

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

_____	:	
IN RE MARGARET FIELDS	:	CIVIL ACTION
	:	
_____	:	
MARGARET FIELDS	:	
	:	
v.	:	
	:	
OPTION ONE MORTGAGE	:	
CORPORATION, et al.	:	NO. 06-1753
_____	:	

MEMORANDUM

Bartle, C.J.

July 31, 2006

Before the court is the appeal of Margaret Fields ("Fields") from the March 24, 2006 Order of the Bankruptcy Court. It decided that the fee Option One Mortgage Corporation ("Option One") charged her for title insurance was properly excluded from the calculation of "points and fees" for purposes of the Truth In Lending Act, 15 U.S.C. § 1601 et seq. ("TILA"), as amended by the Home Ownership Equity Protection Act of 1994 ("HOEPA").

This court has jurisdiction over Fields' appeal pursuant to 28 U.S.C. § 158(a)(1) and Rule 8001 of the Federal Rules of Bankruptcy Procedure. See In re Spring Ford Indus., Inc., 338 B.R. 255, 259 (E.D. Pa. 2006). We will not disturb the factual findings of a bankruptcy court unless they are clearly erroneous. In re IT Group, Inc., 448 F.3d 661, 667 (3d Cir. 2006). A factual finding is clearly erroneous if the reviewing

court if "left with a definite and firm conviction that a mistake has been committed." Gordon v. Lewistown Hosp., 423 F.3d 184 (3d Cir. 2005). We exercise plenary, or de novo, review over any legal conclusions. Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999). Where the Bankruptcy Court's decision is a mixed question of law and fact, we must break down the determination and apply the appropriate standard of review to each. In re Montgomery Ward Holding Corp., 326 F.3d 383, 387 (3d Cir. 2003).

Congress enacted TILA in 1968 as part of the Consumer Protection Act in order to compel money lenders to disclose various costs of borrowing so that unsophisticated consumers can make informed decisions. See 15 U.S.C. § 1601. To implement the policies of TILA, the Federal Reserve Board promulgated "Regulation Z," which along with the Federal Reserve's interpretation of Regulation Z are to be considered "dispositive" by the courts unless "demonstrably irrational." Ford Motor Credit Co. v. Mihollin, 444 U.S. 555, 565 (1980). Congress amended TILA in 1994 to require lenders to make additional disclosures to consumers regarding certain high-cost mortgages. If a loan is covered by HOEPA and "material disclosures are not provided or inaccurately provided, the creditor is strictly liable, and a borrower has the right to rescind the loan up to three years after consummation, upon transfer of all of the consumer's interest in the property, [or] upon sale of the property, whichever occurs first." In re Community Bank of

Northern Va., 418 F.3d 277, 304 (3d Cir. 2005) (internal quotations omitted); 12 C.F.R. § 226.23. "In addition to the right of rescission, an aggrieved borrower may, within one year of the date of the violation, seek actual damage[s] sustained ... as a result of the failure, and statutory damages, which cannot exceed \$500,000" Community Bank, 418 F.3d at 304 (internal quotations omitted); 15 U.S.C. §§ 1640(a)(1), (2)(B).

A loan is subject to the additional disclosure requirements of HOEPA if "the total points and fees payable by the consumer at or before closing will exceed the greater of (I) 8 percent of the total loan amount or (ii) \$400." 15 U.S.C. § 1602(aa)(1)(B). The "points and fees" calculation includes:

- (A) all items included in the finance charge, except interest or the time-price differential;
- (B) all compensation paid to mortgage brokers;
- (C) each of the charges listed in section 1605(e) of this title (except an escrow for future payment of taxes), unless--
 - (i) the charge is reasonable;
 - (ii) the creditor receives no direct or indirect compensation; and
 - (iii) the charge is paid to a third party unaffiliated with the creditor;and
- (D) such other charges as the Board determines to be appropriate.

