

Mr. Pollak--

Justification memo in housing case.
Mr. Fiss suggested you may want to start
looking it over.

B.

7/5

Title VIII file

Stephen J. Pollak

July 4, 1968

FWH:ESC:HWF:rg

HWF Frank W. Hill, Edward S.
Christenbury and Hugh W. Fleischer

Complaint in United States v. Town and
Country Homes, Incorporated
(Title VII, Civil Rights Act of 1968)

I. INTRODUCTION

The attached complaint should be filed.
The basis for this action is Title VIII of the
Civil Rights Act of 1968.

The Civil Rights Division office received
a complaint from Mr. Paul J. Brown, a Negro, on
June 19, 1968, that he had been discriminated
against because of his race by several real estate
concerns in Baton Rouge, Louisiana, in his efforts
to purchase a home in that area.

On June 20, 1968, Grady Norris and Hugh
W. Fleischer interviewed Mr. Brown. Mr. Brown is
34 years old, married and has four children rang-
ing in age from 2½ to 12 years. He is an employee
of the United States Department of Labor, Bureau of
Work Training Programs as a Senior Manpower
Administrative Representative. He has been with
the Department since 1963 and is a GS-13. He is
second in command of a six-person office being
newly established in Baton Rouge. He is moving
from Dallas, Texas, where the regional office is
located. Mr. Brown has three years of college train-
ing at Texas Southern University. He served in the
United States Air Force as First Lieutenant navigator
and bombardier from 1954 to 1961 and has an honorable
discharge.

cc: Records
Chrono
Dunbaugh
Fleischer
Hill
Christenbury
Goldsmith
Trial File

Mr. Fiss

On May 28, 1968, Mr. Brown initiated his attempts to purchase a home, the relevant details of which are described below. He was interested in purchasing a three or four bedroom home between 20 to 32 thousand.

On June 23, 1968, he agreed to purchase and the owner of a six year old home agreed to sell a six bedroom home in the Sherwood Forest Subdivision for \$32,900.00. The private owner had moved to New Jersey and sold the home through the Farrier and Muth Real Estate, Baton Rouge. The home is being financed by a Baton Rouge mortgage concern. Mr. Brown has applied for a VA loan guarantee.

II. FHA AND VA PRACTICES

The FHA and VA relationship to the homes being sold by the proposed defendants is the basis for coverage under Section 803(1)(c).

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The Federal Housing Administration, which is an agency of the Department of Housing and Urban Development has two procedures which are relevant to this case. The first is what is termed a "feasibility analysis" of a proposed subdivision. This procedure is commonly referred to as a subdivision approval. The developer of a subdivision must submit a standard application for subdivision approval, a sample of which is found in Attachment A. This application and a plat map of the proposed subdivision are submitted to FHA. FHA conducts an investigation which includes the following considerations: valuation, architectural, sanitary engineering, land planning, site engineering and underwriting. If FHA finds that its minimum standards are met under the above considerations and if the owner signs a non-discrimination certificate, FHA sends a letter to the developer advising him that the subdivision has been approved. This service is without charge to the developer.

The second FHA procedure is the on-site inspection and approval of individual homes under construction. A developer which has obtained a subdivision approval may request this minimum home approval. FHA representatives make a minimum of three on-site inspections during the course of the construction. If the specifications are met, FHA will assign an appraised value to the home and approve it thereby making that home eligible to be sold with an FHA insured mortgage. If the above procedure is followed, FHA regulations require the developer to give to the purchaser a one-year warranty against construction defects.

FHA may approve individual homes for mortgage insurance in two additional ways. If the home has been site inspected during construction and approved by the VA, which approval is considered by FHA to be comparable to the FHA site inspection approval for these purposes, or if mortgage insurance is requested on an existing home, in the latter instance, the approval given. However, in the latter instance, the purchaser mortgageor does not have the privilege of the above described one year warranty. Under any of these systems of FHA approval regardless of the price the mortgage will be insured to a percentage of the charged but only to the extent of a percentage varies appraised value of the home. The percentage varies from 85% to 97% depending upon the price and certain other factors.

The Veterans Administration has two similar procedures. The first is termed the master certificate of reasonable value. This document may be requested by the developer of five or more homes in one subdivision. Essentially, it is comparable to the VA subdivision approval of FHA, mentioned above. VA makes a judgment of the specifications and plat map filed by the developer and assigns an appraised value to the individual homes.

