

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALVIN RICCIARDI, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
AMERIQUEST MORTGAGE COMPANY, :
Defendant. : NO. 03-CV-2995

MEMORANDUM AND ORDER

J. M. KELLY, J.

JANUARY 10, 2005

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a non-jury trial and a review of the pleadings filed by the parties in the above captioned matter, the Court makes the following Findings of Fact, Conclusions of Law and decision.

I. FINDINGS OF FACT

1. Plaintiff Alvin Ricciardi ("Plaintiff") was not a credible witness.

2. In August, 2002, Plaintiff spoke with Ameriquest Mortgage Company ("Ameriquest") to refinance his loans with Cendant Mortgage and National Penn Bank.

3. The purpose of the early disclosures were to communicate the initial terms and type of program to the borrower.

4. The early disclosures were mailed to Plaintiff on August 30, 2002.

5. Plaintiff has a Bachelor of Business Administration in Accounting.

6. Plaintiff also has a computer programming degree.

7. The loan closing took place on September 11, 2002.

8. At the loan closing, Plaintiff signed a Fannie Mae Request for Verification of Employment that indicated he was employed as an internet advisor.

9. At the loan closing, Plaintiff certified on the Uniform Residential Loan Application that he was an internet advisor and that his Base Employment Income was \$4500.00 per month.

10. Plaintiff falsely represented to Ameriquest that he was employed.

11. Plaintiff signed the Mortgage at the loan closing.

12. Plaintiff signed the Fixed Rate Note at the loan closing.

13. By signing the Fixed Rate Note, Plaintiff agreed to a loan from Ameriquest in the amount of \$180,900.00 to be repaid in equal monthly installments of principal and interest in the amount of \$1360.19 per month for thirty years.

14. Plaintiff signed the Borrower's Acknowledgment of Final Loan Terms and received a copy of the documents at the loan closing.

15. Plaintiff knew his annual percentage rate of 8.824% and

interest rate of 8.259% when he signed the loan documents.

16. Plaintiff knew the amount of his monthly payments of \$1360.19 when he signed the loan documents.

17. Plaintiff had an opportunity to examine every document at the loan closing.

18. Plaintiff knew the terms of his loan with Ameriquest.

19. Plaintiff had an opportunity to ask questions about the documents he was presented at the loan closing.

20. Plaintiff did not refuse to sign the loan documents.

21. Plaintiff did not tell Ameriquest at the loan closing that he wanted different loan terms.

22. Plaintiff signed the document captioned, "Understanding Your Loan," which instructed him not to rush.

23. It was important to Plaintiff to get cash from the loan with Ameriquest because, at the time, Plaintiff was running out of money.

24. Plaintiff needed the cash from the loan to continue to pay his living expenses.

25. Plaintiff did not walk out before the end of the loan closing because he needed the cash from the loan with Ameriquest.

26. Plaintiff signed the Truth in Lending Disclosure Statement.

27. Plaintiff did not ask Ameriquest about any of the information contained in the Truth in Lending Disclosure

Statement.

28. Plaintiff admits that he received a notice from Ameriquest providing him with a one week cancellation period for the loan.

29. Plaintiff was notified of this one week cancellation period on September 11, 2002.

30. The Truth in Lending Disclosure provided to Plaintiff accurately displayed the finance charge.

31. The Total of Payments section of the Truth in Lending Disclosure Statement provided to Plaintiff accurately communicated the total payments to be made on the loan.

32. The Amount Financed section of the Truth in Lending Disclosure Statement provided to Plaintiff accurately communicated the amount financed.

33. Plaintiff signed the HUD-1 Settlement Statement at the loan closing, which presented the settlement charges.

34. Addendum A to the Manual of Title Insurance allows a title company to charge a basic rate of \$1,263.75 for loans which are in the amount of \$180,001.00 through \$181,000.00.

35. Sections 6.1, 6.6 and 6.8 of the Manual of Title Insurance authorize endorsement charges of \$50.00 each.

36. Plaintiff was charged a basic rate of \$1263.75 plus endorsements totaling \$150.00 for the Title Insurance by Express Financial Services, the title insurance company (the "Title

Insurance Company").

37. Plaintiff provided no evidence or testimony that he provided a prior title insurance policy to Ameriquest.

38. Plaintiff did not provide a prior title policy to Ameriquest.

39. Ameriquest charged Plaintiff \$50.00 for each of three endorsements that were placed by the Title Insurance Company on Plaintiff's Title Insurance Policy.

