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Complaint

IN THE MATTER OF

## GUILD MORTGAGE COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE TRUTH IN LENDING ACT, REGULATION Z, AND  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3320. Complaint, Dec. 31, 1990—Decision, Dec. 31, 1990*

This consent order requires, among other things, a San Diego, Ca., corporation to accurately calculate and disclose the annual percentage rate, finance charge, payment schedule and other information required by Regulation Z; and to make adjustments to the accounts of consumers listed, by paying restitution to consumers totalling almost \$500,000 over a five-year-period.

*Appearances*

For the Commission: *Carole L. Reynolds* and *Stephen Cohen*.

For the respondent: *Stephen Douglas Royer, Seltzer, Caplan, Wilkins & McMahon*, San Diego, CA.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Guild Mortgage Company, a corporation, hereinafter sometimes referred to as respondent, has violated the Federal Trade Commission Act (FTC Act), 15 U.S.C. 45-58, as amended, and the Truth in Lending Act (TILA), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR Part 226, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges:

PARAGRAPH 1. Guild Mortgage Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4180 Ruffin Road, San Diego, California.

PAR. 2. Respondent has been and is now engaged in the business of offering "consumer credit" to the public and is a "creditor," as those terms are defined in the TILA and Regulation Z.

PAR. 3. The acts and practices of respondent alleged in this

complaint have been and are in or affecting commerce, as "commerce" is defined in the FTC Act.

PAR. 4. Respondent, in the course and conduct of its business, on numerous occasions, has failed to disclose accurately a composite annual percentage rate and, thus, has underdisclosed the annual percentage rate and finance charge in its TILA disclosures for discounted adjustable rate mortgages.

PAR. 5. Respondent's aforesaid practice violates Sections 106, 107 and 128 of the TILA, 15 U.S.C. 1605, 1606 and 1638, respectively, and Sections 226.4, 226.22, and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4, 226.22 and 226.18 (d) and (e), respectively, and Section 226.17(c)(1) of Regulation Z, 12 CFR 226.17(c)(1), as more fully set out in Sections 226.17(c)(1)-8 and 226.17(c)(1)-10 of the Federal Reserve Board's Official Staff Commentary to Regulation Z (Commentary), 12 CFR 226.17(c)(1)-8 and 226.17(c)(1)-10 (formerly Sections 226.18(f)-2 and 226.18(f)-8 of the Commentary, 12 CFR 226.18(f)-2, 226.18(f)-8), and constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

PAR. 6. Respondent, in the course and conduct of its business, on numerous occasions, has failed to disclose accurately the annual percentage rate and finance charge in its TILA disclosures.

PAR. 7. Respondent's aforesaid practice violates Sections 106, 107 and 128 of the TILA, 15 U.S.C. 1605, 1606 and 1638, respectively, and Sections 226.4, 226.22, and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4, 226.22 and 226.18(d) and (e), respectively, and constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

PAR. 8. Respondent, in the course and conduct of its business, on numerous occasions, has failed to include the premiums for mortgage insurance in the annual percentage rate, finance charge and monthly payments scheduled to repay the obligation in its TILA disclosures.

PAR. 9. Respondent's aforesaid practice violates Sections 106, 107 and 128 of the TILA, 15 U.S.C. 1605, 1606 and 1638, respectively and Sections 226.4(b)(5), 226.22 and 226.18(d), (e) and (g) of Regulation Z, 12 CFR 226.4, 226.22 and 226.18(d), (e) and (g), respectively, and constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

PAR. 10. Respondent, in the course and conduct of its business, on numerous occasions, has failed to disclose accurately the number,

amount, and timing of payments scheduled to repay the obligation in its TILA disclosures.

