

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA,
Plaintiff,

v.

SHAWMUT MORTGAGE COMPANY,
Defendant.

COMPLAINT

The United States of America alleges:

1. This action is brought by the United States to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619, the Equal Credit Opportunity Act (the ECOA), 15 U.S.C. §§ 1691-1691f, as amended, and, acting upon notification and authorization to the Attorney General by the Federal Trade Commission, §§ 5(a) (1), 5(m)(1) (A), 9, 13(b), 16(a) and 19 of the Federal Trade Commission Act (the FTC Act), 15 U.S.C. §§ 45(A) (1) , 45(m) (1) (A), 49, 53(b), 56(a), and 57b.
2. This court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1337a, and 1345; 42 U.S.C. § 3614; and 15 U.S.C. SS 45(m) (1) (A), 49, 53(b), 56(a), 57b, 1691(c) and 1691(h).
3. Defendant, Shawmut Mortgage Company (or "the mortgage company" or "the lender"), is a Connecticut Stock Corporation incorporated under the laws of the State of Connecticut with its principal place of business in West Hartford, Connecticut. Shawmut Mortgage Company is a wholly-owned subsidiary of Hartford National Corporation, a bank holding company incorporated under the laws of the State of Delaware with its principal place of business in Hartford, Connecticut. Hartford National Corporation is a wholly-owned subsidiary of Shawmut Services Corporation, a bank holding company incorporated under the laws of the State of Delaware with its headquarters in Hartford, Connecticut. Shawmut Mortgage Company's business includes engaging in residential real estate-related transactions and regularly extending credit to persons. The mortgage company is a creditor as that term is defined, by section 702(e) of the ECOA, 15 U.S.C. § 1692a(e), and is, therefore, subject to the requirements of the ECOA and its implementing Regulation B, as amended, 12 C.F.R. Part 202, in effect on or after March 23, 1977.
4. Beginning in January 1990, as required by the Home Mortgage Disclosure Act ("HMDA"), the mortgage company has maintained a Loan Application Register ("LAR") on which the lender's employees recorded information about each home loan application, including the applicants, income and race (or ethnicity), the loan amount, the type of loan, whether the subject property was to be owner-occupied, and the action taken by the mortgage company on the application. The mortgage company kept the LAR data in computerized form, in preparation both for the filing of annual HMDA reports to the mortgage company's federal bank regulatory agency and for internal reports that were circulated periodically to its management and employees. On the basis of the LAR/HMDA reports management of the mortgage company knew that it had been denying the home mortgage loan applications of black and Hispanic applicants at substantially higher rates than white applicants. More specifically, the reports showed that:
 - a. in 1990 the mortgage company's overall denial rates for applications for conventional purchase and refinancing loans combined were 123 of 317 (or 38.8%) for blacks; 68 of 205 (or 33.17%) for Hispanics; and 1,193 of 6,892 (or 17.31%) for whites;
 2. in 1991 these denial rates were 122 of 359 (or 33.98%) for blacks; 68 of 222 (or 30.63%) for

Hispanics; and 1,122 of 7,634 (or 14.7%) for whites; and

3. in 1992 these denial rates were 118 of 555 (or 21.26%) for blacks; 88 of 360 (or 24.44%) for Hispanics; and 1,594 of 14,999 (or 10.63%) for whites.
5. Prior to late 1991, when the mortgage company began to implement a special program to review the files of denied minority applicants, it processed applications for home mortgages in the following manner:
 - a. employees of the mortgage company (usually with the title of "loan counsellor" or "loan originator") contacted real estate agents and brokers, builders, and others involved in the sale of residential real estate, in order to develop sources of referrals of persons interested in borrowing money to purchase homes (or to refinance their current outstanding home mortgage debts).
 2. It was the responsibility of the loan counsellor to have those seeking home mortgage loans present an initial application containing the financial information deemed necessary by the mortgage company to make an underwriting decision on the loan application (*i.e.*, a decision whether to deny the application, to approve it under the terms requested, or to make a counter-offer). The required qualifying information included (among other things): The applicant(s)' income, employment history, education, past credit performance, outstanding financial obligations, assets (liquid and non-liquid), and the applicant(s)' projected monthly payment for the loan sought (including principal, interest, taxes, and insurance). It was also the loan counsellor's responsibility to ascertain the existence of any "offsetting" qualifications of the applicant(s) that could compensate for one or more deficiencies in the required qualifying information.
 3. In addition to the information requested of the prospective borrower(s) by the application form, the mortgage company required applicant(s) to sign additional forms authorizing the lender to obtain documentation of the qualifying information claimed by the applicant(s). These additional forms included:
 - i. A verification of Employment (VOE) form, to be executed by the applicant(s)' employer(s) and returned to the mortgage company, verifying the applicant(s)' claimed base salary or wages for the past two years and year-to-date, and secondary income (such as overtime, bonus, and commission income). The VOE contains a box to be checked ("yes" or "no") as to whether the applicant(s)' secondary income is expected to continue;
 2. A Verification of Deposit (VOD) form, to be executed by the applicant(s)' financial depository institution(s) and returned to the mortgage company, verifying the amount of the applicant(s)' claimed deposits;
 3. A mortgage or rent payment verification form, whichever was applicable, to be executed by the applicant(s)' former mortgagee or landlord and returned to the mortgage company, verifying the applicant(s)' prior mortgage or rent amount and payment history; and
 4. A credit report form authorizing a credit reporting firm selected by the mortgage company to verify on its behalf the amount and duration of the applicant(s)' financial obligations and to obtain both positive and negative information on the applicant(s)' credit history with respect to both present and former financial obligations over the previous seven-year period.

