

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FIRST NATIONAL BANK
OF GORDON, NEBRASKA,

Defendant.

CONSENT ORDER

The United States filed this case against the First National Bank of Gordon, Nebraska (hereinafter "the Bank") on April 15, 1996, alleging violations of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f, and Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619.

The Complaint alleges that the Bank has engaged in a pattern or practice of discrimination against American Indians in the extension of general consumer loans which are used for personal purposes, as well as for the purchase of automobiles, mobile homes and for home improvements. More specifically, the Complaint alleges that since at least September, 1992 through at least March, 1994, the Bank discriminated illegally against its American Indian customers living in the state of South Dakota by charging them higher interest rates for the consumer loans than it did for similarly situated non-Indian customers. It is further alleged that this disparity could not have occurred by chance and cannot be fully explained by factors unrelated to race, color, or national origin, such as differences in the borrowers' creditworthiness or by differences in the size and duration of the loans.

The Bank denies the allegations of the Complaint contending that higher interest rates charged some of its American Indian customers living upon the Pine Ridge Indian Reservation were justified by credit risk considerations and that it has complied with all federal lending laws and regulations.

The parties agree that the controversy should be resolved without further proceedings and without an evidentiary hearing. Therefore, the parties have consented to the entry of this Consent Order as indicated by the signatures appearing below.

It is hereby ORDERED, ADJUDGED and DECREED as follows:

I. GENERAL INJUNCTIVE PROVISION

The Bank, its officials, employees, agents, and all other persons in active concert or participation with the Bank are permanently enjoined from imposing higher interest rates or different methods of determining and calculating interest and the interest rate for personal loans, loans for the purchase of automobiles and mobile homes, and home improvement loans (hereinafter "consumer loans"), on the basis of race, color or national origin.

II. PROVIDING EMPLOYEES WITH COPY OF CONSENT ORDER

Within thirty (30) days after execution of this Consent Order, and throughout the term of this Consent Order, every employee of the Bank who regularly participates in decisions of whether or not to extend consumer loans and/or participates in decisions regarding the terms of such credit, and every officer and director of the Bank shall be provided with a copy of this Consent Order.

