

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

CONSUMER FINANCIAL PROTECTION BUREAU)
and UNITED STATES OF AMERICA,)
)
Plaintiffs,) CIVIL ACTION NO.
)
v.)
)
NATIONAL CITY BANK,)
through its Successor in Interest,)
)
Defendant.)
_____)

COMPLAINT

Plaintiffs Consumer Financial Protection Bureau (“CFPB”) and the United States of America (“Department of Justice” or “DOJ”) bring this action to remedy discrimination by National City Bank against approximately 76,000 African-American and Hispanic residential mortgage borrowers between 2002 and 2008. The PNC Financial Services Group (“PNC”), purchased National City Bank in 2008, and as successor in interest is responsible for remedying the violations of law by National City Bank alleged herein. Plaintiffs allege:

1. From 2002-2008, National City Bank originated over one million mortgage loans nationwide through its retail loan offices. Approximately 36,000 of these were to African-American borrowers, and approximately 34,000 to Hispanic borrowers. From 2003-2008, National City Bank originated over 600,000 loans throughout the country through its wholesale lending channels using mortgage brokers. Approximately 25,000 of these were to African-American borrowers, and approximately 49,000 to Hispanic borrowers.

2. As a result of National City Bank’s policies and practices, African-American and Hispanic borrowers paid higher prices for their home mortgage loans than non-Hispanic White borrowers (“White borrowers”), not based on creditworthiness or other objective criteria related to borrower risk, but because of their race or national origin.

3. The victims of National City Bank's discrimination were located in geographic markets spread across the country.

4. National City Bank maintained compensation systems that created financial incentives for loan officers to charge "overages" and to minimize "underages." These financial incentives resulted in discrimination against African-American and Hispanic borrowers.

5. An "overage" is an additional fee charged to a borrower above the par rate, which is the price of a mortgage loan that is based solely on criteria related to loan risk and is usually set forth on a rate sheet. An overage therefore raises the total cost to borrowers above what they would pay if the loans were closed using the prices that were set based on the borrowers' objective credit characteristics and the terms of the loan. An "underage" is a price concession that reduces the par rate of a loan. An underage therefore lowers the total cost to borrowers below what they would pay if the loans were closed using the prices that were set based on the borrowers' objective credit characteristics and the terms of the loan.

6. The higher loan prices National City Bank charged to African-American and Hispanic borrowers put increased economic burdens on those borrowers and their families.

7. Plaintiffs bring this lawsuit to hold PNC accountable for National City Bank's serious violations of law and to remedy the substantial and widespread harmful consequences of National City Bank's discriminatory lending policies and practices.

8. This Court has subject-matter jurisdiction over this action because it is "brought under Federal consumer financial law," 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c), and 12 U.S.C. § 5564(f).

PLAINTIFFS

9. Plaintiff CFPB is an independent agency of the United States charged with regulating the offering and provision of consumer financial products or services under Federal consumer financial laws. 12 U.S.C. § 5491(a). The CFPB is authorized to take appropriate enforcement action to address violations of Federal consumer financial law, including the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (“ECOA”). *See* 12 U.S.C. §§ 5481(12)(D); 5564(a).

10. The CFPB brings this action under sections 1064 and 1065 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5564 and 5565; and the ECOA, 15 U.S.C. § 1691c(a)(9), which prohibits discrimination by any creditor against any applicant with respect to any aspect of a credit transaction on the basis of, *inter alia*, race or national origin. 15 U.S.C. § 1691(a)(1).

11. The DOJ brings this action to enforce the ECOA and the Fair Housing Act, 42 U.S.C. §§ 3601-3619 (“FHA”). The Attorney General of the United States is authorized to initiate a civil action in federal district court whenever the Attorney General has reasonable cause to believe that a pattern or practice in violation of the FHA or the ECOA has occurred. 42 U.S.C. §§ 3614(a); 15 U.S.C. § 1691e(h).

DEFENDANT

12. Defendant National City Corporation was a Delaware corporation headquartered in Cleveland, Ohio and was the parent company to National City Bank (hereafter collectively referred to as “National City”). PNC, a Pennsylvania corporation headquartered in Pittsburgh, Pennsylvania acquired National City Corporation, its subsidiaries, and its operations through a stock-for-stock transaction on December 31, 2008. Since PNC’s acquisition of National City on December 31, 2008, National City’s mortgage portfolio and residential mortgage lending retail

business has been wholly integrated and assumed by PNC. As successor-in-interest to National City, PNC is responsible for remedying the violations alleged herein.