The purpose of the verifications described in sub-paragraph (c) was to provide the lender with documentary evidence of the applicant(s)' claimed financial qualifications for loan approval, *i.e.*, the ability and willingness to repay the mortgage debt. In those instances where the qualifying information was not susceptible to verification by use of standard forms (such as the VOE for the self-employed or the VOD for those whose assets were not located in depository financial institutions), the mortgage company had the option to require applicant(s) to submit alternative documentation (such as copies of tax returns or proof of liquid assets not held by a depository institution) directly to the lender.

4. Upon receipt of the verification forms by the lender, it was the responsibility of a loan processor (alone or in concert with the loan counsellor or the loan underwriter) to see to it that the forms were complete, properly executed, and consistent with the applicant(s), claimed financial qualifications. In addition, it was the loan processor's responsibility to place the documentation in the loan file, in preparation for submission of the application to the lender's underwriters for a decision. The extent of the documentation the mortgage company required for each loan application was dependent upon either the lender's internal standards with respect to loans it intended to hold in its own loan portfolio (or the portfolio of one of its affiliated depository institutions) or, for those loans that the mortgage company intended to sell, the external standards required by potential purchasers of the loan on the secondary mortgage market.
 5. With the exception of credit reporting agencies that reported derogatory credit history, those entities that provided documentation to the mortgage company on the standard forms described in paragraph 5 provided none of the verification forms or the qualifying information contained therein directly to the applicant(s). If the credit report included derogatory information, the credit reporting agency, by means of a form letter, informed the applicant(s) of the existence of the derogatory information and advised the applicant(s) to contact the credit reporting agency in order to correct claimed errors in the report.
 6. After assembling a loan file containing the application, the documentation of the applicant(s)' ability and willingness to repay the mortgage debt, and an appraisal of the subject property (used to document the adequacy of the security value of the property to be mortgaged), the loan processor submitted the file to the mortgage company's underwriters for a loan decision.
 7. It was the responsibility of the underwriter, prior to making an underwriting decision, to insure that all of the applicant(s)' claimed qualifying information was documented for the file, by obtaining the information from those who had been asked to supply it, or by requesting the loan processor to do so.
 8. Thereafter, it was the responsibility of the mortgage company's underwriters to review the entire loan file to assess the evidence therein concerning the applicant(s) ability and willingness to repay the loan and the security value of the subject property. On the basis of this assessment, the underwriters made a decision whether the mortgage company should approve the loan application under the terms requested, deny the application under those terms but make a counteroffer to the applicant(s), or deny the application. In making these decisions, it was the underwriter's responsibility to apply rules (or "underwriting guidelines") that were defined either by the mortgage company's internal standards for those loans it intended to hold in its own loan portfolio (or the portfolio of one of its affiliated depository institutions), or, for those loans that the mortgage company intended to sell, by the external standards required by potential purchasers of the loan on the secondary mortgage market.
6. Prior to late 1991, it was the lender's policy to allow its employees, in carrying out the procedures described in the previous paragraph, to exercise discretion in deciding the extent of the efforts they would make to document the qualifying information of loan applicants. Pursuant to this policy, the employees were free to decide whether to request applicants for alternative documentation, depending on a variety of circumstances, including but not limited to circumstances:
- a. when the standard verification forms described in subparagraphs 5 (c) (i)-(iv) were not provided for documentation of positive information, or
 2. when applicants might have been able to supply additional information that would compensate for negative qualifying information or an explanation of any negative information that had been provided.
7. Prior to late 1991, it was the lender's policy, pursuant to its internal underwriting guidelines and the external underwriting guidelines of its secondary market purchasers, to allow its underwriters broad discretion in approving loan applications that failed to meet all guideline requirements, so long as the facts upon which the exceptions were made were adequately documented in the loan file. In addition, the mortgage company permitted underwriters to waive documentation of specific requirements if the file contained documentation

of compensating or offsetting qualifying information.

