

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

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GREGORY S. LANGHAM
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 04-F-1065 (mfw)

BY _____ DEP. CLK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PHILLIP W. RANNEY, individually;
ARMOR MORTGAGE;
ABACUS MORTGAGE;
COMMUNITY HOMEBANC MORTGAGE SERVICES, INC.;
HARBOR PACIFIC FUNDING, INC.;
HIGH CENTER, INC.;
LENDING STRATEGIES OF COLORADO, INC.;
LITE REALTY CORP.;
PWR PROCESSING, INC., dba First Source America Mortgage Corp. dba NexLoan;
PWR PRESS, INC.; and
SOURCE FUNDING COMPANY, Colorado corporations;
KACE, LLC, dba Aristocrat Mortgage, a Colorado limited liability company; and
MORTGAGE WATCH, a California corporation;

Defendants; and

KATHLEEN A. RANNEY, individually,

Relief Defendant.

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC"), through its undersigned attorneys,
alleges as follows:

1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade
Commission Act (FTC Act), 15 U.S.C. § 53(b), to secure a permanent injunction, rescission of

contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief against the Defendants for engaging in deceptive acts or practices in connection with the advertising, marketing and sale of home mortgage refinancing in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and in violation of the Truth-in-Lending Act, 15 U.S.C. §§ 1601-1661j (“TILA”), and Section 24(a) of its implementing regulation, Regulation Z, 16 C.F.R. § 226.24(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. See 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief, including consumer redress, as may be appropriate in each case. 15 U.S.C. § 53(b). The FTC also enforces TILA, and violations of TILA and of Regulation Z are considered to be violations of the FTC Act. 15 U.S.C. § 1607(c).

5. Phillip W. Ranney exercises or has exercised day-to-day management control of the corporate defendants listed in Paragraphs 6-17. At all times relevant to this Complaint, acting alone or in concert with others, Phillip W. Ranney has formulated, directed, controlled or participated in the acts and practices of those entities, including the various acts and practices set

forth herein. Phillip W. Ranney resides at 4715 Dapple Grey Lane, Colorado Springs, Colorado, and does business in the District of Colorado.

6. Armor Mortgage is a Colorado corporation located at 4715 Dapple Grey Lane, Colorado Springs, Colorado. At all times relevant to this complaint, Armor Mortgage, acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. Armor Mortgage resides and does business in the District of Colorado.

7. Abacus Mortgage is a Colorado corporation located at 3806 East Pikes Peak Avenue, Colorado Springs, Colorado. At all times relevant to this complaint, Abacus Mortgage, acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. Abacus Mortgage resides and does business in the District of Colorado.

8. Community Homebanc Mortgage Services, Inc., is a Colorado corporation located at 3806 East Pikes Peak Avenue, Colorado Springs, Colorado. At all times relevant to this complaint, Community Homebanc Mortgage Services, Inc., acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. Community Homebanc Mortgage Services, Inc., resides and does business in the District of Colorado.

9. Harbor Pacific Funding, Inc., is a Colorado corporation located at 3806 East Pikes Peak Avenue, Colorado Springs, Colorado. At all times relevant to this complaint, Harbor Pacific Funding, Inc., acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. Harbor Pacific Funding, Inc., resides and does business in the District of Colorado.

10. High Center, Inc., is a Colorado corporation located at 3806 East Pikes Peak Avenue, Colorado Springs, Colorado. At all times relevant to this complaint, High Center, Inc.,

acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. High Center, Inc., resides and does business in the District of Colorado.

11. KACE, LLC, is a Colorado limited liability company located at 3806 East Pikes Peak Avenue, Colorado Springs, Colorado. At all times relevant to this complaint, KACE, LLC, acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. KACE, LLC, does business as Aristocrat Mortgage. KACE, LLC, resides and does business in the District of Colorado.

12. Lending Strategies of Colorado, Inc., is a Colorado corporation located at 3806 East Pikes Peak Avenue, Colorado Springs, Colorado. At all times relevant to this complaint, Lending Strategies of Colorado, Inc., acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. Lending Strategies of Colorado, Inc., resides and does business in the District of Colorado.

