

Complaint

92 F.T.C.

IN THE MATTER OF
CAPITAL BUILDERS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket 9041. Complaint, July 15, 1975¹ — Decision, Aug. 8, 1978

This order, among other things, requires a Charleston, W. Va. home improvements firm to cease misrepresenting or failing to make relevant disclosures regarding prices, interest rates, savings, discounts and financing arrangements. Further, the firm must cease failing to furnish consumers, in connection with the extension of credit, those materials and disclosures required by Federal Reserve System regulations. The company is additionally required to establish a \$35,000 escrow account for making restitution to entitled customers, and to effectuate such restitution in a manner prescribed in the order.

Appearances

For the Commission: *Aaron H. Bulloff, Allan M. Huss and Sharon J. Devine.*

For the respondent: *Stanley E. Preiser, Preiser & Wilson, Charleston, W. Va.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Capital Builders, Inc., a corporation, and Jerome Finn and Richard Landman, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and of the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Capital Builders, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and

¹ Complaint reported as amended by Commission order dated November 18, 1975.

place of business located at 517 Elizabeth St., East, Charleston, West Virginia.

Respondents Jerome Finn and Richard Landman are the principal officers of said corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of residential aluminum siding and other home improvements to the public and in the installation thereof.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, advertising, and promotional material, contracts, and other business papers and documents, to be shipped and transmitted from and to their place of business, located as aforesaid in the State of West Virginia, to their prospective purchasers and to purchasers thereof located in various States of the United States other than the State of West Virginia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase and installation of their home improvement products, respondents have made numerous statements and representations in their promotional material, and through oral statements and representations made by their salesmen or representatives to prospective purchasers, respecting the nature of their offer and its price.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not specifically set out herein, and through oral statements made by their salesmen or representatives, respondents represent, and have represented, directly or by implication, that:

(1) Respondent's products are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling price.

(2) After the installation of respondents' aluminum siding is

completed, the homes of purchasers will be used for demonstration and advertising purposes by the respondents; and that as a result of allowing their homes to be used as models, purchasers will be granted reduced prices or will receive allowances or discounts.

(3) Purchasers of respondents' products will pay a specified interest rate.

(4) Purchasers of respondents' products will have no liens placed against their property.

(5) Financing of respondents' consumer credit transactions will be through local financing institutions.

PAR. 6. In truth and in fact:

(1) Respondents' products have not been offered for sale at special or reduced prices, and savings have not thereby been afforded purchasers because of reductions from respondents' regular selling price. In fact, respondents do not have regular selling prices, but the prices at which respondents' products are sold vary from customer to customer, depending on the resistance of the prospective purchaser.

(2) Purchasers have not been granted reduced prices, nor have they received allowances or discounts as a result of respondents' claims that the purchasers' property would be used as a display model. Respondents' claim was a representation designed to break down the prospective purchaser's sales resistance, and not to afford the purchaser a reduction in price.

(3) In many instances, purchasers of respondents' products pay interest rates different from the rates represented to them by respondents' salesmen.

(4) Purchasers of respondents' products have liens placed against their property either in the form of a second mortgage evidenced by a trust deed or in the form of a security interest created by operation of state law and perfectable under state law.

(5) In many instances, respondents finance transactions in which they extend credit through financing institutions located outside the State of West Virginia.

Therefore, the statements and representations set forth in Paragraphs Four and Five hereof were and are false, misleading, and deceptive.

PAR. 7. In the usual course of their business as aforesaid, respondents employ a liquidated damages clause in their contracts, which requires purchasers to pay thirty percent (30%) of the contract price if they cancel the contract at any time before work is started. The amount fixed by this liquidated damages clause is not a reasonable forecast of just compensation for the harm that would be caused by a breach of the contract, or the harm that would be caused

by a breach of the contract is not one that is incapable of, or is very difficult of, accurate estimation. As such, the liquidated damages clause serves as a penalty to the purchaser or attempts to impose a penalty on the purchaser, and, accordingly, is an unfair act or practice.