The second procedure is the certificate of reasonable value and subsequent on-site inspections. Most of these inspections are conducted by private engineers and building experts who are hired by VA, although VA has a few employees who conduct these inspections. As in the FHA procedure, there are a minimum of three on-site inspections. At the conclusion of the inspections, VA approves the homes for an appraised value. This final approval entitles a veteran to apply for a loan guarantee on the purchase of such an approved home. VA may approve individual homes for loan guarantees in two additional ways. If the home has been site inspected by FHA, VA recognizes that as comparable to a VA inspection. An existing home may be approved for a loan guarantee under provisions similar to the FHA. Under these three procedures for individual home approval, VA will guarantee the home loan regardless of the price charged but only to the extent of a percentage of the appraised value of the home.

As will be seen in the discussion below, the most common procedure used by developers is to have an FHA subdivision approval and a VA certificate of reasonable value and on-site inspection. This procedure qualifies the developer to sell the homes using either FHA, VA or, of course, conventional financing, and the reason why it is followed, according to the FHA officials, is because the VA inspections are less stringent than those of FHA. It is not necessary to have the FHA subdivision approval to obtain VA individual home approval. In fact, one of the three proposed defendants, Myer Development Corporation did not obtain an FHA subdivision approval but did have VA approval on the majority of homes in the Drusilla Place Subdivision.

FHA mortgage insurance and VA loan guarantees are subject to a discount rate. This discount rate is a result of the substantially lower rate of interest required by FHA and VA (now 6-3/4%)

compared with mortgages on home purchases which are financed conventionally. (generally 7½ to 8%). In order to induce the private financial institutions to enter into FHA and insured VA guaranteed loans the federal agencies permit the lending agencies to charge the seller the difference between the federal and conventional interest rate, which charge is termed the discount rate. Unquestionably, some or all of the defendants will argue that the financial disadvantage in using VA and FHA was the reason why they purchased denied Mr. Brown an opportunity to purchase homes VA or FHA. However, as is explained below the prospective defendants have engaged in FHA and/or VA sales when the discount rate was comparable or more disadvantageous than the discount rate at the time of Mr. Brown's attempted purchase.

before & after?

The discount rate may vary from day to day but generally stays within a half point to one point variance if there is no fluctuation of the interest rate. FHA makes a monthly survey of three prominent lending institutions to determine the current discount rate. This survey shows that in southern Louisiana, including Baton Rouge, the discount on May 1, 1968, was 8 points or 9%. The FHA-VA interest rate at that time was 5-3/4%. During the early part of May, the interest rate was increased to 6-3/4% which correspondingly dropped the discount rate. On May 31, 1968, the discount rate was 6½ points or 93½%. On June 30, 1968, the latest date for which FHA has a reading the discount rate had remained constant at 6½ points or 93½%. The following is a chart showing the monthly discount rate for the Southern section of the United States including Louisiana, which was compiled by FHA in Washington, D.C.

1/ Some lending institutions will allow an amount to be set aside on behalf of certain developers. In exchange for the assurance that the developer will finance exclusively through that lending agency, the agency earmarks an amount to be used to lessen or eliminate the discount that would otherwise have to be paid by the developer. The developer generally pays a low rate of interest to have this money so earmarked.

What about? Developer?

| | | |
|-------------------|-------|------------|
| May 1, 1968 | 92.1% | 7.9 points |
| April 1, 1968 | 93.0% | 7.0 points |
| March 1, 1968 | 93.2% | 6.8 points |
| February 1, 1968 | 93.0% | 7.0 points |
| January 1, 1968 | 93.2% | 6.8 points |
| December 1, 1957 | 93.7% | 6.3 points |
| November 1, 1967 | 94.7% | 5.3 points |
| October 1, 1967 | 94.6% | 5.4 points |
| September 1, 1967 | 94.5% | 5.1 points |
| August 1, 1967 | 95.3% | 4.7 points |
| July 1, 1967 | 95.7% | 4.3 points |
| June 1, 1967 | 96.3% | 3.7 points |

III. FACTS

A. Knippers and Day Real Estate, Incorporated

1. The Discriminatory Act

On May 29, 1968, Mr. Brown called Mr. William E. Day of Knippers and Day Real Estate to arrange an appointment. Mr. Brown did not divulge his race to Day. The appointment was made for May 30, 1968. On that day, at about 11:30 a.m., Brown went to Day's office, which is located in Sherwood Forest Place subdivision. Mr. Day, at that time, told Brown that he (Day) could not sell to a Negro because it would "bankrupt" Day. Mr. Brown told him that, because Day had "involved FHA money" in Sherwood Forest Place, Day had an obligation to sell without racial discrimination. Brown asked Day to consult Knipper and to call him (Brown) at his motel before Brown departed Baton Rouge at about 4:00 p.m. Day indicated that he was certain that the answer would be "no". No further discussions were held.