13. Lite Realty Corp. is a Colorado corporation located at 3806 East Pikes Peak Avenue, Colorado Springs, Colorado. At all times relevant to this complaint, Lite Realty Corp. acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. Lite Realty Corp. resides and does business in the District of Colorado.

14. Mortgage Watch is a California corporation located at 2790 North Academy Boulevard, Suite 309, Colorado Springs, Colorado. Mortgage Watch has also done business as Realm Mortgage. At all times relevant to this complaint, Mortgage Watch, acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. Mortgage Watch resides and does business in the District of Colorado.

15. PWR Processing, Inc., is a Colorado corporation located at 3806 East Pikes Peak

Avenue, Colorado Springs, Colorado. At all times relevant to this complaint, PWR Processing, Inc., acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. PWR Processing, Inc., does business as First Source America Mortgage Corp. and as NexLoan. PWR Processing, Inc., resides and does business in the District of Colorado.

16. PWR Press, Inc., is a Colorado corporation located at 3806 East Pikes Peak Avenue, Colorado Springs, Colorado. At all times relevant to this complaint, PWR Press, Inc., acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. PWR Press, Inc., resides and does business in the District of Colorado.

17. Source Funding Company is a Colorado corporation located at 3806 East Pikes Peak Avenue, Colorado Springs, Colorado. At all times relevant to this complaint, Source Funding Company, acting alone or in concert with others, has engaged in the marketing and advertising of home mortgage refinancing. Source Funding Company resides and does business in the District of Colorado.

18. The foregoing Defendants have operated as a common enterprise in the advertising and marketing of refinanced home mortgages.

19. Relief Defendant Kathleen Ranney is the wife of defendant Phillip W. Ranney and the nominal owner of Defendant Abacus Mortgage. She is the sole signatory on bank accounts used by one or more of the corporate Defendants and exercises control over assets that are the fruits of the various acts and practices set forth herein. Individually and jointly with her spouse Phillip W. Ranney, she has received funds and other properties that were derived unlawfully from payments by consumers as a consequence of the acts and practices complained of herein,

and she does not have a legitimate claim to such funds and other properties.

COMMERCE

20. The acts and practices of the Defendants, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF CONDUCT

21. Since at least 2001, Defendant Phillip W. Ranney, individually and through the Defendant corporations, has advertised the availability of low interest home mortgages to homeowners wishing to refinance their home mortgages. Defendants typically advertise that they can refinance consumers’ mortgages at specific rates that are comparable to the lowest rates then available and that they can provide those loans to homeowners without the homeowners’ incurring any expenses.

22. When consumers contact any of the Defendant corporations, they are told that providing them with a “no-fee” loan involves a process of multiple refinances. The consumer is told that he or she will actually apply for two or more loans, one at the low competitive rate and the others at a rate that is higher than the market rate. They are told that the lenders on the higher-than-market loans will pay a premium to the mortgage broker (often called a “yield spread premium”) for such loans and that those payments will be used to pay the fees associated with the low-interest loan. The low-interest loan will be used to pay off the higher interest loan, leaving the consumer with a low-interest loan on which they were not subject to any of the fees associated with a new loan.

23. Defendants have engaged in numerous deceptive and unfair practices to induce consumers to apply for mortgages.

- a. In all cases, Defendants advertise that they can provide consumers with low interest refinanced home mortgages with no fees to the consumers. Instead, in numerous cases, Defendants do not provide consumers with low interest loans, leaving them stranded with higher interest loans, in many cases at rates higher than the loans they were replacing.
- b. Defendants have represented that they would pay the fees associated with the refinancing out of the payments made by the lenders. Instead, in numerous instances Defendants have not paid such costs as appraisal fees, so that at least one appraiser has exercised his right to file liens on the properties he had appraised.
- c. Defendants have represented that they are licensed as mortgage loan brokers in the State of California, when, in fact they are not licensed, and the license numbers that they display in their advertising in fact belong to entities that are not affiliated with Defendants.
- d. Defendants have represented to consumers that they do not have to make payments on their higher interest loans, because the low interest rate loans will be in place before the payments are delinquent or because the lender's payment to Defendants will cover the loan payments, when, in numerous cases, Defendants do not obtain the second loan and do not use the premium from the first loan to make the payments on that loan.