PAR. 8. In the conduct of their aforesaid business, at all times mentioned herein, respondents have been in substantial competition, in or affecting commerce, with corporations, firms, and individuals in the sale of aluminum siding and other home improvement products of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, acts, and practices, has had, and now has, the capacity and tendency to lead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time in the past have regularly extended, consumer credit, as "consumer credit" is defined in Section 226.2(k) of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 12. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, and in connection with their credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, have caused, and are now causing, customers to execute a document entitled "Contract," a retail installment contract, for the purchase and installation of residential aluminum

siding. Subsequently, at the time of or after installation, after the credit transaction for the installation of the siding is consummated, respondents have their customers execute a document entitled "Contract and Disclosures." Only the document entitled "Contract and Disclosures" contains the consumer credit cost disclosures required by Regulation Z.

Therefore, respondents have failed to make the consumer credit cost disclosures required by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of the Regulation.

PAR. 13. By and through the use of respondents' contract to perform home improvements, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the respondents' customers. Respondents' retention or acquisition of such security interest in said real property thereby entitles their credit customers to be given the right to rescind their transactions until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures in the manner and form required by Regulation Z, whichever is later, as required by Section 226.9(a) of Regulation Z.

Having consummated a rescindable consumer credit transaction, respondents or their representatives have, in many instances, initiated installation of the home improvements, and, subsequently, respondents have delivered or caused to be delivered to their customers a written notice of the customers' right to rescind, which notice is ante-dated to the date of consummation of the contract.

By and through their actions as alleged above, respondents have:

(1) Failed to give notice to the customer of his right to rescind the credit transaction by furnishing him with two copies of the "notice to customers required by federal law," set forth in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

(2) Failed to delay the making of any physical change in the property of the customer until after the rescission period has expired, as required by Section 226.9(c)(2) of Regulation Z.

(3) Failed to delay performance of any work or service for the customer until after the rescission period has expired, as required by Section 226.9(c)(3) of Regulation Z.

(4) Failed to delay the making of deliveries to the residence of the customer until after the rescission period has expired, as required by Section 226.9(c)(4) of Regulation Z.

(5) Failed to provide customers with two copies of the "effect of

rescission," set forth in Section 226.9(d) of Regulation Z, in the manner and form prescribed by Section 226.9(b) of Regulation Z.

PAR. 14. Having consummated a rescindable consumer credit transaction, as alleged in Paragraph Thirteen above, respondents include the following language in the contract:

Owner agrees that in event of cancellation of this contract before work is started, owner shall pay contractor thirty percent (30%) of the contract price as liquidated damages for the breach.

By and through the use of this quoted language, respondents have:

(1) Represented, directly or by implication, that customers will or may be liable for damages, penalties, or any other charges if they exercise the right to rescind provided by Section 226.9 of Regulation Z, contrary to the provisions of Section 226.9(d) of Regulation Z.

(2) Supplied additional information, not required by Regulation Z, which is stated so as to mislead or confuse the customer concerning his right to rescind the credit transaction, in violation of Section 226.6(c) of Regulation Z.

PAR. 15. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act, and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the Truth in Lending Act, and the implementing regulations promulgated thereunder, and the respondents having been served with a copy of that complaint, together with a proposed form of order; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period

of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following findings of fact, conclusions of law, and order:

I

JURISDICTIONAL FINDINGS

1. Respondent Capital Builders, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its former office and principal place of business located at 1105 Main St., in the City of Charleston, State of West Virginia.

Respondents Jerome Finn and Richard Landman are the principal officers of said corporation. They formulate, direct, and control the policies, acts, and practices of said corporation, and their addresses are the same as that of said corporation.

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

FINDINGS OF FACT

1. Jerome Finn is president of Capital Builders, Inc. (hereinafter "Capital").

2. Richard Landman is vice-president and treasurer of Capital. Jerome Finn and Richard Landman are the sole officers of Capital.

3. As the officers and directors of Capital, Jerome Finn and Richard Landman formulate, direct, and control the acts and practices of Capital and its employees, and formulate and direct the acts and practices of its agents.

4. Capital Builders, Inc., by its agents or employees, entered into transactions with various customers for the purchase of home improvements.

5. Purchases of respondents' home improvements were financed by at least eight lending institutions, including Kanawha Banking and Trust, Charleston National Bank, Kanawha Valley Bank, North American Acceptance Corporation, F.B.S. Financial, Inc., and General Electric Credit Corporation.

6. Stipulations 7 through 27 relate to purchases of respondents' home improvements financed by Kanawha Banking and Trust, Charleston National Bank, and Kanawha Valley Bank, all located in Charleston, West Virginia, for the period July 1, 1973 to October 1, 1975, inclusive (hereinafter referred to as "financing bank").