13. National City was a residential mortgage lender that originated conventional loans, loans insured by the Federal Housing Administration and loans guaranteed by the Department of Veteran Affairs.

14. PNC is, and National City was, subject to Federal laws governing fair lending, including the ECOA and the FHA and the regulations promulgated under each of those laws. The ECOA and the FHA prohibit lenders from discriminating on the basis of, *inter alia*, race or national origin in their lending practices. Charging a higher price for loans on the basis of race or national origin, including charging a higher annual percentage rate of interest (“APR”), is a discriminatory lending practice prohibited by the ECOA and the FHA.

15. PNC is, and National City was, a “creditor” within the meaning of the ECOA, 15 U.S.C. § 1691a(e), and PNC is, and National City was, engaged in “residential real estate-related transactions” within the meaning of the FHA, 42 U.S.C. § 3605.

INVESTIGATION

16. In 2011, the CFPB and the DOJ (hereafter collectively referred to as “Plaintiffs”) opened a joint investigation of the lending practices of National City from 2002-2008 and the lending practices of PNC from 2009-2010 to evaluate compliance with Federal fair lending laws, including the ECOA and the FHA.

17. After notifying PNC of the investigation, the Plaintiffs requested a number of documents and data related to National City’s and PNC’s pricing of residential mortgage loans for the years 2002-2010.

18. The Plaintiffs analyzed National City’s and PNC’s lending policies and practices for the years 2002-2010.

19. The Plaintiffs also analyzed the APRs of residential mortgage loans originated by National City and PNC for the years 2002-2010.

FACTUAL ALLEGATIONS

20. From at least 2002-2008, National City originated residential mortgage loans through two channels: 1) a retail channel, through which National City originated loans using its own employees, and 2) a wholesale channel, through which National City originated loans through brokers.

Retail Lending

21. With respect to its retail channel, National City operated over 410 retail mortgage offices throughout the country. National City loan officers accepted loan applications, determined whether to originate each loan using National City's underwriting guidelines, and set the price of each loan using National City's pricing guidelines. From 2002-2008, National City originated more than one million loans through its retail channel.

22. For loans in the retail channel, National City determined the risk-related pricing of a particular loan based on objective factors, including the borrower's credit characteristics and the terms of the loan, which resulted in calculated "par" interest rates for individual mortgage loan applications. These par rates were communicated to National City's loan officers through the distribution of rate sheets.

23. National City gave its retail loan officers wide discretion to charge more than the par rate as set forth on the rate sheet (an "overage") or offer a pricing concession that lowered the par rate as set forth on the rate sheet (an "underage"). These overages and underages were not related to loan terms or to a borrower's objective credit characteristics.

24. The compensation of National City's retail loan officers was based in part on their ability to charge overages and avoid including underages on the loans they arranged. The compensation system rewarded loan officers with extra compensation for making loans with overages – the greater the overage, the greater the additional compensation. The compensation system also created incentives to make any underages as small as possible.

25. From 2002-2008, National City did not have in place objective criteria, or provide guidelines, instructions, or procedures to be followed by loan officers in charging overages or making available underages. In addition, National City did not require its loan officers to document the reasons for charging overages or including underages and did not have meaningful monitoring of whether discrimination based on race or national origin resulted from these overages and underages.

26. Charging a higher net overage on the basis of race or national origin, whether through National City's inclusion of a greater overage or a smaller underage in the price of the mortgage loan, is a discriminatory lending practice by National City and prohibited by the ECOA and the FHA.

27. Statistical analyses of retail mortgage loans originated by National City between 2002 and 2008 demonstrate statistically significant discriminatory pricing disparities in retail mortgage loans based on race and national origin. Statistical significance is a measure of probability that an observed outcome would not have occurred by chance. As used in this Complaint, an outcome is statistically significant if the probability that it could have occurred by chance is less than 5%.

28. With respect to retail mortgage loans, between 2002 and 2008, National City charged African-American borrowers nationwide, on average, approximately 11 basis points more than it charged similarly-situated White borrowers as measured through the APR, after accounting for the credit risk factors (e.g., credit score) and terms of the loan (e.g., loan-to-value ratio and property type) that National City used in establishing the par rates that were set forth in its rate sheets. These disparities are statistically significant and mean that on average an African-American borrower paid approximately \$159 more than a similarly-situated White borrower during each year that he or she remained in the loan. These disparities cannot be explained by factors unrelated to race.