40. Plaintiff did not provide any credible evidence or testimony that the appraisal costs were unreasonable.

41. Ameriquest provided Plaintiff with all the material disclosures relating to the loan.

42. On March 3, 2003, Plaintiff, through counsel, sought to rescind his loan with Ameriquest.

43. Ameriquest denied Plaintiff's March, 2003 request to rescind the loan.

44. At the loan closing, Plaintiff was expressly advised not to rely upon any oral representations.

45. In the Understanding Your Loan notice, Plaintiff was advised, "Don't feel rushed. Don't rely on any representations that are not in writing. Take your time."

46. Plaintiff signed and admitted reading the Understanding Your Loan notice prior to the completion of the loan closing.

47. In an Important Notice to Borrowers, Plaintiff was

advised:

To protect you (Borrower(s)) and us (Lender) from misunderstandings or disappointments, any agreements we have reached covering this loan transaction are contained in the loan documents you have signed today. Your loan documents are the complete statement of the loan agreement reached between us.

48. Plaintiff acknowledged that he read and signed the Important Notice at the loan closing.

49. Plaintiff never told Ameriquest that the certification in the Uniform Residential Loan Application, which indicated that he was an internet advisor with a Base Employment Income of \$4500.00 per month, was incorrect.

50. Plaintiff's loan file did not include any information that he was receiving unemployment compensation.

51. Plaintiff's loan file contained a handwritten note with Plaintiff's signature that read, "I, Alvin Ricciardi, make \$4500.00 monthly as an internet advisor."

52. Plaintiff's representations to Ameriquest that he was employed as an internet advisor in September, 2002 were false.

53. Plaintiff's representations to Ameriquest that his monthly income was \$4500.00 in September, 2002 were false.

54. Ameriquest granted the loan in reliance of Plaintiff's certification in the Uniform Residential Loan Application that the information contained in the application

is true and correct.

55. Ameriquest has incurred attorney's fees and costs in the amount of \$9220.00 defending this matter.

56. Plaintiff has not made a mortgage payment since February, 2003.

57. Interest has accrued on Plaintiff's loan in the amount of \$1243.45 per month for 18 months for a total of \$22,382.10.

II. CONCLUSIONS OF LAW

1. The Truth in Lending Act ("TILA"), 15 U.S.C. § 1601, et seq., has not been violated because TILA disclosures provided to Plaintiff are accurate and in compliance with the Manual of Title Insurance. See Manual of Title Ins. Rating Bureau of Pa., as amended through July 1, 2002.

2. The Title Insurance charges are in compliance with Addendum A to the Manual of Title Insurance, which allows a title company to charge a basic rate of \$1,263.75 for loans in the amount of \$180,001.00 through \$181,000.00. See Manual of Title Ins. Rating Bureau of Pa., as amended through July 1, 2002. Ameriquest properly charged Plaintiff a basic rate of \$1263.75 for his receipt of the \$180,900.00 loan.

Ameriquest's Title Insurance endorsement charges were in compliance with the Manual of Title Insurance. Sections 6.1,

6.6 and 6.8 of the Manual of Title Insurance authorize Ameriquest's charge of \$50.00 each, for a total of \$150.00, for the three endorsements that were placed by the Title Insurance Company on Plaintiff's Title Insurance Policy. Id.

As the Title Insurance charges complied with the Manual of Title Insurance, they were reasonable charges. The charges were not a cost of the loan and should not be included by Ameriquest in the calculation of the finance charge. 15 U.S.C. § 1605(e); see also 12 C.F.R. 226.4(c). Therefore, Ameriquest properly excluded the Title Insurance charges from its calculation of the Truth in Lending finance charge. See Id.

3. Plaintiff did not sufficiently establish that Ameriquest's charge of the basic rate for Title Insurance was unreasonable. Only where the Title Insurance charge is unreasonable will that portion of the cost which is excessive be included in the finance charge. See 12 C.F.R. 226.4(c); see also, Johnson v. Know Fin. Group, L.L.C., Civ. A. No. 03-378, 2004 U.S. Dist. LEXIS 9916, at *26-27 (E.D. Pa. May 26, 2004).

4. In Plaintiff's complaint, he contends that he was eligible for the reissue rate when charged for Title Insurance. Section 5.3 of the Manual of Title Insurance provides that a purchaser of a title insurance policy is

entitled to a reissue rate only if evidence of the earlier policy is produced. See Manual of Title Ins. Plaintiff did not produce an earlier policy. Plaintiff was not entitled to a reissue or refinance rate because he did not provide evidence of a prior title policy to Ameriquest.