8. Prior to late 1991, it was the policy of the mortgage company to require different or varying levels or degrees of documentation of applicants' qualifying information, depending on a variety of circumstances, including but not limited to:
 - a. the loan product sought by the applicants;
 2. the applicant(s)' provision of documentation of offsetting qualifications that could compensate for inadequacies in or lack of documentation of the applicant(s)' ability or willingness to pay or the security value of the subject property;
 3. the mortgage company's contractual arrangements with one or more secondary market purchasers, under which the loan purchasers agreed in advance to purchase loans that had been approved by the lender under exceptions, specifically set forth in the contract, to the documentation contained in such purchasers, published underwriting guidelines; and
 4. the mortgage company's allowance of formal "underwriting exceptions," whereby named officers and employees of the mortgage company were allowed to obtain the underwriter's approval of loan applications that failed to meet the lender's underwriting guidelines or that contained less documentation than that required of similarly situated applicants not applying under an exception. To this end the mortgage company maintained an "exceptions list" that specified which named officers or employees were entitled to invoke specifically described exceptions.
9. Prior to late 1991, the lender had no mechanism in place to review the level of diligence exercised by its loan counsellors, loan processors, or underwriters in obtaining documentation of black and Hispanic applicants' qualifying information or to review the level of discretion its underwriters exercised in applying internal or external underwriting criteria to their applications.
10. During the period January 1990 through late 1991, the mortgage company failed to take adequate steps to insure that its loan counsellors, loan processors, or underwriters exercised the same degree of diligence in obtaining documentation of qualifying information for black and Hispanic applicants as they exercised in obtaining such information for white applicants, or to take adequate steps to insure that its underwriters applied the same underwriting standards to black and Hispanic applicants as they did to white applicants.
11. The mortgage company began to make policy changes in late 1991 that were intended to improve its treatment of black and Hispanic applicants. However, these changes had only incremental impact prior to late 1992. Specifically, in late 1991 the mortgage company instituted several changes in its policies and procedures. This included a procedure whereby certain of its employees sitting on "Mortgage Review Committees" were given the responsibility of reviewing the files of minority applicants whose loans had been denied by the lender's underwriters. Between late 1991 and late 1992, the Mortgage Review committee process made some progress, but was not wholly effective in eliminating discriminatory practices. Instead of creating a mechanism that would insure fair treatment of all applicants by loan counsellors, loan processors and underwriters, the lender allowed the Mortgage Review Committee to obtain applicant qualifying information that either contradicted that obtained by the loan counsellors, loan processors or underwriters or provided offsetting or compensatory information that would justify loan approval.
12. Prior to late 1992 or early 1993, the mortgage company failed to instruct its loan counsellors or loan processors to obtain documentation of, or underwriters to consider:
 - a. the stability of applicants' income (in contrast to the stability of applicants' employment) in documenting applicants' ability to repay the mortgage loan;
 2. applicants, prior record of rent and utility payments (in contrast to credit history as reflected by applicants, performance in repaying contractual debt) in documenting applicants, ability and

willingness to repay the mortgage loan;

3. applicants' non-traditional sources of cash for down payment, such as family revolving loans or cash that was not held by the applicants in depository financial institutions; and
 4. the income and assets of applicants, extended family members, who planned to reside at the property subject to the mortgage but who were not co-applicants, in documenting applicants' ability to repay the mortgage loan.
13. Prior to late 1991, the lender's management knew or should have known that the implementation of its policies and practices resulted in discrimination against black and Hispanic loan applicants. More specifically, these officials knew or should have known that:
- a. at each stage of the loan application process described in paragraph 5, the mortgage company's employees exercised the discretion allowed to them by the policies described in paragraphs 6 through 8;
 2. black and Hispanic applicants who could have qualified for approval were being denied loans as the result of the failure of the lender's employees to undertake sufficient steps to obtain documentation of the applicants, qualifying information;
 3. white applicants were approved when they did not meet all of the mortgage company's underwriting guidelines or when the documentation of their qualifying information was in part missing or incomplete; and
 4. black and Hispanic applicants were more likely than white applicants to benefit from the formal changes made in the lender's documentation requirements as described in paragraph 12.

From late 1991 to late 1992, the Mortgage Review Committees, in reversing denials made by underwriters, consistently found that these employees had failed to exercise the diligence expected of them in documenting the qualifying information of black and Hispanic applicants.