29. These disparities result in approximately 20,000 African-American borrowers having paid higher upfront mortgage loan fees or continuing to pay additional interest because of race in each monthly mortgage payment they make until the loan is paid off, which may be as many as 30 years after origination.

30. With respect to these retail loans, National City, on average, charged Hispanic borrowers approximately 9 basis points more than it charged similarly-situated White borrowers as measured through the APR, after accounting for the credit risk factors (e.g., credit score) and terms of the loan (e.g., loan-to-value ratio and property type) that National City used in establishing the par rates that were set forth in its rate sheets. These disparities are statistically significant and mean that on average, a Hispanic borrower paid approximately \$125 more than a similarly-situated White borrower during each year that he or she remained in the loan. These disparities cannot be explained by factors unrelated to national origin.

31. These disparities result in more than 18,000 Hispanic borrowers having paid higher upfront mortgage loan fees or continuing to pay additional interest because of national origin in each monthly mortgage payment they make until the loan is paid off, which may be as many as 30 years after origination.

32. In setting the par rates for its retail mortgage loans, National City accounted for individual borrowers' differences in credit risk characteristics. The net overages charged to African-American and Hispanic borrowers were separate from and not justified by the credit risk characteristics, which were already accounted for in the par rates set forth in the rate sheets. Accordingly, the disparities in the net overages paid by African-American and Hispanic borrowers described above are not justified by borrowers' credit risk characteristics.

33. The higher APRs that National City charged to African-American and Hispanic borrowers in its retail channel (borrowers whom National City determined had the credit characteristics to qualify for a home mortgage) were a result of the implementation of National City's policies or practices that: a) allowed loan officers subjective discretion to adjust pricing

without regard to borrower risk, including charging overages and applying underages; b) did not require its loan officers to justify or document the reasons for charging overages or allowing underages; c) failed to adequately monitor or control for disparities based on race or national origin resulting from its policies and practices; and d) linked loan officer compensation in part to charging overages and avoiding underages.

34. National City's policies and practices identified in the previous paragraph were not justified by business necessity or legitimate business interests. There were also less discriminatory alternatives available to National City than these policies or practices.

Wholesale Lending

35. From 2003-2008, National City charged African-American and Hispanic wholesale borrowers nationwide higher loan prices than White wholesale borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race or national origin. It was National City's policy and practice to allow mortgage brokers who submitted loan applications to National City through its wholesale channel to charge discretionary fees and vary a loan's interest rate from the par rate set by National City. This subjective pricing discretion resulted in higher loan prices that were not based on loan risk for African-American and Hispanic borrowers compared with similarly situated White borrowers. As a result of National City's discriminatory wholesale lending practices, African-American and Hispanic borrowers paid, on average, hundreds of dollars more for a National City wholesale loan.

36. In the years 2003-2008, National City originated over 600,000 residential mortgage loans through its wholesale channel. Mortgage brokers throughout the United States, who had entered into contracts with National City for the purpose of submitting mortgage loan applications to it for origination, brought loan applications to National City during this time.

37. National City was directly and extensively involved in setting the complete terms and conditions of wholesale mortgage loans. National City evaluated the risk of making each

wholesale mortgage loan using National City's underwriting guidelines and it determined whether to originate and fund each loan.

38. National City determined the par rate of a particular wholesale loan based on objective factors, including the borrower's credit characteristics and the terms of the loan. These par rates were communicated to mortgage brokers through rate sheets.

39. National City permitted its mortgage brokers to charge discretionary fees and to increase or decrease the loan price that was listed on the rate sheets. This step of pricing wholesale loans permitted mortgage brokers to exercise subjective discretion in setting the final price National City charged to individual borrowers, for reasons unrelated to a borrower's credit risk characteristics and terms of the loan.

40. From 2003-2008, National City did not have in place objective criteria to be followed by brokers in charging fees or higher interest rates than the par rates listed on the rate sheets. In addition, National City did not require its brokers to document the reasons for charging fees or higher interest rates, did not have meaningful monitoring of whether discrimination based on race or national origin resulted from these charges, and did not offer fair lending training to its brokers.