7. In many instances, customers of Capital were solicited by telephone and subsequently by a salesman representing Capital, and when the customer agreed to purchase home improvements from Capital, a "short form" contract for the purchase was executed by and between the customer and Capital.

8. In many instances the salesman obtained financial information at the time the customer signed a "short form" contract with Capital. This financial information included information regarding outstanding debts, employment, income, and ownership of the real property to be improved.

9. In many instances prior to the time the customer signed the "short form" contract with Capital, the salesman informed the customer of one or more specific finance terms, including the amount financed, the period of repayment, the amount of monthly payment, and the interest rate.

10. In many instances it was understood by both the customer and the salesman for Capital that the "short form" contract was to be financed and that Capital would arrange the financing.

11. This "short form" contract did not contain any disclosure of consumer credit information, including the period of repayment, the amount of monthly payment, the annual percentage rate, or the finance charge, nor was a "Notice to the Customer" as set forth in Section 226.9(b) of Regulation Z (hereinafter "Notice to the Customer"), provided to or left with the customer.

12. In some instances, after execution of the "short form" contract, Capital obtained and paid for building permits and/or property descriptions.

13. Capital's usual practice was to have its salesmen transmit the customer's financial information to Capital's office personnel, who, in turn, forwarded this financial information, as well as the amount financed and the number of payments, to an employee of the installment loan department of the financing bank.

14. In each transaction, the amount of finance charge, amount of each monthly payment, deferred payment price and annual percentage rate were determined by an employee or agent of Capital from instructions and charts provided by the financing bank.

15. The financing bank approved or disapproved the financing of the transaction, and so notified Capital's office personnel.

16. After approval of financing of the transaction by the financing bank, and after execution of the "short form" contract by and between the customer and Capital, Capital contracted for the performance of its obligations with various subcontractors.

17. These subcontractors in fact performed the obligations of Capital under the contract, and were paid therefor by Capital.

18. The financing bank's procedures required Capital to furnish the bank with a note payable to Capital, a Contract and Disclosure Statement ("long form" contract), and a "Notice to the Customer," each signed by the customer. However, in most instances, the Kanawha Valley Bank required the customer to furnish Kanawha Valley Bank with a notice and disclosure form on forms provided by Kanawha Valley Bank, and utilized these forms in lieu of the long form contract and note provided by Capital. In these latter instances, the note and disclosure was mailed by Kanawha Valley Bank directly to the customer, and returned directly to Kanawha Valley Bank. In some instances, the financing bank required the customer to execute a deed of trust to secure the transaction.

19. The financing bank's procedures also required that the aforementioned documents be completed by Capital on forms provided or approved by the financing bank.

20. Capital's agent or employee, who in some instances was not the original salesman, returned to the customer's home to complete and obtain the customer's signature on the above-required documents, except in those instances when Kanawha Valley Bank provided the customer with its forms directly.

21. In many instances, work on the property had already commenced and had been completed at the time of this second visit, or when the note and second contract were provided to the customer.

22. At this second visit, Capital's agent or employee obtained the customer's signature on the note, Contract and Disclosure Statement ("long form" contract), and the "Notice to the Customer." In most instances, Capital's agent or employee dated these documents with the date that the customer executed the contract with the salesman for the purchase of home improvements, even though this second visit occurred at a later date.

23. Capital's agent or employee left copies of the notice, "long form" contract, and "Notice to the Customer" with the customer at this second visit.

24. Upon completion of Capital's obligation under the contract, the customer executed a "Property Improvement Completion Certificate" (hereinafter "Completion Certificate") which he gave to Capital, its subcontractor, agent or employee.

25. Except when the customer returned the note directly to Kanawha Valley Bank, respondents negotiated the note to the financing bank and delivered to the financing bank the Contract and

Disclosure Statement ("long form" contract), the "Notice to the Customer," and the "Completion Certificate."

26. After the financing bank received these documents, it disbursed the amount financed directly to Capital, either by check or by direct deposit to an account of Capital.

27. At all times material hereto, Capital and the financing banks were engaged in a regular course of dealing with regard to the financing of home improvement transactions, as herein set forth.