PAR. 11. Respondent's aforesaid practice violates Section 128 of the TILA, 15 U.S.C. 1638, and Section 226.18(g) of Regulation Z, 12 CFR 26.18(g), and constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Commissioner Strenio dissenting as to the terms of the consent order, and Commissioner Starek not participating.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge the respondent with violation of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* and its implementing Regulation Z, 12 CFR Part 226, and the Federal Trade Commission Act, 15 U.S.C. 45 *et seq.*; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts and Regulation, and that complaint should issue stating its charge in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Guild Mortgage Company is a corporation organized, existing, and doing business under and by virtue of the laws of the

state of California, with its principal office and place of business located at 4180 Ruffin Road, San Diego, California.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

#### ORDER

#### DEFINITIONS

For purposes of this order, the following definitions apply:

1. *Composite APR* means a blend of interest rates as described in Section 226.17(c)(1)-10 of the Federal Reserve Board's Official Staff Commentary to Regulation Z;

2. *First adjustment date* is the date on which the consumer's monthly payment of principal and interest is first changed, in accordance with the terms set forth in the consumer's note or adjustable rate rider;

3. *Original TIL disclosure* is the last TIL disclosure given to a consumer by respondent before consummation of the loan.

#### I.

*It is ordered,* That respondent Guild Mortgage Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any extension of consumer credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to disclose accurately in its discounted adjustable rate mortgages a composite annual percentage rate and, thereby, failing to disclose accurately the annual percentage rate and the finance charge, as required by Sections 106, 107 and 128 of the Truth in Lending Act, 15 U.S.C. 1605, 1606 and 1638, and Sections 226.4, 226.22, and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4, 226.22 and 226.18 (d) and (e) and Section 226.17(c)(1) of Regulation Z, 12 CFR 226.17(c)(1), as more fully set out in Section 226.17(c)(1)-10 of the Federal Reserve Board's Official Staff Commentary to Regulation Z, 12 CFR 226.17(c)(1)-10.

2. Failing to disclose accurately the annual percentage rate and finance charge, as required by Sections 106, 107 and 128 of the Truth in Lending Act, 15 U.S.C. 1605, 1606 and 1638, and Sections 226.4, 226.22 and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4, 226.22 and 226.18(d) and (e).

3. Failing to include the premiums for mortgage insurance when computing the annual percentage rate, finance charge, and number, amount and timing of payments scheduled to repay the obligation, as required by Sections 106, 107 and 128 of the Truth in Lending Act, 15 U.S.C. 1605, 1606 and 1638, and Sections 226.4, 226.22 and 226.18(d), (e) and (g) of Regulation Z, 12 CFR 226.4, 226.22 and 226.18(d), (e) and (g).

4. Failing to disclose accurately the number, amount, and timing of payments scheduled to repay the obligation, as required by Section 128 of the Truth in Lending Act, 15 U.S.C. 1638, and Section 226.18(g) of Regulation Z, 12 CFR 226.18(g).

5. Failing to make all disclosures determined in accordance with Sections 106 and 107 of the Truth in Lending Act, 15 U.S.C. 1605 and 1606, and Sections 226.4 and 226.22, in the manner, form and amount required by Sections 226.17, 226.18, 226.19 and 226.20 of Regulation Z, 12 CFR 226.17, 226.18, 226.19 and 226.20.

## II.

*It is further ordered, That:*

A. In accordance with Section 108(e) of the TILA, 15 U.S.C. 1607, and as shown on the attached Exhibits 1 (adjustable rate mortgage list), 2 (mortgage insurance premium list), and 3 (adjustable rate mortgage and mortgage insurance premium list), respondent shall make adjustments to the current and past accounts of each consumer listed who was extended credit by respondent; except, any adjustment relating solely to respondent's failure to use a composite annual percentage rate shall be limited to the time period up to the first adjustment date;

B. For those adjustments resulting from mortgage insurance premium errors, respondent shall refund the mortgage insurance premium collected to date as shown on Exhibits 2 and 3;

C. Not later than thirty (30) days following the date of service of this order, for those consumers listed on Exhibits 2 and 3, respondent shall have either cancelled the remaining mortgage insurance or taken

whatever action is necessary so that the applicable consumer is not charged for any additional mortgage insurance premiums for the life of the loan;

D. Respondent shall have a five-year period in which to complete the adjustments described in paragraphs A and B; except, where the amount of the adjustment is \$200 or less, the adjustment shall be completed by the end of the first year. Each consumer listed on Exhibits 1, 2, and 3 shall receive payment from respondent for at least one fifth of the applicable adjustment for that consumer no later than the last day of each calendar year beginning with the current year.

### III.

*It is further ordered,* That all payment adjustments required by this order shall be made by mailing the consumer a check by first class mail, certified, return receipt requested, to the current or last known address of each such consumer.