41. If a loan was originated by National City, brokers received compensation through (1) discretionary fees charged to consumers, and (2) yield spread premiums ("YSPs") paid by National City. The YSP was an amount paid by National City to its brokers based on the extent to which the note rate charged on a loan exceeded the par rate for that loan as listed on the rate sheet. The YSP is derived from the present dollar value of the difference between the par rate a wholesale lender such as National City would have accepted on a particular loan and the note rate a mortgage broker actually obtained for National City. The higher the interest rate, the higher the YSP paid by National City. National City generally capped the total amount of compensation that a broker could receive at 5% of the loan amount, including any YSP and fees

charged to the consumer, but imposed no other guidelines or rules with respect to broker compensation.

42. For each individual residential loan application presented to it, National City had actual knowledge about the broker compensation paid to brokers and charged to the consumer. National City controlled broker compensation through its policies and practices, and incentivized mortgage brokers to increase the interest rate above the par rate set forth on the rate sheet and to increase broker fees in order to increase the compensation that brokers received through YSP and fees.

43. Requiring borrowers to pay higher mortgage loan prices on the basis of race or national origin, whether through higher interest rates that reflect National City's payment of a higher YSP to brokers or through higher direct broker fees, is a discriminatory lending practice by National City prohibited by the ECOA and the FHA.

44. Statistical analyses of wholesale mortgage loans originated by National City demonstrate statistically significant discriminatory pricing disparities in wholesale mortgage loans based on race and national origin.

45. From 2003-2008, with respect to wholesale loans, National City charged African-American borrowers nationwide, on average, approximately 14 basis points more than it charged similarly-situated White borrowers as measured through the APR, after accounting for the credit risk factors (e.g., credit score) and terms of the loan (e.g., loan-to-value ratio and property type) that National City used in developing the par rates set forth in its rate sheets. These disparities are statistically significant and mean that an African-American borrower paid approximately \$228 more than a similarly-situated White borrower during each year that he or she held the loan. These differences cannot be explained by factors unrelated to race.

46. These disparities result in approximately 14,000 African-American borrowers having paid higher upfront mortgage loan fees or continuing to pay additional interest because of

race in each monthly mortgage payment they make until their loans are paid off, which may be as many as 30 years after origination.

47. From 2003-2008, with respect to wholesale loans, National City charged Hispanic borrowers nationwide, on average, approximately 10 basis points more than it charged similarly-situated White borrowers as measured through the APR, after accounting for the credit risk factors (e.g., credit score) and terms of the loan (e.g., loan-to-value ratio and property type) that National City used in developing the par rates set forth in its rate sheets. These disparities are statistically significant and mean that a Hispanic borrower paid approximately \$154 more than a similarly-situated White borrower during each year that he or she held the loan. These differences cannot be explained fully by factors unrelated to national origin.

48. These disparities result in approximately 23,000 Hispanic borrowers having paid higher upfront mortgage loan fees or continuing to pay additional interest because of national origin in each monthly mortgage payment they make until their loans are paid off, which may be as many as 30 years after origination.

49. The higher APR that National City charged to African-American and Hispanic borrowers in its wholesale channel (borrowers whom National City determined had the credit characteristics to qualify for a home mortgage) were a result of National City's policy or practices that a) allowed mortgage brokers subjective and unguided discretion in setting prices for wholesale loans unrelated to credit risk characteristics and the terms of the loan; b) did not require mortgage brokers to justify or document the reasons for the amount of broker fees and prices set above the par rate; c) failed to adequately monitor or control for disparities based on race or national origin resulting from its policies and practices; and d) created a financial incentive for mortgage brokers to charge higher discretionary fees and interest rates above the par rates National City had set based on objective credit risk characteristics and the terms of the loan.

50. National City's policies and practices identified in the previous paragraph were not justified by business necessity or legitimate business interests. There were also less discriminatory alternatives available to National City than these policies or practices.

EQUAL CREDIT OPPORTUNITY ACT VIOLATIONS

51. National City's policies and practices, as alleged herein, constitute discrimination against applicants with respect to credit transactions on the basis of race and/or national origin in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1).

52. National City's policies and practices, as alleged herein, constitute a pattern or practice of resistance to the full enjoyment of rights secured by the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f.

53. Over 76,000 persons nationwide overpaid for loans as a result of National City's pattern or practice of discrimination and denial of rights as alleged herein. In addition to higher direct economic costs, some of the victims of discrimination suffered additional consequential economic damages resulting from having an excessively costly loan, including possible increased risk of credit problems, and other damages, including emotional distress.

