IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

NATIONAL URBAN LEAGUE,

Plaintiffs,

v.

Civil Action No. 76-0716

THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,

Defendants.

Box 132 Folder: National Urban League v. off. of comptroller 57 Cumary Summary Judgment Motions Defendants (Federal Reserve Bd.) 1976-78

DEFENDANTS' OBJECTIONS AND OPPOSITION TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE

Defendants, by their undersigned counsel, hereby object to and oppose plaintiffs' Statement of Material Facts, as follows:

1. Defendants object to this statement on the ground that the existence or non-existence of discrimination in mortgage lending is irrelevant to the legal duty of the Federal Reserve Board and its officers under the law to supervise and regulate Federal Reserve member banks pursuant to equal credit laws. Defendants further object to the statement of agency policy in 1961 as so dated as to be nonprobative of claims regarding present enforcement policy and therefore incompetent. Defendants further object to the statement of agency policy in 1961 because it predates the statute upon which plaintiffs chiefly rely, Title VIII of the Civil Rights Act of 1968, and is therefore incompetent to prove claims under Title VIII.

But much of their memo devoted to showing inaction of FRB re: discrimination by member banks

D's don't dispute existence of discrimination

2. Defendants object to this statement on the ground that the existence or non-existence of discrimination in mortgage lending is irrelevant to the legal duty of the

Date: March 10, 1978

Federal Reserve Board and its officers under the law to supervise and regulate Federal Reserve member banks pursuant to equal credit laws. Further, the statistics cited by plaintiffs in the 1971 HUD survey fail to differentiate among the federal banking agencies and their respective regulated lending institutions and are therefore incompetent to prove discrimination by state banks that are members of the Federal Reserve System. The mortgage loans of such State member banks make up less than two percent of the home loan mortgage market. Affidavit of Janet Hart at ¶32.

Defendants oppose the first sentence of this statement on the grounds that the 1971 survey was conducted by HUD, not by the federal banking agencies, which merely distributed the HUD questionnaire to the banks they regulate. Defendants also oppose this statement because defendants fully investigated all answers given by state member banks to the questionnaire that indicated possible discriminatory practices and concluded that no violations of law had occurred. Affidavit of Janet Hart at ¶5.

3. Defendants object to this statement as irrelevant and incompetent insofar as it relates to surveys of financial institutions not regulated by the Federal Reserve Board. Defendants further object on the ground that the existence or non-existence of discrimination in mortgage lending is irrelevant to the legal duty of the Federal Reserve Board and its officers under the law to supervise and regulate Federal Reserve member banks pursuant to equal credit laws.

Defendants oppose this statement insofar as it evaluates the Form B survey conducted by the Federal Reserve Board, as well as the Form A and Form C surveys conducted by the Federal Home Loan Bank Board and the Comptroller of the Currency, to indicate "a consistent disparity in the treatment of minority mortgage loan applicants, as compared to majority group applicants." Such disparity, if it exists, cannot be attributed to unlawful discrimination by statistically reliable techniques. Affidavit of Raymond F. Hodgdon at ¶29(k), 31, 32(i).

4. Defendants object to this statement on the ground that the existence or non-existence of discrimination in mortgage lending is irrelevant to the legal duty of the Federal Reserve Board and its officers under the law to supervise and regulate Federal Reserve member banks pursuant to equal credit laws.

5. Defendants object to this statement as irrelevant on the ground that the mere collection of race and sex data by some federal agencies does not bear on the statutory duties of the Federal Reserve Board under equal credit laws. Moreover, since the purpose and usefulness of race and sex data collection by these agencies can only be evaluated in the context of each agency's enforcement program, these provisions are, in and of themselves, imcompetent to establish that similar procedures must be utilized by the Federal Reserve Board in its enforcement program.

6. Defendants do not oppose this statement insofar as it states that collection and maintenance of race and sex data is an effective means of civil rights enforcement.

Such data is collected and maintained with each Federal Reserve member bank under the Board's newly promulgated Regulation B, and the data is routinely reviewed by the Board's bank examiners. However, defendants oppose this statement insofar as it may be taken to suggest that such race and sex data must be centrally collected and analyzed by Board officials in Washington, D. C. Affidavit of Philip C. Jackson, Federal Reserve Board at ¶15; Affidavit of Janet Hart at ¶¶23-39. Also, the Affidavit of Ms. Graae at page four indicates her understanding that such analysis is best undertaken by the Board's bank examiners during their investigations.

7. Defendants object to this statement on the ground that the views expressed therein are irrelevant to the legal duty of the Federal Reserve Board and its officers under the law to supervise and regulate Federal Reserve member banks pursuant to equal credit laws. Defendants oppose this statement because it does not fairly and accurately reflect the views of other governmental entities, private organizations and persons who have considered this question, some of whom expressed their views during the rulemaking proceedings leading to amendments of the Board's Regulation B to bring it into conformity with the 1976 amendments to the Equal Credit Opportunity Act. At that time, the Board received comments favoring and opposing its proposal to require creditors to collect and maintain racial data, and there were differences of opinion among commenting federal agencies as to whether the Board should require banks to make race and sex notations in cases where applicants refused to do so. Affidavit of Philip C. Jackson at ¶6.

Additionally, Congress has considered but failed to adopt proposals that would require data collection in order to enforce laws prohibiting lending discrimination.

