors and/or assigns.

**VIII
CONSUMER EDUCATION PROGRAM**

- A. The Consumer Education Fund shall consist of any excess funds remaining in the Compensation Fund after compensating the aggrieved persons, which shall be distributed to consumer education groups to be mutually agreed upon by the Department of Justice and Fidelity. Each group will receive a share of available funds as determined by the Department of Justice.
- B. The consumer education provided under this Section will include the distribution of informative pamphlets or other forms of literature and sponsorship of credit counseling, or educational workshops or forums focusing on, but not limited to:
1. the fact that different credit card products carry different prices/rates, and that different sources charge different prices/rates for essentially the same product, and that the same source may charge different prices for the same product;
 2. the importance of shopping among different providers of credit, and the questions to ask while shopping;

3. how to evaluate and compare the ultimate price of competing loan products;
4. options to obtain credit that are available to borrowers with impaired credit; and
5. the non-discrimination requirements and other rights guaranteed by ECOA and Regulation B.

**IX
TRAINING**

- A. Within sixty days of entry of this Settlement Agreement, Fidelity shall advise all employees engaged in Credit Card Program activities and current credit card Service Providers of the purpose and requirements of this Settlement Agreement.
- B. Within one hundred and twenty days of the date of entry of this Settlement Agreement, Fidelity shall train all of its personnel involved: (i) in negotiating agreements to market or service Credit Card Programs; (ii) in developing credit policies for Credit Card Programs; (iii) in credit solicitation for Credit Card Programs; and (iv) in credit review processes and/or in credit/servicing for Credit Card Programs, of the requirements of ECOA, Regulation B, and this Settlement Agreement. Future employees engaged in Credit Card Program activities shall complete such training prior to assuming any responsibility in the above-listed areas. Fidelity shall maintain a log of the attendees at

each training. Copies of these logs shall be retained for the life of this Settlement Agreement and shall be subject to the inspection provisions of the Agreement. The requirements of this Paragraph, except with respect to the training of future employees, shall apply equally to any successors in interest and/or assigns of Fidelity.

- C. Fidelity shall provide ongoing training on an annual basis for all persons subject to the provisions in Paragraph B, above, regarding the requirements of ECOA, Regulation B, and this Settlement Agreement.
- D. All current and future training material for Credit Card Programs developed and used by Fidelity shall conform to the requirements of ECOA, Regulation B, and this Settlement Agreement.

X
RECORDKEEPING AND
REPORTING REQUIREMENTS

- A. During the term of this Settlement Agreement, Fidelity shall retain all records related to compliance with the Agreement. This shall include credit card application files submitted for credit cards issued by Fidelity, as well as all credit card-related documents and notices relevant to any classification as to underwriting risk and any documents related to servicing or collection activities of credit cards issued by Fidelity.

- B. During the term of this Settlement Agreement, upon reasonable notice from the Department of Justice, Fidelity shall make all documents required to be maintained pursuant to the Agreement available to the Department of Justice for inspection and copying at the Department of Justice's expense.
- C. During the term of this Settlement Agreement, Fidelity shall report compliance with this Settlement Agreement to the Department of Justice semi-annually. The reports shall be submitted to the Department of Justice within ninety days after the last business day of Fidelity's second and fourth fiscal quarters. Each compliance report shall detail the actions taken to comply with this Settlement Agreement since the date of this Settlement Agreement, or the date of the prior report, as applicable, including a description of all compliance training, the dates held, instructors, content, and the individuals who attended. Each report shall also for the applicable time period:
1. describe all new third-party Service Provider arrangements for the provision of credit cards;
 2. include a copy of all new credit card credit policies and third-party credit card Service Provider agreements;
 3. list by category any new consumer complaints regarding

- Fidelity's credit card programs; and
4. include, in machine-readable form from its automated loan tracking system for all new credit card applicants, the following information, to the extent available:
 - a. the application number;
 - b. the date the application was received;
 - c. the source of the application;
 - d. the number and relationship of co-applicants;
 - e. the source of income;
 - f. the type and amount of credit applied for and/or received;
 - g. the action taken on the application and the date;
 - h. the reason for any adverse action (if applicable);
and
 - i. delinquency status (if applicable).
- D. The requirements of this Section shall be binding on Fidelity, its employees, successors and/or assigns.

**XI
JURISDICTION, DISMISSAL AND ENFORCEMENT**

- A. The Parties stipulate and the Court finds that the Court has personal jurisdiction over the Defendant for purposes of this civil action, and subject matter jurisdiction over the claims in the civil action pursuant to 28 U.S.C. §§ 1331 and 1345, and 15 U.S.C. § 1691e(h).

- B. This Settlement Agreement and Order shall remain in effect for a period of three years from the date it is entered by the Court.
- C. This case is dismissed with prejudice, except that this Court shall retain jurisdiction for the duration of the Settlement Agreement for the purpose of enforcing the terms of the Agreement. After the three-year term of the Settlement Agreement, it shall be considered to be terminated, without need for further action by the Parties, and the Court shall no longer have jurisdiction over this matter or the Parties.
- D. This Settlement Agreement may be modified at any time by written agreement of the Parties, and without the need for Court approval. Any and all such written modifications shall be considered to be part of the Agreement.
- E. The Parties agree to work in good faith and to use their best efforts to seek the Court's approval of this Settlement Agreement, to implement the terms of the Agreement, and to resolve informally any differences regarding interpretation of and compliance with this Agreement prior to bringing such matters to the Court for resolution.

THE PARTIES CONSENT TO THE ENTRY OF THIS SETTLEMENT AGREEMENT AS INDICATED BY THE SIGNATURES OF COUNSEL BELOW:

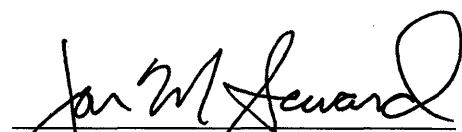
FOR PLAINTIFF UNITED STATES OF AMERICA:

Dated: 7-2-02

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IT IS SO ORDERED.

Dated: July 18, 2002


UNITED

GE