

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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FEDERAL TRADE COMMISSION,)
Plaintiff,)
)
v.)
)
GATEWAY FUNDING DIVERSIFIED)
MORTGAGE SERVICES, L.P. and GATEWAY)
FUNDING, INC.,)
Defendants.)
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Civil No.

**STIPULATED FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), has filed a Complaint for Permanent Injunction and Other Equitable Relief, pursuant to Sections 5(a), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 56(a) (the “Complaint”).

The Complaint alleges that defendants Gateway Funding Diversified Mortgage Services, L.P., (“Gateway”) and Gateway Funding, Inc. (“GFI”) (collectively “defendants”) have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 701(a)(1) of the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. § 1691(a)(1), and Section 202.4 of its implementing Federal Reserve Board Regulation B (“Regulation B”), 12 C.F.R. § 202.4. Because of defendants’ demonstrated inability to pay, the Complaint does not seek civil penalties pursuant to Section 5(m)(1) of the FTC Act, 15 U.S.C. § 45(m)(1).

The parties, by and through their respective counsel, have agreed to entry of this

Stipulated Final Judgment and Order (“Order”) by this Court, without trial or adjudication of any issue of fact or law to settle and resolve all matters of dispute arising from the conduct alleged in the Complaint. Defendants do not admit liability for any of the matters alleged in the Complaint. Plaintiff and defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and defendants waive any right that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412. Defendants have waived service of the Summons and Complaint.

The parties having requested the Court to enter this Order, it is therefore ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties.
2. The Complaint states a claim upon which relief may be granted against the defendants under Sections 5(a), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 56(a), and under the ECOA, 15 U.S.C. §§ 1691-1691f, and Regulation B, 12 C.F.R. § 202.
3. The activities of defendants are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, as amended.
4. Entry of this Order is in the public interest.

ORDER

I. DEFINITIONS

For purposes of this Order:

- a. “applicant” is synonymous in meaning and equal in scope to the definition of the term in § 202.2 of Regulation B, and means any person who requests or who has received an extension of credit from a creditor, and includes any

person who is or may become contractually liable regarding an extension of credit, including guarantors, sureties, endorsers and similar parties;

- b. “branch” means any of the offices from which Gateway loan originators originate loans, including Gateway’s headquarters office;
- c. “branch manager” means any Gateway loan originator with supervisory authority over any branch;
- d. “credit transaction” is synonymous in meaning and equal in scope to the definition of the term in § 202.2 of Regulation B, and means every aspect of an applicant’s dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures);
- e. “direct lending” refers to mortgage loans originated by Gateway’s loan originators;
- f. “ECOA” refers to the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691–1691f, as amended;
- g. “Gateway” refers to Gateway Funding Diversified Mortgage Services, L.P., and its successors and assigns;
- h. “GFI” refers to Gateway Funding, Inc., and its successors and assigns;
- i. “loan originator” means any employee of Gateway who originates mortgage loans on Gateway’s behalf, including but not limited to loan officers and branch managers;

- j. “mortgage loan” means any closed-end loan secured or to be secured by residential real property;
- k. “Regulation B” refers to Federal Reserve Board Regulation B, 12 C.F.R. § 202, as amended; and
- l. “wholesale lending” refers to mortgage loans funded by Gateway that are originated by brokers.

II. INJUNCTION

IT IS THEREFORE ORDERED that defendants, and each of them, their successors and assigns, and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Order by personal service or otherwise, directly or through any partnership, corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined, in connection with Gateway’s direct or wholesale lending operations, from:

- A. Engaging in any act or practice that discriminates against an applicant on the basis of race or national origin regarding any aspect of a credit transaction, including by originating, approving, or funding mortgage loans for which African-American or Hispanic applicants pay higher prices than non-Hispanic white applicants that are not justified by the underwriting risk of the loans or the credit characteristics of the applicants; and
- B. Failing otherwise to comply with the ECOA, 15 U.S.C. § 1691-1691f, as amended, and Regulation B, 12 C.F.R. § 202, as amended.