### IV.

*It is further ordered,* That by not later than thirty (30) days from the date of service of this order, respondent shall send a letter by first class mail to all consumers listed on Exhibits 2 and 3 to eliminate the consumer's liability for future mortgage insurance premiums.

### V.

*It is further ordered,* That respondent shall maintain for at least six (6) years from the date of service of this order and, upon request, make available to the Federal Trade Commission for inspection and copying, all records and documents necessary to demonstrate fully its compliance with this order.

### VI.

*It is further ordered,* That respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

## VII.

*It is further ordered,* That respondent shall promptly notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

## VIII.

*It is further ordered,* That respondent shall, within one hundred and twenty (120) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order. Within thirty (30) days of the end of each year for five years, starting with the current year, respondent shall forward a copy of all checks mailed to consumers in that year to the Federal Trade Commission, Enforcement Division, Washington, D.C. 20580.

## IX.

*It is further ordered,* That respondent shall have the right to request modification of this order.

Commissioner Strenio dissenting as to the terms of the consent order, and Commissioner Starek not participating.

## EXHIBIT 1—FTC RESTITUTION INFORMATION

GUILD LOAN	RESTITUTION AMOUNT
FAB022443T	1,173.04
FAB202555X	687.48
FAB202574X	541.96
FAD780215T	808.23
FAD791001T	1,663.52
FAI208382T	651.24
FAI208396T	510.08
FAI208417T	558.74
FAI208468T	451.66
FAI208471T	657.39
FAQ210208T	1,070.70
FAR270323T	927.74
FAT200564T	1,114.24

GUILD LOAN	RESTITUTION AMOUNT
FAW560264X	327.78
FBB200144T	764.46
FBB430137T	607.74
FBB430207T	985.30
FCD190714T	1,334.59
FCD200688T	226.41
FCD200803T	1,663.35
FCD200902T	283.13
FCE081017X	268.66
FCE171068T	796.78
FCE191130X	718.27
FCE191859T	714.01
FCE200704T	1,434.13
FCE200738T	883.20
FCG030594T	351.42
FCG200457T	740.97
FCJ200051T	663.02
FCJ200079T	1,509.15
FCJ200215T	765.91
FGS080219T	1,153.32
FGS080229T	1,481.89
FGT020250T	171.91
FGT020265T	631.32
FGT030280T	1,666.34
FGT040287T	1,249.11
FGT050247T	973.19
FGT050262T	516.83
FGT050323T	42.57
FGT060230T	583.77
FGT060234T	978.17
FGT060255T	1,400.26
FGT060295T	360.60
FGT060301T	950.92
FGT060320T	972.76
FGT060327T	581.21
FGT060330T	132.63
FGT060335T	656.17
FGT060398T	317.91
FGT060442T	59.34
FGT060451T	81.54
FGT200211T	75.87
FGT200220T	396.02
FGT200233T	365.19
FGT200374T	170.27
FZA205419T	607.53
FZA205461T	655.08

GUILD LOAN	RESTITUTION AMOUNT
FZA205473T	517.06
FZA205513T	309.08
FZA395593T	502.47
GAB022423T	340.06
GAB202556X	687.72
GAB202562X	751.13
GAB330760T	1,387.21
GAB330774T	1,590.99
GAD202324T	522.13
GAD202330X	707.06
GAD202333X	707.44
GAD202334X	707.44
GAD202336X	737.09
GAD202337X	660.84
GAD202340X	884.51
GAD202342X	836.41
GAD202348X	495.29
GAD202350X	227.33
GAD202351X	796.68
GAD202355X	691.98
GAD202357X	805.74
GAD202368X	865.05
GAD231003T	447.65
GAD260832T	2,275.50
GAD260866T	1,633.79
GAD264145T	1,891.86
GAD264190T	1,319.52
GAD264216T	441.91
GAD570604X	563.15
GAD570735T	599.48
GAD690209T	561.86
GAD690213T	662.81
GAD690214T	850.11
GAD690230T	921.01
GAD690234T	1,354.43
GAD690357T	782.51
GAD690403T	648.13
GAD692053X	595.34
GAD693523T	694.57
GAD710249T	1,304.38
GAD713014X	306.11
GAD750214T	537.52
GAD750215T	831.71
GAD780203T	2,215.79
GAD781004T	749.27
GAD788026X	715.04