Plaintiff contends the cost of his appraisal was unreasonable. The cost of property appraisal is specifically excluded from the calculation of the finance charge. 15 U.S.C. § 1605(e)(5). Only where the appraisal cost is unreasonable will that portion of the costs which is excessive be included in the finance charge. See 12 C.F.R. 226.4(c); see also, Johnson v. Know Fin. Group, 2004 U.S. Dist. LEXIS 9916, at *26-27. Plaintiff did not provide any credible evidence or testimony that the appraisal cost was unreasonable. The appraisal cost of \$300.00 was a reasonable charge and should not be included in the calculation of the finance charge. Id.

5. Plaintiff's rescission was untimely. Under the Truth in Lending Act, Plaintiff had "until midnight of the third business day following the consummation of the transaction" to rescind the loan. See 15 U.S.C. § 1635(a). Pursuant to § 1635(a), Plaintiff had three business days from the loan closing, until September 14, 2002, to rescind the loan at issue. Ameriquest further provided Plaintiff with a one week cancellation period for the loan. Plaintiff, therefore, had

one week from the loan closing, until September 18, 2002, to rescind the loan. Plaintiff did not seek to rescind the loan until March, 2003, well after the rescission periods allowed under TILA and by Ameriquest.

6. Plaintiff is not entitled to rescind his loan with Ameriquest Mortgage Company. Plaintiff has not proven any material disclosure violations. Plaintiff knew the terms of his loan, including the annual percentage rate, at the time of closing.

Under TILA, a borrower's right to rescind is extended from three days to three years only if the lender failed to provide material disclosures or if the material disclosures were inaccurate. 15 U.S.C. § 1635(f); 12 C.F.R. § 226.15(a)(3). As TILA disclosures provided to Plaintiff were accurate, Plaintiff did not have an extended right to rescind the loan.

Regardless of timeliness, Ameriquest properly denied Plaintiff's March, 2003 request to rescind the loan because the disclosures were accurate.

7. Plaintiff claims he is entitled to relief under § 201-2(4)(v), (xv), and (xxi) of the Pennsylvania Unfair Trade Practices Act and Consumer Protection Law ("UTPCPL"). Pennsylvania courts have held that "every plaintiff asserting a private cause of action under the UTPCPL must demonstrate his/her justifiable reliance on the misrepresentation or

wrongful conduct" of the defendant. See Toy v. Metropolitan Life Ins. Co., 2004 PA Super. 404, 27 (Pa. Super. Ct. 2004).

As we discredit Plaintiff's testimony regarding misrepresentations made by Ameriquest, there was no violation of TILA that could trigger a claim under UTPCPL.

8. Ameriquest sustained damages as a result of Plaintiff's fraudulent conduct. Under Pennsylvania law, the elements of fraud are as follows: (1) a representation; (2) that is material to the transaction at issue; (3) made falsely, with knowledge of its falsity or recklessness as to whether it was true or false; (4) made with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance. Gibbs v. Ernst, 647 A.2d 882, 889 (Pa. 1994).

Plaintiff intentionally misrepresented the material facts of his employment in September, 2002, in order to secure the benefits of the loan from Ameriquest. Plaintiff was running out of money, so he represented that he was gainfully employed when, in fact, he was not. Ameriquest justifiably relied on Plaintiff's multiple misrepresentations that in September, 2002, he was employed as an internet advisor with a monthly income of \$4500.00. Plaintiff committed fraud. As a proximate result of this fraud, interest has accrued on Plaintiff's loan

in the amount of \$22,382.10 and Ameriquest incurred \$9220.00 in reasonable attorney's fees defending this matter.

We find in favor of Ameriquest and against Plaintiff on Ameriquest's Counterclaim of fraud. Ameriquest is, therefore, awarded damages in the amount of \$31,602.10 on its Counterclaim.

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O R D E R

AND NOW, this day of January, 2005, in consideration of the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that judgment is entered in favor of Defendant, Ameriquest Mortgage Company, and against Plaintiff, Alvin Ricciardi with respect to Counts I, II, and IV of the Complaint and Count I of Defendant's Counterclaim.¹

IT IS FURTHER ORDERED that, Plaintiff is directed to pay Defendant:

(1) \$22,382.10 in satisfaction of the accrued interest on Plaintiff's loan; and

(2) \$9220.00 in satisfaction of Defendant's reasonable attorney's fees in this matter.

This case is **CLOSED** for statistical purposes.

BY THE COURT:

/s/ James McGirr Kelly, J.
JAMES MCGIRR KELLY, J.

¹ On June 23, 2004, this Court entered judgement in favor of Defendant and against Plaintiff with respect to Count III of the Complaint. (See Doc. No. 30.)