III. COMPENSATORY RELIEF

1. The Bank shall create a Fund which will total One Hundred Seventy Five Thousand Dollars (\$175,000.00) for distribution to persons that the United States determines have been aggrieved by the discrimination alleged in its Complaint. The Bank will create the Fund on or before July 1, 1997, by making a deposit of One Hundred Thousand Dollars (\$100,000.00) into a trust account entitled "First National Bank of Gordon, Nebraska Compensation Fund Trust Account." On or before February 15, 1998, the Bank will make a second deposit of Seventy Five Thousand Dollars (\$75,000.00) into the Fund. The Bank will provide written verification of the amount deposited to Department of Justice within seven (7) days of each deposit into the Fund.⁽¹⁾ Any interest that may accrue on money deposited into the Fund shall become part of the Fund, and the Bank shall have no claim on such interest. Money from the Fund will be distributed by the Bank pursuant to the procedures set forth below.
2. The United States shall compile a list of those American Indian borrowers whom it determines are persons aggrieved by the alleged discrimination (the "United States' list"). The list will include the amount of money from the first deposit into the Fund which is to be paid each person on the list as partial compensation, as well as an approximate amount of money from the second deposit into the Fund which will be paid to each person on the list to provide final and complete compensation. The United States shall be solely responsible for making those determinations. The list will be provided to the Bank upon its completion.
3. The United States shall send a letter to each person on the United States' list, conforming to that set forth in Attachment A, certified mail, return receipt requested ("Notification Letter"). The notification letters shall be accompanied by a copy of a release conforming to Attachment B.
4. No later than July 1, 1997, the Bank shall provide the United States the names and addresses of persons who have returned executed releases, along with copies of such releases. Within twenty business days after July 1, 1997, the Bank shall issue checks in the amounts designated by the United States, drawn against the Fund and payable to each person for whom it has received an executed release. If the Bank receives any executed release after July 1, 1997 it shall similarly notify the United States and issue a check to such person within five days of receipt of the release. All checks (including checks specified in paragraph III 8) shall be mailed, by certified mail, return receipt requested. The Bank shall provide copies of the canceled checks to the United States in a timely manner as they are returned to Bank.
5. The United States shall provide to the Bank a list of all persons for whom no return receipt card has been obtained. Both the United States and the Bank shall take reasonable steps thereafter to locate such persons and provide them with the notification letter and release. The United States may also take steps to contact any persons who received the letter, but did not return a release to the Bank.
6. After the United States receives verification of the second deposit into the Fund on February 15, 1998, as provided in paragraph III 1, counsel for the United States shall mail to the Bank a second list containing: (1) the names of persons from the United States' first list and the amounts to which each such person is entitled from the money then in the Fund; and (2) the names of additional American Indian borrowers not contained in the United States' first list, whom the United States has determined are also entitled to compensation, and the amounts to which each such person is entitled from the money then in the Fund.
7. Within twenty (20) days after the Bank receives the information specified in the preceding paragraph, the Bank shall issue checks, drawn against the Fund, to persons on the United States' second list who previously had been contacted and who had returned releases, in the amount specified by the United States.
8. The United States shall mail to all persons identified on the United States' second list not previously contacted, the notification specified in paragraph III 3, in the manner specified therein. The United States shall provide the Bank the names and addresses of persons for whom no return receipt card has been obtained. The parties shall take the steps specified in paragraph III 3 to locate such persons, and the United States may also take steps to locate any persons who received the letter but have not returned a release.
9. Payments from the Fund to persons identified by the United States shall be subject to the following conditions:
 - (a) No person from the United States' first or second list shall be paid any amount from the Fund until after execution of a written release consistent with that set forth in Attachment A of all claims, legal or equitable, which he or she might have against the Bank, its current, former, and future officers, directors, employees, agents, parent companies, affiliates, and other successors in-interest regarding claims asserted by the United States in this lawsuit,

with respect to the interest rates charged on consumer loans, so long as such claims accrued prior to the entry of this Consent Order.

(b) The total amount to be paid by the Bank to the persons identified by the United States shall not exceed One Hundred Seventy Five Thousand Dollars (\$175,000.00) plus the interest that has accrued in the Fund.

10. In the event there is money remaining in the Fund one hundred forty-five (145) days after receipt by the Bank of the United States' second list because persons identified by the United States could not be located or, when located and properly notified, did not return releases, such money will be added to the money used by the Bank to defray fees for documentation and credit reports on consumer loans obtained by residents of the Pine Ridge Reservation from the Bank, as described below in paragraph IV.

IV. COMPENSATION FOR THE COST OF DOCUMENTATION FEES

1. The Bank shall set aside One Hundred Thousand Dollars (\$100,000), on the schedule provided herein, to be used by the Bank to pay fees or charges for documentation and credit bureau reports for consumer loans applied for by residents of the Pine Ridge Reservation. The Bank shall set aside Twenty-Five Thousand Dollars (\$25,000.00) a year for four years. The first \$25,000 set aside for this purpose shall be made available seven days after the entry of this Consent Order, and thereafter an additional \$25,000 shall be made available annually on the anniversary of the entry of the Consent Order in 1998, 1999, and 2000.

2. For each person who is a resident of the Pine Ridge Reservation and applies for a consumer loan from the Bank, the Bank shall defray its fees for documentation and credit bureau report (the full charge is \$20.00) for no more than two consumer loans per year. However, the parties may, by mutual agreement, increase or decrease the number of loans for which the Bank will defray such fees to more or less than two per year.

3. Any amount set aside to defray these fees which is not fully used by the Bank in a single year shall be rolled over for use during the following year. The Bank shall not be required to defray fees totaling more than \$25,000 a year (plus any money rolled over from the previous year, and plus any residue from the Fund as provided in paragraph III 10).