8. Defendants oppose this statement. The means by which the Federal Reserve Board routinely and specifically conducts fair housing compliance investigations by bank examiners in fact includes a "systematic collection and analysis" of Regulation B data, although such data is not centrally collected and analyzed in Washington, D.C. See Affidavit of Janet Hart at ¶¶26 (Attachment L(D)); 32.

9-10. Defendants oppose this statement. The Board's examiners do review data collected by member banks pursuant to Regulation B to determine whether such data gives evidence of unlawful discriminatory acts and practices. Affidavit of Janet Hart at ¶32. Since the Examiner Instructions (Attachment F to Hart Affidavit) and Examiner Checklist (Attachment G to Hart Affidavit) pertain to such discriminatory acts and practices, they necessarily require reference to race and sex data compiled under Regulation B. Affidavit of Janet Hart at ¶¶28, 32.

11. Defendants object to this statement as irrelevant because neither the statutory language nor legislative history indicates that Home Mortgage Disclosure Act information is a tool for detection of unlawful discrimination or that the information provided by banks under the Act is useful toward that end. Defendants oppose this statement insofar as it suggests that the Federal Reserve Board does not enforce compliance with the Home Mortgage Disclosure Act. Affidavit of Janet Hart at ¶33.

12. Defendants oppose this statement. Affidavit of Janet Hart at ¶¶40-53.

13. Defendants do not oppose this statement insofar as it states that 1971 HUD survey identified 25 Federal Reserve member banks whose responses to certain questions in the survey required further exploration to ensure an absence of unlawful discrimination, and that subsequent inquiries to bank officers confirmed the absence of discriminatory practices. Affidavit of Janet Hart at ¶5.

14. Defendants do not oppose this statement insofar as it states that upon analysis of the results of the 1974 Fair Housing Information Survey, the Board identified two Federal Reserve member banks whose responses to certain questions in the survey required further exploration to ensure an absence of unlawful discrimination, and that subsequent investigation confirmed the absence of discriminatory practices. Affidavit of Janet Hart at ¶15.

15. Defendants oppose this statement insofar as it states that the Federal Reserve Board does not employ persons with special competence for dealing with mortgage lending discrimination, and that race and sex discrimination are unrelated to other consumer affairs problems. Affidavit of Janet Hart at ¶¶20-28, 32, 41-46.

16. Defendants object to this statement as irrelevant on the grounds, first, that implied claims of unlawful discrimination in employment are irrelevant to the instant action and would in themselves require a Title VII class action for proof and, second, that fair housing laws can be effectively enforced by employees and officials of any race or sex. Defendants further object on the ground that plaintiff's affiant alleges only discrimination on the basis of sex, thus rendering racial data irrelevant in this case.

To the extent that sex data may be viewed as relevant, (it is not clear whether plaintiff intends "minorities" to include women) defendants oppose the statement. Affidavit of Janet Hart at ¶¶8-10.

17-25. These statements relate to activities of the Comptroller of the currency, who is no longer a defendant in this lawsuit, and no statement of opposition or objection is therefore required.

For a statement of material facts as to which there is a genuine dispute so as to preclude a granting of summary judgment to plaintiffs, the Court is respectfully referred to defendants' Statement of Material Facts as to Which There is No Genuine Dispute, filed in support of defendants' cross-motion for summary judgment.

Respectfully submitted,

Barbara Allen Babcock 1aft
BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

Anthony J. Steinmeyer
ANTHONY J. STEINMEYER

Robert M. Rader
ROBERT M. RADER

Brian G. Kennedy JBMR
BRIAN G. KENNEDY

Attorneys, Department of Justice
Washington, D. C. 20530
Tel: (202)739-4263

Attorneys for Defendants

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON BANKING, CURRENCY AND HOUSING
NINETY-FOURTH CONGRESS
2129 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

Box 132
Folder: NUL v OCC Summary Judgment
Motion Defendants (Federal Reserve Bd) 1976-78

NEWS RELEASE

FOR RELEASE 6:00 P.M.
MONDAY, JUNE 14, 1976

FED IGNORING MANDATE TO CRACK DOWN ON REDLINING -- REUSS

Chairman Henry S. Reuss of the House Committee on Banking, Currency, and Housing said today he finds it "startling" that the Federal Reserve Board "apparently has no intention" of using information gathered under a new "anti-redlining" law to end discrimination in mortgage lending.

In a letter to Fed Chairman Arthur F. Burns, Reuss cited a statement by Board member Philip Jackson that the Fed has no plans to use information collected by banks under the Home Mortgage Disclosure Act of 1975. The act requires lending institutions to make public by census tract where they make their mortgage loans, and is aimed at "redlining," or refusal of banks to make loans in "deteriorating" neighborhoods.

"If Governor Jackson's statement accurately represents the view of the Board," Reuss told Burns, "I find this startling."

Jackson's statement in the press indicated that the Fed would rely on local pressures to end discrimination. Reuss charged that the Fed should use this information "as well as all other relevant data to ensure vigorous enforcement of the 1968 Civil Rights Act to prevent discrimination in housing credit."

"Enforcement of the Civil Rights Act of 1968 is a difficult enough responsibility of the Federal Reserve without the unnecessary addition of self-imposed limitations on the data to be considered," Reuss said. He urged Burns to make clear "at the earliest possible moment" the Board's intentions with regard to cracking down on redlining.

#####