28. Stipulations 29 through 34 relate to purchases of respondents' home improvements financed by North American Acceptance Corporation of Atlanta, Georgia, F.B.S. Financial, Inc. of Cincinnati, Ohio, L & F Title & Mortgage Company of Charleston, West Virginia, and General Electric Credit Corporation of Pikesville, Maryland (hereinafter "finance companies"). L & F Title & Mortgage Company is a division of Capital.

29. In some instances, Capital, its agents or employees, followed the procedures outlined in Stipulations 7 through 14, but the financing bank disapproved the loan.

30. Capital then sought to obtain financing through one of the finance companies enumerated in Stipulation 28.

31. Capital, its agents or employees, followed the procedures enumerated in Stipulations 15 through 22, except the financing institutions were finance companies, and not financing banks.

32. In some instances, Capital's agent or employee did not inform the customer that financing had been obtained through an out-of-state finance company rather than through a local bank.

33. Capital, its agents or employees, followed the procedures enumerated in Stipulations 23 through 26, except the financing institutions were finance companies and not financing banks, and in all cases payment was made to Capital by check issued by the finance company.

34. At all times material hereto, Capital and each finance company were engaged in a regular course of business with regard to the financing of home improvement transactions as herein set forth.

CONCLUSIONS OF LAW

1. Capital Builders, Inc. arranged for the extension of credit within the meaning of Section 226.2(h) of Regulation Z, the implementing regulation promulgated under the Truth in Lending Act.

2. The credit extended by Kanawha Valley Banking and Trust, Charleston National Bank, Kanawha Valley Bank, The Guaranty Bank, Union Federal Savings and Loan, North American Accep-

tance Corporation, F.B.S. Financial, Inc., General Electric Credit Corporation, and L & F Title & Mortgage Company in each transaction described in the foregoing Stipulations of Fact is "consumer credit" as defined by Section 226.2(p) of Regulation Z.

3. Each transaction described in the foregoing Stipulations of Fact constituted a single consumer credit transaction from the bank or finance company to the customer through the instrumentality of Capital Builders, Inc.

4. Each of the consumer credit transactions described in the foregoing Stipulations of Fact is a transaction which gave rise to a right of rescission as set forth in Section 226.9 of Regulation Z.

ORDER

I

It is ordered. That respondents Capital Builders, Inc., a corporation, its successors and assigns, and its officers, and Jerome Finn and Richard Landman, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, distribution, or installation of aluminum siding, storm windows, storm doors, or any other products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, orally or in writing, or by any other means, that any price for respondents' products and/or services is a special or reduced price, unless such price constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such products and/or services were sold or offered for sale to the public on a regular basis by respondents in the recent, regular course of their business; or misrepresenting, in any manner, the savings available to purchasers.

(2) Representing, directly or by implication, orally or in writing, or by any other means, that the home of any of respondents' customers or prospective customers has been specially selected as a model home to be used, or will be used, as a model home, or otherwise, for advertising, demonstration, or sales purposes, or that such customers will thereby be granted any allowance, discount, or commission; *provided, however,* that nothing in this order shall prohibit respondents from representing, after a contract has been executed between respondents and a purchaser of respondents' products or services, that purchasers or prospective purchasers can earn future compen-

sation by providing the names of prospective purchasers to respondents' personnel connected with the sale of respondents' products or services.

(3) Representing, directly or by implication, orally or in writing, or by any other means, that the purchaser will pay any interest rate other than that which the purchaser will actually pay; *provided, however*, that nothing in this order shall prohibit respondents from stating the lending institution's prevailing rate of finance charge expressed as an annual percentage rate, as "annual percentage rate" is defined in Section 226.2(g) of Regulation Z.

(4) Failing to disclose, clearly and conspicuously, that purchasers will have liens placed against their property, when such is the case.

(5) Failing to disclose, clearly and conspicuously, that financing of credit transactions will not be through local financing institutions, when such is the case. For purposes of this order, local financing institutions shall be deemed to be institutions which have a main office or a branch office within the county or any county adjacent to which the purchaser or prospective purchaser resides.

(6) Using any liquidated damages clause in their contract form.

(7) Failing, for a period of ten years after the effective date of this order, to maintain adequate records:

(a) For a continuing period of three (3) years from the date of transaction which disclose the factual basis for any representations or statements as to special or reduced prices, as to usual and customary retail prices, as to savings afforded to purchasers, and as to similar representations of the type described in Paragraphs Five (1) and (2) of the complaint.