V. MONEY MANAGEMENT EDUCATION PROGRAM

1. Within ninety (90) days after the entry of this Consent Order, the Bank shall send by first class mail, to counsel for the United States and to the Magistrate Judge: (a) a proposed, personal, money management program designed to educate persons residing on the Pine Ridge Reservation how to establish and manage credit with the Bank; (b) a list of proposed locations on the Reservation where the program will be presented, and the time of such presentation; and (c) a plan for publicizing the program. Such program shall be designed to provide, at a minimum, the following information:

- What individual borrowers can do to place themselves in good standing to receive credit from the Bank;

- The qualification or criteria considered by loan officers of the Bank in determining a prospective borrower's credit-worthiness;

- How to prepare a loan application;
- The current terms of the loan products offered by the Bank;
- How to establish a saving, checking, or certificate of deposit account with the Bank;
- The current terms of the savings products offered by the Bank;

- How to maintain a checkbook, read a checking or saving statement and reconcile the customer's balance with the Bank's statement.

2. If, within thirty (30) days after receipt of the proposed, education program described above, counsel for the United

States indicates in writing to Bank that it does not agree with the proposed program, then counsel for the United States and the Bank shall seek in good faith to resolve their differences within thirty (30) days. In the event that the parties cannot agree, any dispute regarding the proposed program will be submitted to the Magistrate Judge within fifteen (15) days to rule on same. If, within thirty (30) days after receipt of the proposed program, counsel for the United States has no objection, counsel shall so inform the Bank in writing.

3. After approval of the program, the Bank shall spend at a minimum of fifty (50) hours per year, for four years, presenting the program to residents of the Pine Ridge Reservation, which shall include time spent by Bank officials on travel and in preparation for teaching.

4. During the term of this Consent Order, if the Bank wishes to substantively modify or alter the program, it may do so but shall inform counsel for the United States of the changes in writing prior to instituting the changes.

VI. RECRUITMENT

The Bank will take affirmative steps to increase the pool of qualified American Indian applicants for positions at the Bank, particularly for positions as loan officers.

Among other actions, the Bank may actively solicit qualified American Indian persons for employment by publishing an advertisement in newspapers of general circulation on the Pine Ridge Reservation. Recruitment efforts may also include informing officials on the Pine Ridge Reservation (e.g. representatives of the tribal government and the Superintendent of the Bureau of Indian Affairs) and institutions of higher education with significant American Indian enrollment (e.g. the Oglala Lakota College, the University of South Dakota at Vermillion, Black Hills State University at Spearfish and the University of North Dakota at Bismarck) of job vacancies; the posting of notices of job vacancies for job vacancies at public institutions on the Reservation; placing radio ads about job vacancies on radio stations which broadcast on the Reservation; and contacting previous American Indian job applicants to inform them of any subsequent new job openings.

VII. RECORD KEEPING AND REPORTING REQUIREMENTS

Unless otherwise provided, this Consent Order shall remain in effect for four (4) years from the date of the entry of this Consent Order.

1. During the period of this Consent Order, the Bank shall retain all applications for consumer loans and all documents and notices relevant to any decisions regarding such loans, including any documents relating to the terms of any such loans. The Bank will retain all records relating to its compliance with this Consent Order.

2. All applications for consumer loans shall request that each applicant provide his or her race or national origin (American Indian or Alaskan Native, Asian or Pacific Islander, Black, Hispanic, White, Other). The Bank may specify the following on the application:

Information concerning race or national origin is requested by the federal government to monitor compliance with the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f, and the Fair Housing Act, 42 U.S.C. §§ 3601-3619. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. However, if you choose not to furnish the information and you have made this application in person, the lender is required to note race or national origin on the basis of visual observation or surname.

If the applicant chooses not to provide this information for an application taken in person, the Bank shall note this fact on the application and note the race or national origin of the applicant(s), to the extent possible, on the basis of visual observation or surname. (The Bank shall not use "Other" when completing the application on the basis of visual observation.)