24. The result of Defendants' conduct has been substantial injury to consumers.

Some consumers have been stuck with high interest loans that they must either pay off or

refinance at considerable additional cost. Other consumers have discovered that Defendants have failed to pay their appraisers, resulting in liens being placed on their property. Still other consumers have, on Defendants' advice, not made payments on their higher interest mortgages, resulting in damage to their credit ratings and the beginning of foreclosure proceedings.

DEFENDANTS' ADVERTISEMENTS

25. Beginning not later than 1998 and continuing until the present time, Defendants have posted advertisements on their website and run advertisements in newspapers of general circulation in several states, including the State of Colorado, in order to induce consumers to use their home mortgage refinancing services. True and correct copies of representative advertisements are attached as Exhibits A through C, and contain the following statements:

- a. 6-3/4's%
intro APR:
3-3/8's%
NO Closing Costs
Nothing out-of-pocket or equity
NO Appraisal or Credit Report Fees
NO Banker/Broker/Processor Fees
NO Discount/Origination "Points"
NO Flood Cert/Pest Inspection Fees
NO Doc Prep, Title, Recording Fees
100% OFF ALL CHARGES!
50% OFF 1st Year's Interest
\$ave at least \$10,000.00!

Advanced Mortgage Arbitrageurs
Toll free
(877) 213-7900

(Exhibit A, *Denver Post*, March 2001)

- b. Free 10, 15, 20, 25, or:
30-year Fixed

NO Closing Costs

6.00 % APR

Legal Services Centers of American, Inc. (866) 719-4235

(Exhibit B, *Rocky Mountain News*, July 2002)

c. REALM Mortgage

Realty Experts, Associated Lenders & Movers Assoc.

Based in the Pikes Peak Region, Operating Nationwide

Today's Rate

6 5/8 %

30-year fixed annual percentage rate

As of July 22, 1998

NO COSTS

No application, credit report, appraisal, or document preparation fees. No points, discount, origination, or processing fees. No fees for tax/flood certifications, recording. No title company charges. No out-of-pocket expense. No loss of equity.

NO KIDDING

(Exhibit C, <http://www.realmmortgage.com/index.html>, 10/8/98)

26. Beginning not later than 2002 and continuing until the present time, Defendants have run advertisements in newspapers of general circulation in the State of California in order to induce consumers to use their home mortgage refinancing services. True and correct copies of representative California advertisements are attached as Exhibits D through F, and contain the following statements:

- a. 30-Year Fixed
NO Closing Costs
NO Application Fees
NO Credit Report Fees
NO Appraisal Fees
NO Doc Prep Fees
NO "Points"
NO Origination Fees
NO Broker/Lender Fees
NO Title Insurance Fees

5 875%
APR

NO Underwriting Fees
NO Recording Fees
NO Pre-Payment Penalties
NO FEES, PERIOD! AND NO HOUSE PAYMENTS 'til '03

Starting today, 5.875% equals your total cost of funds after re-refinancing in 20-40 days (unless interim rates go even lower)

Lite Realty, Inc. Toll Free
CA Lic. No. 00919139 (866) 719-4235

(Exhibit D, *San Diego Union Tribune*, October, 2002)

b. 30-Year Fixed

NO Fees:
NO Application Fees
NO Credit Report Fees
NO Appraisal Fees
NO Doc Prep Fees
NO "Points"
NO Origination Fees
NO Broker/Lender Fees
NO Title Insurance Fees
NO Underwriting Fees
NO Recording Fees
NO Pre-Payment Penalties
NO FEES, PERIOD! AND NO HOUSE PAYMENTS 'til '6/03