By letter dated May 31, 1968, Brown complained to the Director of the FHA, in New Orleans, regarding this and other similar experiences with other agencies. The Director of the FHA, by letter of June 4, 1968, notified Mr. Day of Mr. Brown's complaint and requested an explanation within 10 days. On June 11, 1968, the

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attorney for Knippers and Day wrote to the Director and denied that Mr. Day had refused to negotiate with Brown. Moreover, the attorney wrote that Brown "was not acting in good faith nor as a bona fide purchaser...."

On June 28, 1968, Departmental attorneys requested of Day's attorney permission to speak with officials of Knippers and Day. That request was denied on the grounds that Knippers and Day had a meeting scheduled with the Director of the FHA on Tuesday, July 2, 1968, and that Departmental interviews would be "improper" prior to the resolution of the problem between FHA and Knippers and Day.

On July 2, 1968, the Director of FHA met with Mr. Day and his attorney. Day contended, initially, that Sherwood Forest Place was not an "approved" subdivision. Ultimately, however, that point was conceded by Day. When asked directly whether they would, in the future, sell to Negroes, Mr. Day, acting upon advice of counsel, refused to answer.

STX
Average

2. Nature of the Defendant

Knippers and Day Real Estate, Incorporated, is a Louisiana corporation doing business in Baton Rouge, Louisiana. It is a general agency conducted "for the buying and selling of real estate, for itself or as agent for others"

Related corporations are Town and Country Homes, Incorporated, and K & D Enterprises, Incorporated, both of Baton Rouge. The former has acted as developer of Sherwood Forest Place subdivision, and lists as its president and vice president Mr. I. W. Knipper and Mr. William B. Day, respectively. The latter corporation has acted as owner and builder with respect to specific lots and houses in Sherwood Forest Place subdivision, and lists as its president Mr. I. W. Knippers. In that all three corporations are involved in the developing, building and marketing of homes in Sherwood Forest Place subdivision,

we are recommending that each be named as a defendant. For the purposes of this memorandum, however, we shall refer to all, generally, as Knippers and Day.

3. Coverage

The homes built by Knippers and Day in Sherwood Forest subdivision, the terms of sale of which Day refused to negotiate with Brown, are dwellings provided in whole or in part by loans insured or guaranteed by the credit of the Federal Government under agreements entered into after November 20, 1962, within the meaning of Section 803(a)(1)(c) of the Civil Rights Act of 1968. Specifically:

- (a) Sherwood Forest Place is an FMA approved subdivision. The two portions of the subdivision were approved on January 25, 1966 and April 11, 1967.
- (b) Since January 1, 1968, Knippers and Day (K & D Enterprises, Inc.) have sold at least 5 new homes in Sherwood Forest Place which have been financed with loans guaranteed by the Veterans Administration. 2/
- (c) Knippers and Day advertised until and including May 30, 1968, in the Baton Rouge newspapers that 3 and 4 bedroom homes were "ready for immediate occupancy",

Is this known? correct.

2/ Based upon our inspection of records in the office of the Tax Assessor in East Baton Rouge Parish, we believe that Knippers and Day have sold approximately a total of 13 homes in Sherwood Forest Place subdivision since January 1, 1968. (See Appendix B1)).

Signed
Sales K
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and indicated that "VA and Conventional financing" were available. 3/

Houses of the general specifications desired by Mr. Brown were available on May 30, the time of the discriminating act. Advertisements of 3 and 4 bedroom homes in Sherwood Forest Place subdivision ran in local papers on June 6, 7, 8, 16 and 19. Further, records in the office of the Clerk of Court (deed and mortgage agreement) reflect that Knippers and Day sold a home in Sherwood Forest Place (conventionally financed) on June 25, 1968. Finally, on June 26, 1968, Departmental attorneys observed one "open house" owned by Knippers and Day in Sherwood Forest Place and six other new, vacant houses in the area with "for sale" signs displayed.

Proof through whom?

We believe that these facts establish that:

- (a) Knippers and Day, on May 30, 1968, owned, in an FHA approved subdivision, new homes of the type in which Mr. Brown was interested;
- (b) Knippers and Day, until May 30, 1968, had negotiated the sale of such homes to white persons who financed their purchase through VA;
- (c) Knippers and Day, on May 30, 1968, refused to negotiate for the sale of such a dwelling to Brown because of his race.