III. FAIR LENDING MONITORING PROGRAM

IT IS FURTHER ORDERED that, defendants and their successors and assigns shall within ninety (90) days of the entry of this Order submit to counsel for the Commission for review and

approval, and for a period of three (3) years from the date of entry of this Order continuously operate and maintain, a fair lending monitoring program. If counsel for the Commission does not otherwise notify defendants in writing within forty-five (45) days after receipt of the fair lending monitoring program, it shall be deemed approved and shall commence immediately. Any material modification of the fair lending monitoring program shall be documented and provided to counsel for the Commission for review and approval prior to the implementation of any such changes. If counsel for the Commission does not otherwise notify defendants in writing within forty-five (45) days after receipt of the proposed modification of the fair lending monitoring program, it shall be deemed approved. The fair lending monitoring program shall include but not be limited to the following:

A. Development and implementation of effective fair lending policies and procedures sufficient to ensure compliance with all provisions of the ECOA and Regulation B. These policies and procedures shall include but not be limited to policies and procedures to prevent any applicant from being denied a mortgage loan or being charged a higher price for a mortgage loan based on race or national origin or any other basis prohibited by Section 701(a) of the ECOA, 15 U.S.C. § 1691(a), and Section 202.4 of Regulation B, 12 C.F.R. § 202.4. These policies and procedures shall not affect Gateway's ability to make denials of mortgage loans or determine prices of mortgage loans that are justified by the underwriting risk of the loans or the credit characteristics of the applicants;

B. Development and implementation of a comprehensive system to perform detailed, periodic fair lending monitoring analyses and reviews sufficient to ensure that mortgage loans are not priced in a manner that violates the ECOA or Regulation B, including an examination of whether there are disparities in prices charged to African-American and Hispanic applicants as

compared to non-Hispanic white applicants that are not justified by the underwriting risk or credit characteristics of the applicants in Gateway's:

1. Overall direct lending;
2. Overall wholesale lending;
3. Direct lending within each branch; or
4. Direct lending by each loan originator; and

C. Development and implementation of policies and procedures for taking appropriate remedial measures if the analyses described in Section III.B reveal disparities in the prices charged to African-American and Hispanic applicants as compared to non-Hispanic white applicants that are not justified by the underwriting risk or credit characteristics of the applicants. These policies and procedures shall include but not be limited to detailed corrective actions to be taken if pricing disparities are found, including measures such as verbal or written counseling; fair lending re-training; enhanced scrutiny of loans originated by the branch and/or loan originator; limiting or eliminating pricing discretion at the branch, by the loan originator, or as otherwise appropriate; termination of employment; and providing consumer refunds. The specific corrective action pursued shall depend, among other things, on the size and scope of the disparity and its persistence, and the prior conduct of the branch manager or loan originator involved.

IV. FAIR LENDING TRAINING

IT IS FURTHER ORDERED that defendants and their successors and assigns shall within ninety (90) days of the entry of this Order establish and implement, and for a period of three (3) years from the date of entry of this Order continuously operate and maintain, a mandatory fair lending training program. The content and implementation of the training must be fully documented in writing. The training shall specifically address the following:

- A. All aspects of the prohibition against discrimination in Section 701(a) of the ECOA, 15 U.S.C. § 1691(a), and Section 202.4 of Regulation B, 12 C.F.R. § 202.4;
- B. This Order, a copy of which shall be included in the written materials;
- C. The monitoring defendants will conduct pursuant to this Order to ensure that applicants are treated fairly with respect to the pricing of loans; and
- D. The array of remedial steps, including but not limited to those set forth in Section III.C of this Order, that may be taken if disparities are identified by the monitoring.

Within one hundred and eighty (180) days from the date of entry of this Order, all current branch managers and loan originators will receive the fair lending training. All branch managers and loan originators hired after the date of this Order shall receive fair lending training within forty-five (45) days of their start date.

V. DATA INTEGRITY

IT IS FURTHER ORDERED that defendants and their successors and assigns shall within ninety (90) days of the entry of this Order establish and implement, and for a period of three (3) years from the date of entry of this Order continuously operate and maintain, a comprehensive data integrity program that is designed to ensure the accuracy and completeness of the data and other information that Gateway collects regarding mortgage loan applicants, loan originator compensation, and mortgage loan pricing. The content and implementation of this program must be fully documented in writing, and defendants shall ensure that any data integrity problems are promptly and thoroughly corrected.