If an application is taken entirely by telephone, The Bank need not request this information. If an application is taken entirely by mail, and the applicant fails to answer these questions on the application form, the Bank is not required to provide the data. The Bank shall indicate on the face of the application when it was received by telephone or by mail.

3. The Bank shall keep all employee applications for the duration of the Consent Order. The Bank will keep a record of all job vacancies and its efforts to fill the same, listing all applicants for the position, all advertising, all contacts with persons who might want to work for the Bank and other relevant records concerning the job.
4. Upon reasonable notice to counsel for the Bank, representatives of the United States shall be permitted to inspect and copy all pertinent records of the Bank at any and all reasonable times; provided, however, that the United States shall endeavor to minimize any inconvenience to the Bank from inspection of such records.
5. Beginning six months from the entry of this Consent Order and every six months thereafter for the term of this Consent Order, the Bank shall serve by first class mail, postage prepaid, upon counsel for the United States, a six-month report. Such report shall include the following:

(a) any and all changes to the Bank's Consumer Loan Pricing Guidelines and/or Loan Policy concerning consumer loans;

(b) a list of all approved consumer loans including the name(s), address, telephone number, and race or national origin (pursuant to paragraph VII 2), including the loan number, initial principal amount, interest rate, maturity date, whether the loan was secured or unsecured, and whether the loan was single pay or installment; and a list of all denied consumer loans including name(s), address, telephone number, and race or national origin (pursuant to paragraph VII 2).

(c) the name and address of each consumer loan applicant for whom the loan fees (paragraph IV) were waived during the reporting period, the number of defrayed loans to each loan applicant, and the balance of the money set aside pursuant to paragraph IV remaining for waiver of loan documentation fees at the end of the six month reporting period;

(d) the date, location, content and duration of any community education program conducted during the reporting period (paragraph V); and

(e) the job openings which became available during the reporting period; the name and address of each person applying for each such job opening; the name of the person chosen to fill each job opening; and a description of the efforts made by the Bank pursuant to paragraph VI to recruit American Indian applicants for each opening.

VIII. MODIFICATION OF CONSENT ORDER

The parties may alter the terms of this Consent Order by signed, written, mutual agreement, including but not limited to an extension of any time limits for performance.

IX. DISMISSAL

This action is dismissed without prejudice to the right of either party to approach the Court regarding matters of noncompliance with the terms of this Consent Order. The parties to this Order will endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution.

X. COSTS

Each party to this litigation will bear its own costs.

It is so ORDERED this day of , 1997.

UNITED STATES DISTRICT JUDGE

It is so agreed by the parties.

For the United States:

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ATTACHMENT A

Notification Letter

United States Department of Justice

Dear :

As you may know, in April, 1996 the United States government brought a lawsuit in the federal court located in South Dakota alleging that certain policies and practices of the First National Bank of Gordon, Nebraska, in effect from at

least September of 1992 through March of 1994, discriminated against American Indian customers of the Bank by charging them higher interest rates for consumer loans than similarly situated white customers. The Bank has denied these allegations and asserted that it has never illegally discriminated in extending consumer loans.

More recently, the government and the Bank agreed to voluntarily settle this case, and on , 1997, the federal court entered a Consent Order submitted to it which sets forth that settlement. You may obtain a copy of this Consent Order either from the attorneys for the United States who are listed later in this letter or from the Bank.

You will note that Part III of the Consent Order requires the establishment of a Fund by the Bank designed to compensate persons whom the government determines have been victims of the discrimination alleged in the case. This is to inform you that the government has completed its review of this matter and has identified you as a person entitled to compensation from this Fund, in the amount of approximately _____. The first installment of this compensation in the amount of _____ is available after July 1, 1997 upon the completion of the requirements set out below. A second installment of approximately _____ will be mailed to you early in 1998, although the precise amount of this second payment will be determined at that time.