14. As a result of the manner in which the policies and practices described in paragraphs 5 through 13 were implemented, black and Hispanic applicants who sought home mortgage loans from the mortgage company during the period January 1990 through late 1991, and in some instances between late 1991 and late 1992, were:
- a. subjected to more stringent standards than were white applicants, either by the failure of the lender's underwriters to consider their offsetting or compensating qualifying information to the extent that such information was considered for white applicants, or by the underwriters, subjecting them to higher underwriting standards than those applied to white applicants;
 2. provided with lesser opportunities than were white applicants to document their qualifying information; or
 3. denied loans under underwriting policies and practices that had a greater negative impact on their chances for loan approval than on the approval chances of white applicants.
15. The disparities in denial rates between white home mortgage loan applicants and black and Hispanic applicants during the period January 1990 through October 1992 cannot be fully attributed to differences in the relative qualifications of white and minority applicants.
16. The manner in which the mortgage company's policies and practices were implemented, as described in paragraphs 5 through 13 constituted:
- a. discrimination on the basis of race or national origin in making available residential real estate-related transactions in violation of Section 805 of the Fair Housing Act, 42 U.S.C. § 3605(a);

2. the making unavailable or the denial of dwellings to persons, because of race or national origin, in violation of Section 804(a) of the Fair Housing Act, 42 U.S.C. § 3604(a); and
 3. discrimination on the basis of race or national origin in the terms, conditions, or privileges of the provision of services or facilities in connection with the sale or rental of dwellings, in violation of Section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b).
17. During the period January 1990 through October 1992, on numerous occasions, defendant has denied mortgage credit to black and Hispanic applicants, while extending mortgage credit to similarly qualified white applicants, and has thereby discriminated against black and Hispanic applicants on the basis of race or national origin, thereby violating Section 701(a) (1) of the ECOA, 15 U.S.C. § 1691; and Section 202.4 of Regulation B.
 18. Defendant has engaged in the practices described in this Complaint with knowledge as set forth in Section 5(m) (1) (A) of the FTC Act, 15 U.S.C. § 45(m) (1) (a).
 19. The discriminatory practices of defendant as described in this Complaint were implemented with disregard for the rights of black and Hispanic persons.
 20. During the period January 1990 through October 1992, the defendant engaged in a pattern or practice of discrimination in home mortgage lending, in violation of the Fair Housing Act and the Equal Credit Opportunity Act by:
 - a. requiring a higher level of documentation of black and Hispanic applicants' qualifying information than it required of white applicants;
 2. failing to make an effort to obtain documentation of black and Hispanic applicants, qualifying information comparable to the efforts made to obtain documentation of the qualifying information of white applicants;
 3. failing to obtain qualifying information from black and Hispanic applicants that would compensate for apparent disqualifying information;
 4. failing to approve loans for qualified black and Hispanic applicants under the same underwriting standards that were applied to qualified white applicants;
 5. failing to approve loans for black and Hispanic applicants whose qualifications as documented in the mortgage company's loan files did not meet all of its underwriting standards but nevertheless met standards that were equal to or greater than those applied to similarly situated white applicants; and
 6. failing to take steps to insure that the policy of granting exceptions for certain applicants, as described in paragraph 8 (d), did not result in the application of discriminatory standards to minority applicants.
 21. During the period January 1990 through October 1992, the defendant engaged in a pattern or practice of discrimination against minority applicants with respect to credit transactions, in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(A) (1), by failing to implement the policy changes described in paragraph 12, thereby continuing an overall loan processing system that had the effect of discriminating against black and Hispanic applicants.
 22. The implementation of the defendant's policies and practices as described in this Complaint, constitutes:
 - a. a pattern or practice of resistance to the full enjoyment of rights secured by the Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619; and
 2. a denial to a group of persons of rights granted by Title VIII of the Civil Rights Act of 1968, as

amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619, that raises an issue of general public importance.

23. Persons who have been victims of defendant's discriminatory practices as described in this Complaint are aggrieved persons as defined in 42 U.S.C. § 3602(i). As a consequence of defendant's practices, these persons have been denied their rights to equal opportunity in housing, credit, and residential real estate-related transactions. Some victims also have experienced other actual, compensable injuries, such as economic loss.

WHEREFORE, the United State's prays that the court enter an ORDER that:

- a. declares that the totality of the policies and practices of defendant constitutes a violation of the Fair Housing Act, the FTC Act, and the Equal Credit Opportunity Act;
2. enjoins defendant, its agents, employees and successors, and all other persons in active concert or participation with it, from discriminating on account of race or national origin in any aspect of their mortgage lending activities;
3. requires defendant to develop and submit to the court for its approval a detailed plan that: (a) remedies the vestiges of defendant's discriminatory policies and practices; and (b) ensures that future black and Hispanic mortgage loan applicants will be treated in a nondiscriminatory manner that does not differ from the treatment afforded to white applicants;
4. awards such damages or redress as would fully compensate the victims of defendant's discriminatory conduct for the injuries caused by the defendant; and
5. assesses civil penalties against defendant, in order to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

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