5 1/2%
APR

Conventional, 30-Year Fixed rate achieved by re-refinancing
at a maximum cost of 5.5%

Mortgage Watch (800) 223-5513
CA Lic. No. 00919139

(Exhibit E, *Los Angeles Times*, March, 2003)

c. 30-Year Fixed

NO Fees:
NO Application Fees
NO Credit Report Fees
NO Appraisal Fees
NO Doc Prep Fees
NO "Points"

5 3/8%
APR

NO Origination Fees
NO Broker/Lender Fees
NO Title Insurance Fees
NO Underwriting Fees
NO Recording Fees
NO Pre-Payment Penalties
NO FEES, PERIOD! AND NO HOUSE PAYMENTS 'til '6/03

Conventional, 30-Year Fixed rate achieved by re-refinancing
at a maximum cost of 5.375%

Mortgage Watch (800) 223-5513
CA Lic. No. 00919139

(Exhibit F, *San Jose Mercury News*, March, 2003)

27. Beginning in 1998 and continuing until the present time, Defendants have made additional oral and written representations to prospective borrowers who have contacted Defendants with respect to their home mortgage refinancing services, including but not limited to the following:

a. "BOTTOM LINE 6.125%* FIXED - FREE!"

"BOTTOM LINE (unless rates improve by January): 5.875%, FIXED - FREE!"

(Confirmation notices sent to consumers, July 24, 2002, and October 28, 2002)

b. "Nothing else can or will be added to the loan amount, while all Closing Costs from both closings are paid from the Service Release Premiums normally pocketed by brokers."

(Confirmation notice sent to consumer, July 24, 2002)

c. "All closing costs to be paid from the broker rebate . . . Bottom Line % Rate"

(Instruction sheet for PWR Processing employees, 2003)

d. "[Applicant] hereby contracts LITE REALTY, L.L.C. to cause the "lock in" of a 5.875% Conventional/Conforming fixed rate mortgage . . . LITE REALTY, L.L.C. shall pay all Closing Costs for Applicant's 'floating' refinance/pay-off

transaction”

(Rate Lock and Service Agreement, September 22, 2002 and October 31, 2002)

- e. “LITE REALTY, L.L.C. shall reimburse Applicant the interest differential on the second closing. (For example if first closing's interest rate is 7.5% and the final closings interest rate is 5.875%, LITE REALTY, L.L.C. will reimburse the 1.5% per day charge.)”

(Rate Lock and Service Agreement, October 31, 2002)

- f. “You have completed one refinance and your final refinance is now locked at 5.75%”

(Promotional letter from Mortgage Watch to consumers, March-May, 2003)

DEFENDANTS' VIOLATIONS OF THE FTC ACT

28. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. As set forth below, the Defendants have engaged and are continuing to engage in such unlawful practices in connection with the advertising and marketing of refinanced home mortgages.

COUNT I

False Claims that Defendants Would Provide Low Interest Mortgages

29. Through the means described in Paragraphs 25 through 27, including but not limited to the statements contained in the advertisements attached as Exhibits A through F, Defendants have represented, expressly or by implication, that they could provide home mortgage refinancing at interest rates competitive with the lowest rates then available in the marketplace.

30. In truth and in fact, Defendants, in a substantial number of cases, did not provide

home mortgage refinancing at interest rates competitive with the lowest rates then available in the marketplace; rather, Defendants provided home mortgage refinancing at interest rates substantially higher than the lowest rates then available in the market, and, in many cases, at interest rates higher than the mortgages that were being refinanced.

31. Therefore, Defendants' representations as set forth in Paragraph 29 are false or misleading and constitute a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

False Claims that Defendants Would Provide Low Interest Mortgages at No Cost to Consumers

32. Through the means described in Paragraphs 25 through 27, including but not limited to the statements contained in the advertisements attached as Exhibits A through F, Defendants have represented, expressly or by implication, that

- a. The fees and costs associated with processing consumers' loan applications, including but not limited to closing costs, application fees, credit report fees, appraisal fees, document preparation fees, points, origination fees, broker/lender fees, title insurance fees, underwriting fees, recording fees, and pre-payment penalties, would be paid at no cost to consumers; and
- b. Consumers would not be required to pay any mortgage payments on the initial high interest loan because the second low-interest loan would be funded before any payments were due on the initial loan or because any such payments would be covered by the fees paid by the lenders.