3/ On May 30, 1968, Mr. Brown appeared at Day's office. Knipper and Day ceased advertising until June 6, 1968, at which time they resumed their prior advertisements; however, all subsequent advertisements state only that "Conventional financing" is available (See Appendix B(2)).

B. Myer Development Corporation

1. The Discriminatory Act

Mr. Brown First contacted Myer-Yardbrough Realty, Inc., the agency which lists for sale the properties marketed by Myer Development Corporation, 4/ by telephone on May 31, 1968. Mr. Brown stated that he was interested in buying a home in Baton Rouge. Mr. Brown also stated that he is a Negro, and the salesman said that he would "have to look around".

On June 19, 1968, after arriving in Baton Rouge, Brown called Mr. Myer at the latter's home. Myer stated that he had one four bedroom home priced at \$24,500 and 2 or three three bedroom homes available, and that all could be sold under the VA loan guarantee program. Mr. Brown assumes that Mr. Myer did not know that Brown is a Negro during the course of the telephone call notwithstanding the prior contact with one of Myer's salesman. On the morning of June 20, 1968, Brown went to Myer's office. At that time, Myer told him that he was "sold out". Myer stated that he had no 4 bedroom homes, no 3 bedroom homes, and no lots. 5/ Nonetheless, Myer continued to advertise the homes in Drusille Place. Our investigation of records in the parish Tax Assessor's office indicates that at least one 4 bedroom home and one 3 bedroom home owned by Myer Development Corporation remained unsold as of July 3, 1968. 6/

4/ See the discussion of the nature of the defendant, infra.

5/ These facts are based upon Mr. Brown's version of what transpired. Departmental attorneys endeavored (June 23, 29, 30 and July 1) to see Mr. Myer, but with no success.

6/ The relevant records are within a very few days of being current, according to officials in the office of the Tax Assessor.

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Conveyances and mortgage agreements on file in the office of the Clerk of Court of East Baton Rouge reflect that, since January 1, 1968, Myer Development Corporation has sold at least 4 homes in Drusilla Place, which have been financed by loans guaranteed by VA. S/

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Potentially?*

By way of recapitulation, we believe that the foregoing facts establish that:

- (a) Myer Development Corporation refused to negotiate with Mr. Brown by stating that the company had no property for sale;
- (b) In fact, 3 and 4 bedroom homes, owned by Myer Development Corporation, were available and have continued to be available for sale, as reflected by parish records and by newspaper advertisements;
- (c) Myer Development Corporation has recently sold similar homes under government loan guarantee programs and, in fact, continues to offer to sell homes to white persons under those programs.

C. Gully Agency, Incorporated.

1. The Discriminating Act

On June 16, 1968, Mr. Brown called Ken Owens, a salesman for and a director of Gully Agency, Incorporated, regarding a specific house

S/ Since January 1, 1968, Myer Development Corporation has sold at least 11 homes which were financed by loans secured by either FHA or VA. Four of those eleven were under the FHA program. Of the eleven, as the text states, four were in Drusilla Place subdivision. (See attachment C(1))

in Jefferson Terrace subdivision. 9/ According to Mr. Brown, Owens stated that FHA and/or VA money would be available for the financing of the purchase of that home. Brown, at that point, had not divulged his race to Owens. When Brown met Owens later that day at the house, Owens stated that money was "tight", and that the house could not be sold VA or FHA. Owens said that, even if FHA-VA money was available, the builder might be unwilling to sell FHA-VA because of the high discount rate. 10/ Finally, Owens said that a 20%-25% down payment would be required with conventional financing. Owens stated that he would have to contact the builder and determine whether the builder would sell FHA-VA. 11/ On June 19, 1968, Brown called Owens. Owens informed him that the builder would sell only through conventional financing, with 20%-25% down.

Our inspection of conveyances and mortgages recorded in the office of the Clerk of Court discloses that Ken Owens has sold approximately 5 homes in Jefferson Terrace during the last 12 months under the VA or FHA program. All five homes sold for more than the purchase price of the home in which Brown was interested. (See Attachment D(1)) Further, on June 2, 1968, Gully Agency advertised a home built and owned by Ken Owens which is located in Jefferson Terrace. The advertisement stated that the selling

9/ The house is at 10262 Hillyard. Departmental attorney observed a "for sale" sign at the house on June 26, 1968.

10/ See the discussion in Part II, supra.