In order to receive the payments designated above, you must sign the General Release which is attached to this letter. By signing this Release you agree that in accepting these payments, you agree not to sue the First National Bank of Gordon, Nebraska for any discrimination by the Bank of the kind charged by the government that may have occurred prior to this date. If you decide to sign this Release, you should sign on the two lines designated on it for your signature. You should then return it in the enclosed pre-addressed envelope:

[address provided by the Bank]

The Fund will be established on July 1, 1997. Shortly after that date, the Bank will mail a certified check to you by certified mail, in the amount specified in this letter if you have signed and returned the enclosed Release. Checks for any Release received after July 1, 1997, will be mailed upon receipt of the Release. In addition, a second check will be mailed to you after February 15, 1998. No further action will be necessary on your part to receive the second check, if you have signed and returned the Release.

The government believes the money designated above for you to receive is a fair settlement of any claim that you may have as a result of the discrimination alleged in the lawsuit. Attorneys for the government are willing to discuss this matter with you to answer any questions you may have and discuss what options are available to you. If you wish to discuss this matter with a government attorney you should call 1-800-xxx-xxxx and leave your name, address and telephone number. A government attorney will then contact you. You may also write to:

Thomas J. Keary
Marta Campos
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
P.O. Box 65998
Washington, D.C. 20035-5998

You should be aware that government attorneys cannot act as your private attorney, however. Therefore, you may also want to consult with a private attorney to discuss this matter and the options available to you, or to have an attorney of your choice contact the government.

If you do not want to participate in this settlement, you may decline to do so. By declining to participate, you will give up your right to receive the money discussed in this letter, but will not waive any other rights or claims that you believe you are entitled to.

We look forward to hearing from you.

Sincerely,

ATTACHMENT B

GENERAL RELEASE

STATE OF SOUTH DAKOTA

COUNTY OF

WHEREAS, I, [Releaser name] understand that the United States of America ("United States") filed a civil action in the United States District Court of South Dakota against the First National Bank of Gordon, Nebraska ("the Bank") alleging violations of the Equal Credit Opportunity Act, and the Fair Housing Act, as amended, by discriminating against American Indians in the provision of consumer loans;

WHEREAS, I further understand that the Bank denied the allegations in all respects;

WHEREAS, I further understand that the United States and the Bank have agreed to a settlement of the above case and that the United States District Court has approved and entered a Consent Order which includes a provision for the establishment of a fund from which money is to be paid by the Bank to persons whom the United States identifies as aggrieved by the discrimination alleged; and

WHEREAS, I further understand that the United States has identified me as one of the persons it has determined has been aggrieved by the discrimination alleged,

THEREFORE, I agree to the following:

In consideration of dollars to be paid to me, I, [Releaser name], hereby agree, effective upon receipt of payment, to release the Bank and its current, former, and future officers, directors, employees, agents, parent companies, affiliates, and successors-in-interest from all legal and equitable claims or causes of action that have or might have been asserted by me or the United States as of the date of execution of this General Release that arise out of any alleged discrimination on the basis of national origin with respect to the interest rate on any consumer loan(s) I received from the Bank.

I acknowledge and understand that, by signing this Release and accepting this payment, I am waiving any right to pursue my own legal action based on the discrimination alleged by the United States in this case.

I also acknowledge that I have been informed that I may review the terms of this Release with an attorney of my choosing, and to the extent that I have not obtained that legal advice, I voluntarily and knowingly waive my right to do so.

I waive any claims I may have against the United States arising out of this action.

This General Release constitutes the entire agreement between First National Bank of Gordon, Nebraska, the United States, and me, without exception or exclusion.

Signed this _____ day of _____, 1997.

[Releaser's name]

DECLARATION

I state under penalty of perjury that the foregoing is true and correct.

Signed this _____ day of _____, 1997.

1.

For purposes of this Order, counsel for the United States is Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, Post Office Box 65998, Washington, D.C. 20035-5998.