33. In truth and in fact, Defendants, in a substantial number of cases,
- a. Did not pay the fees and costs associated with processing consumers' loan applications; and
 - b. Did not obtain the second low-interest loan before any payments were due on the initial loan and did not make payments on consumers' high interest loans or reimburse consumers for any payments made by the consumers.

34. Therefore, Defendants' representations as set forth in Paragraph 32 are false or misleading and constitute a deceptive act or practice, and the making of false advertisements, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

False Claims that Defendants are Licensed Mortgage Brokers

35. Through the means described in Paragraph 26, including but not limited to the statements contained in the advertisements attached as Exhibits D through F, Defendants have represented, expressly or by implication, that they are licensed to conduct business as mortgage brokers by an agency of the State of California.

36. In truth and in fact, Defendants are not licensed to conduct business as mortgage brokers by an agency of the State of California. Rather, the California license numbers that Defendants use in their advertising belong to legitimate mortgage brokers with whom Defendants have no relationship and who had not granted permission to Defendants to use their license numbers.

37. Therefore, Defendants' representations as set forth in Paragraph 35 are false or misleading and constitute a deceptive act or practice, and the making of false advertisements, in

or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

Violations of the Truth in Lending Act

38. Through the means described in Paragraphs 25 and 26, including the statements contained in the advertisements attached as Exhibits A through F, Defendants have advertised closed-end credit to consumers by disseminating advertisements representing that Defendants could provide home mortgage refinancing at specific Annual Percentage Rates, including but not limited to the following:

6-3/4% APR (Exhibit A);

6.00% APR (Exhibit B);

6.625% APR (Exhibit C);

5.875% APR (Exhibit D);

5.5% APR (Exhibit E); and

5.375% APR (Exhibit F).

39. In credit advertisements, including but not limited to Exhibits A through F, Defendants have violated the requirements of TILA, 15 U.S.C. §§ 1601-1666j, and Regulation Z, 12 C.F.R. Part 226, by advertising credit terms other than those that actually are or will be offered by the creditor, in violation of Section 226.24(a) of Regulation Z, 12 C.F.R. § 226.24(a).

40. By engaging in the violations of TILA and Regulation Z set forth in Paragraph 39 above, Defendants have also violated the FTC Act. 15 U.S.C. § 1607(c).

CONSUMER INJURY

41. Consumers have suffered and continue to suffer substantial monetary loss, injury

to their credit ratings, and impairment of title to their principal residences as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

42. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including but not limited to, rescission of contracts, restitution, and the disgorgement of ill-gotten gains, to prevent and remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that this Court:

1. Permanently enjoin and restrain Defendants from violating Section 5(a) of the FTC Act in connection with the advertising and marketing of home mortgage refinancing.
2. Award Plaintiff such temporary and preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective and final relief, including, but not limited to, temporary and preliminary injunctions and an asset freeze;
3. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from the Defendants' violations of Section 5(a) of the FTC Act, including

but not limited to, rescission of contracts, restitution, and the disgorgement of ill-gotten gains by the Defendants and Relief Defendants;

4. Award such relief against Relief Defendant Kathleen A. Ranney as the Court deems necessary to protect and return funds and other property to which Kathleen A. Ranney has no legitimate claim, where such funds and other property were derived from Defendants' violations of Section 5(a) of the FTC Act in connection with the marketing and advertising of home mortgage refinancing and of the TILA and Regulation Z, including an order to disgorge all ill-gotten gains or proceeds that she has received as a result of the acts and practices complained of herein, and an order imposing a constructive trust upon such gains and proceeds; and

5. Award the Plaintiff the costs of bringing this action, and such other equitable relief as the Court may determine to be just and proper.

Dated: _____

Respectfully Submitted,

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