11/ The record shows that Owens, himself, was the builder of the home in question.

price was \$27,000 and that there could be "Nothing down to vets. \$2,400 down FHA." (See Attachment D(2)). Finally, Durward Gully, president of Gully Agency, has sold at least 5 homes in Jefferson Terrace since October, 1967, under either the FHA or VA program. In light of these facts, Owens' refusal to negotiate with Brown on the basis of a VA or FHA loan constitutes discrimination "in the terms, conditions, or privileges of sale ... of a dwelling," within the meaning of Section 804(b) of the Act.

2. Nature of the Defendant

Gully Agency, Inc. is a Louisiana corporation domiciled at Baton Rouge. The objects and purposes of this corporation are "to engage in a general real estate brokerage business; and to sell homes, land and commercial buildings or any other type of personal or real property owned by third persons or owned by this corporation."

The officers, directors and incorporators of Gully Agency, Inc. are as follows:

1. Durward Gully - President
2. Kenneth C. Owens - Vice-president
3. Harry F. Smith - Secretary-Treasurer

The president and the vice-president of the corporation acquire, hold and convey property in their own names. In all such transactions, the corporation acts as a listing agent for the officers. The corporation does not acquire, hold or convey any property in its own name.

3. Coverage

Jefferson Terrace is an FHA approved subdivision. 12/ A substantial number of the

12/ One section was approved by FHA by letter dated 12/29/66. The second section was approved by FHA by letter of 3/8/68.

individual houses in the subdivision have been inspected and approved by either VA or FHA. Conveyances and mortgage agreements recorded in the office of the Clerk of Court establish that at least 10 homes in Jefferson Terrace have been sold under the VA and FHA program during the last 12 months. Finally, Gully Agency has advertised, on occasion, individual houses in Jefferson Terrace as being available for VA or FHA financing.

In summary, we believe that the facts discussed above establish that:

- (a) Gully Agency and Ken Owens refused to negotiate with Mr. Brown for a sale financed by a loan to be guaranteed by VA or FHA;
- (b) Gully Agency and Ken Owens have recently negotiated VA and FHA sales with white persons in transactions involving similar property in Jefferson Terrace subdivision;
- (c) The particular house viewed by Mr. Brown, and many of the other houses owned by Gully and Owens in Jefferson Terrace have been inspected and approved by FHA or VA;
- (d) The dwellings described in subparagraphs (b) and (c), above are dwellings provided in whole or in part by loans insured or guaranteed by the credit of the Federal Government, within the meaning of Section 803(a)(1)(c) of the Act.

IV. RECORDS

Evidentiary material pertaining to pertinent conveyances was obtained through four methods, each of which served as a cross check upon the other. The first method used was a check of the records in East Baton Rouge Parish Tax Assessor's office. All property located within a subdivision is filed together under the name of the subdivision. A check of these records reveals the present owner of all property within the subdivision, as well as the complete chain of title of the property. These records are current to within one or two days. From these cards a complete list was obtained of all conveyances made within the subdivision by each individual, agency or corporation in question, as well as the name of the vendee of each piece of property.

Having obtained the name of the vendee, a check was made of each vendee's name in the mortgage section of the East Baton Rouge Parish's Clerk of Court's office. By running the vendee's name in the index to the mortgagor books, a reference was obtained to the original mortgage. It can be determined by an inspection of the mortgage agreement if the mortgage has been insured by either FHA or VA. All FHA and VA mortgages are drawn on special forms identifiable by the agency name in the upper left corner. Also included on the mortgage is a cross reference to the conveyance office where the original deed to the property in question is recorded. A reference can also be obtained to the original deed by running the name of the individual agency or corporation in question through the index to the vendor books. This method gives a complete list of all conveyances made by the vendor and serves as a cross check on the list obtained from the Tax Assessor's office. It can also be determined by this method whether the transaction is secured by VA or FHA, as specially marked

forms are used, as with mortgages. While both methods have desirable aspects, the records in the Conveyance Office have the distinct advantage of being current up to the day the check is being made.

The final method is a check through the New Orleans office of FHA and VA. This method was used primarily to determine the coverage of lots observed through personal inspection of the subdivision. By supplying the VA with the street and lot number of a particular piece of property, a check can be made through their "street" files, and all pertinent information concerning the piece of property in question can be obtained. The information available from FHA was not as extensive. They were consulted primarily to determine if a particular subdivision had been initially approved. FHA does not maintain an index of any kind to the individual lots on which FHA insures the mortgage unless FHA gave subdivision approval and the on-site inspection of individual lots.