FAIR HOUSING ACT VIOLATIONS

54. National City's residential lending-related policies and practices, as alleged herein, constitute:

- a) discrimination on the basis of race and national origin in making available, or in the terms or conditions of, residential real estate-related transactions, in violation of the Fair Housing Act, 42 U.S.C. § 3605(a);
- b) discrimination on the basis of race and national origin in the terms, conditions, or privileges or the provision of services in connection with the sale of a dwelling, in violation of the Fair Housing Act, 42 U.S.C. § 3604(b); and

55. National City's residential lending-related actions, policies and practices, as alleged herein, constitute

- a) a pattern or practice of resistance to the full enjoyment of rights secured by the Fair Housing Act, 42 U.S.C. §§ 3601-3619; and
- b) a denial of rights granted by the Fair Housing Act to a group of persons – both African Americans and Hispanics – that raises an issue of general public importance

56. Over 76,000 persons nationwide have been victims of National City’s pattern or practice of discrimination and denial of rights as alleged herein. In addition to higher direct economic costs, some of the victims of discrimination suffered additional consequential economic damages resulting from having an excessively costly loan, including possible increased risk of credit problems, and other damages, including emotional distress. They are aggrieved persons as defined in the Fair Housing Act, 42 U.S.C. § 3602(i), and have suffered injury and damages as a result of National City’s conduct.

CONSUMER INJURY

57. Consumers have suffered substantial injury as a result of National City’s violations of the ECOA and the FHA. In addition, National City and PNC have been unjustly enriched as a result of their unlawful acts or practices.

THIS COURT’S POWER TO GRANT RELIEF

58. The CFPA empowers this Court to grant any appropriate legal or equitable relief including, without limitation, a permanent or temporary injunction, rescission or reformation of contracts, the refund of moneys paid, restitution, disgorgement or compensation for unjust enrichment, monetary relief, and civil money penalties, to prevent and remedy any violation of any provision of law enforced by the Bureau. 12 U.S.C. § 5565.

59. The ECOA empowers this Court to grant such relief as may be appropriate, including actual and punitive damages and injunctive relief. 15 U.S.C. § 1691e(h).

60. The FHA empowers this Court to grant legal or equitable relief necessary to ensure the full enjoyment of the rights granted by the FHA, including a temporary or permanent injunction, restraining order, and monetary damages to aggrieved persons. 42 U.S.C. § 3614(d).

PRAYER FOR RELIEF

WHEREFORE, the Consumer Financial Protection Bureau and the Department of Justice pray that the Court enter an ORDER that:

(1) Declares that the policies and practices of National City constitute violations of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f and the Fair Housing Act, 42 U.S.C. §§ 3601-3619;

(2) Enjoins National City, through its successor in interest, as well as its agents, employees, and successors, and all other persons in active concert or participation with it, from:

- a) Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of National City's unlawful conduct to the position they would have been in but for the discriminatory conduct; and
- b) Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any such discriminatory conduct in the future; to eliminate, to the extent practicable, the effect of National City's unlawful practices; and to implement policies and procedures to ensure that all borrowers have an equal opportunity to seek and obtain loans on a non-discriminatory basis and with non-discriminatory terms and conditions; and

(3) Awards equitable relief and monetary damages to all the victims of National City's discriminatory policies and practices for the injuries caused by National City, including direct economic costs, consequential damages, and other damages, pursuant to 15 U.S.C. §§ 1691c(a)(9) and 1691e(h), 12 U.S.C. § 5565, and 42 U.S.C. § 3614(d)(1)(B) .

The Plaintiffs pray for such additional relief as the interests of justice may require.

Dated: December 23, 2013

Respectfully submitted,

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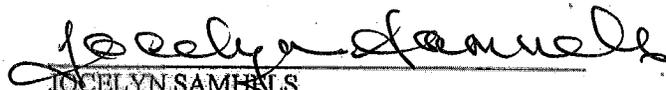
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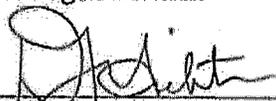
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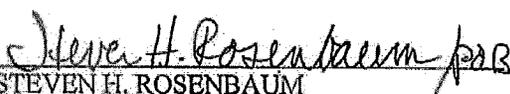
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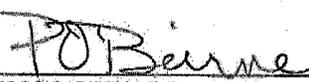
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