(b) For a continuing period of three (3) years from the date of transaction with regard to each and every contract hereafter entered into between respondents and their customers, which disclose the amount each customer was charged, exclusive of interest or finance charges, for material and labor; and for those contracts involving siding or the installation of siding, or both, the total amount of siding materials and other materials installed or delivered to the customer, the type and grade of said siding and other materials, a description of the installation performed, and the total amount of money paid to salesmen, agents, or representatives for the solicitation of said contracts.

The information prescribed in subparagraph (7) need not be aggregated onto separate documents. Respondents' retention of records of the type prescribed in subparagraph (7) shall be deemed *prima facie* evidence of compliance with subparagraph (7).

(8) Failing to maintain for a continuing period of three (3) years from the date of transaction, all invoices, notices for payment, and all similar documents which respondents receive in the regular course of their business from suppliers, subcontractors, and other persons, and, for a continuing period of three (3) years from the date of transaction, copies of all contracts entered into between respondents and their customers. This provision notwithstanding, respondents shall continue to preserve evidence of compliance with the requirements of Truth in Lending, as required by Section 226.6(i) of Regulation Z.

II

It is further ordered, That respondents Capital Builders, Inc., a corporation, its successors and assigns, and its officers, and Jerome Finn and Richard Landman, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the extension of consumer credit or advertisements to aid, promote, or assist, directly or indirectly, in the extension of consumer credit, as "consumer credit," "credit sale," and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

(1) Failing to make the consumer credit cost disclosures prescribed by Section 226.8 of Regulation Z prior to consummation of the transaction as required by Section 226.8(a) of Regulation Z.

(2) Failing to give notice to the customer of his right to rescind the credit transaction by furnishing him with two copies of the "notice to customers required by federal law," set forth in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

(3) Failing to delay the making of any physical changes in the property of the customer until after the rescission period has expired, as required by Section 226.9(c)(2) of Regulation Z.

(4) Failing to delay performance of any work or service for the customer until after the rescission period has expired, as required by Section 226.9(c)(3) of Regulation Z.

(5) Failing to delay the making of deliveries to the residence of the customer until after the rescission period has expired, if the creditor has retained or will acquire a security interest other than one arising by operation of law, as required by Section 226.9(c)(4) of Regulation Z.

(6) Failing to provide the customer with two copies of the "effect of

rescission" set forth in Section 226.9(d) of Regulation Z, in the manner and form required by Section 226.9(b) of Regulation Z.

(7) Representing, directly or by implication, that customers will or may be liable for damages, penalties, or any other charges in the event they cancel a contract that is rescindable pursuant to Section 226.9 of Regulation Z.

(8) Supplying customers with any additional information, explanations, contract clause, or other statements pertaining to a transaction which mislead or confuse the customers or contradict, obscure, or detract from the disclosures required by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

(9) Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, at the time and in the manner, form, and amount required by Sections 226.6, 226.8, 226.9, and 226.10 of Regulation Z.

III

It is further ordered, That respondents shall, within ninety (90) days after service of this order, pay a pro rata share of the escrow account established in subparagraph (2) below to all of respondents' customers who are entitled to receive a share, as "entitled customer" is defined in subparagraph (1) below, subject to the monetary limitation in subparagraph (2) below. Respondents shall effectuate such restitution in the following manner:

(1) For purposes of this order, an "entitled customer" is a person who purchased a home improvement from respondents on credit, as "credit" is defined in Section 226.2(q) of Regulation Z, during the period July 1, 1973 to October 1, 1975, and who has not, at the time of the signing of this Agreement, instituted any private legal action against respondents alleging violations of Regulation Z. "Entitled customers" shall not include persons who received disclosure statements used and prepared by creditors other than respondents and mailed by the creditor directly to the customer.

(2) On or before the third day after the date this order becomes final, respondents shall deposit the sum of thirty-five thousand dollars (\$35,000) into an escrow account in a lending institution with which respondents have had no prior dealings. The escrow account shall be utilized for the payment of amounts due to such of respondents' customers entitled to restitution. Respondents' liability for restitution pursuant to the terms of this order shall not exceed thirty-five thousand dollars (\$35,000). Printing costs, postage costs, reasonable and ordinary secretarial fees (not to exceed \$200), and