VI. CONSUMER REDRESS

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered jointly and severally against defendants and in favor

of the FTC in the amount of \$2,900,000 (two million, nine hundred thousand dollars) as equitable monetary relief. This judgment shall be suspended in part and subject to Section VII of this order, *provided that* defendants shall pay to the Commission the sum of \$200,000 (two hundred thousand dollars) within five (5) days of entry of this Order by electronic transfer, pursuant to instructions to be provided by the FTC;

B. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used to provide equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. The FTC shall have sole discretion in choosing an independent administrator to administer any redress program, and in determining which borrowers are eligible for redress as well as the amounts to be paid. If the FTC determines in its sole discretion that direct redress to borrowers is wholly or partially impracticable or if funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. Defendants shall have no right to challenge the FTC's choice of remedies under this Section; and

C. In order to facilitate redress pursuant to this Order, no later than ten (10) business days after a written request from a representative of the Commission, defendants shall deliver to the Associate Director for Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, in a compatible electronic format (as determined by counsel for the Commission):

1. Data comprising the full name, last known mailing address, last known home and work telephone numbers, entity to which the loan was sold, and loan number for each

African-American or Hispanic applicant who obtained a mortgage loan through Gateway's direct lending business during the period January 1, 2004 through December 31, 2005; and

2. A sworn statement signed by a responsible Gateway official that the data constitutes true, accurate, and complete data of all such applicants in its files.

VII. RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. The FTC's agreement to this Order, requiring that the judgment be suspended for less than the full amount of the judgment, is expressly premised upon the truthfulness, accuracy and completeness of each defendant's financial condition, as represented in each defendant's sworn financial statements, the supporting documents submitted to the Commission, and compliance with Section VI of this Order. The financial statements contain material information upon which the FTC relied in negotiating and agreeing to this Order. If, upon motion by the FTC, this Court finds that any defendant failed to disclose any material asset or materially misstated the value of any asset in the financial statements described above, made any other material misstatement or omission in the financial statements described above, or that any defendant violated Section VI of this Order, the Court shall enter judgment in the amount of \$2,900,000 (two million, nine hundred thousand dollars) in equitable monetary relief, jointly and severally against defendants, plus interest computed at the rate prescribed in 28 U.S.C. 1961(a) which shall immediately begin to accrue, less any amounts previously paid by defendants to the Commission. *Provided, however,* that:

1. In all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and
2. Proceedings instituted under this Section would be in addition to, and not in

lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order;

B. Each party shall bear its own costs and attorney's fees incurred in connection with this action; and

C. For the purpose of any subsequent proceedings to enforce payments required by this Order, including but not limited to, a non-dischargeability action filed in a bankruptcy proceeding, defendants waive any right to contest the allegations in the Complaint.

VIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that defendants, and their successors and assigns, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Shall provide within one hundred eighty (180) days of the entry of this Order, and on an annual basis thereafter for three (3) years from the date of entry of this Order, a written report to the Commission, sworn to under penalty of perjury, setting forth in detail:

1. Defendants' efforts to comply with the requirements of this Order, an assessment as to the extent to which each requirement was met, and an explanation as to why any particular requirement was not met;

2. The results of the periodic fair lending monitoring analyses and reviews required by Section III.B of this Order, including but not limited to a description of the methodology utilized in performing the analyses and arriving at the results, the scope and nature of any racial and/or ethnic disparities identified in the analyses, the scope and nature of any remedial measures taken in response to these results, and any follow-up analyses to be conducted based on the results; and

3. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section X of this Order;

B. Shall, for a period of three (3) years from the date of entry of this Order, notify the Commission of any changes in Gateway's or GFI's corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after obtaining such knowledge; and

C. Shall, for the purposes of this Order, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Re: *U.S. v. Gateway Funding Diversified Mortgage Services L.P. and Gateway Funding, Inc.*

IX. RECORD KEEPING AND COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order:

A. Defendants, and their successors and assigns, shall maintain business records demonstrating compliance with the terms and provisions of this Order;

B. Defendants, and their successors and assigns, shall, within twenty (20) days of receipt of written notice from a representative of the Commission, submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in defendants' direct or indirect control to inspect the business operation; and

C. The Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to obtaining discovery from any person, without further leave of Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36 and 45.

X. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, defendants, and their successors and assigns, shall deliver a copy of this Order to each of their officers, agents, servants, employees, and attorneys. For current personnel, delivery shall be within thirty (30) days of the entry of this Order. For new personnel, delivery shall occur prior to them assuming their responsibilities. Defendants shall secure a signed and dated statement acknowledging receipt of a copy of this Order, within thirty (30) days of delivery, from all persons receiving a copy of this Order pursuant to this Section.

XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that defendants, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of the Order.

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the

purposes of construction, modification and enforcement of this Order.

XIII. FINAL JUDGMENT AND ORDER

The parties, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth above and consent to the entry thereof.

SO ORDERED.

Dated this day of , 2008.

UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR THE PLAINTIFF FEDERAL TRADE COMMISSION

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General Counsel

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Associate Director for Financial Practices
ALICE SAKER HRDY
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President of Gateway Funding, Inc.