Id. § 1602(aa)(4). Regulation Z further defines points and fees to include, in relevant part, "all items listed in [12 C.F.R.] § 226.4(c)(7) ... unless the charge is reasonable, the creditor receives no direct or indirect compensation; and the charge is paid to a third party unaffiliated with the creditor." Section

226.4(c)(7) lists "fees pertaining to title insurance" Therefore, a title insurance fee will be included in "points and fees" unless the charge is reasonable, the lender does not receive any direct or indirect compensation with respect to the charge, and the charge is not paid to any affiliate of the lender.

The record in this case demonstrates that Fields entered into a loan transaction with Option One on January 14, 2002. Fields obtained a loan of \$83,000 to refinance two outstanding mortgages on her home in Philadelphia. The first outstanding mortgage was from Mellon Bank and the second was from Commercial Credit Corporation. Approximately eighteen months after Option One issued the loan in January, 2002, Fields stopped making monthly payments because she could not afford them. On August 5, 2003, Fields filed a petition under chapter 13 of the Bankruptcy Code. Fields brought this action in the Bankruptcy Court under TILA and HOEPA to rescind the Option One loan and seek damages and attorney's fees. She maintained that the January 14, 2002 loan was a HOEPA loan for which Option One did not make the required disclosures.

The parties agree that neither Option One nor any affiliate received direct or indirect compensation with respect to the title insurance fee paid by Fields. The parties dispute whether the fee for title insurance was reasonable. To determine whether a charge is reasonable, a court must consider if a service was actually performed for the fee in question and

whether it conforms to industry rates prevailing in the relevant market at the time of the transaction. Any portion of a fee deemed unreasonable must be added to the "points and fees" for purposes of HOEPA. The parties stipulated that in Pennsylvania the fees for title insurance are found in the Manual of Title Insurance Rating Bureau of Pennsylvania ("Manual") and that the principal amount of Fields' loan was \$83,000. For a loan of \$83,000, the "basic" rate for title insurance was \$756.75 in January, 2002. A purchaser was entitled to receive the "reissue" rate of \$681.08, that is eighty percent of the "basic" rate if the real property has been insured for the ten years immediately prior to the date the insured transaction closes and when "evidence of the earlier policy is produced notwithstanding the amount of coverage provided by the prior policy." Finally, a purchaser may receive the "refinance" rate, that is eighty percent of the "reissue" rate, if she refinances a mortgage loan within three years.¹ The "refinance" rate for a loan of \$83,000 was \$544.86.

Option One charged Fields the "basic rate" of \$756.75 as provided by the Manual. Fields contends that instead she should have been charged the "refinance rate" of \$544.86 and that the difference between the "basic" and "refinance" rates is unreasonable and must be added to the calculation of points and fees. When the difference of \$211.89 is added to the points and

1. Additional conditions not relevant here must also be satisfied.

fees, the sum exceeds 8% of the loan. Because Option One did not make appropriate HOEPA disclosures, Fields maintains she is entitled to rescind the loan agreement and recover damages. Option One counters that even though Fields had purchased title insurance in connection with her prior mortgage loans from Mellon and Commercial Credit and may otherwise have been eligible for the "refinance" rate, she did not provide any evidence of that prior insurance at the time of closing.

In the proceedings below, the parties stipulated that \$5,947 in fees charged to Fields were properly included in the points and fees calculus. Fields argued that the title insurance fee, the hazard insurance premium, and the notary fee should also be included. The Bankruptcy Court added \$13 of the notary fee to the points and fees number but declined to include the title insurance fee and the hazard insurance premium. It found insufficient evidence to support a finding that the defendant knew or should have known that Fields qualified for the lower insurance rate at the time of the transaction and that Fields bore the burden of production on the question. The Bankruptcy Court further found the evidence before it did not support a finding that Option One knew or should have known about Fields' unaltered fee simple ownership status of the property, that the title to the collateral had been previously insured, or that in January, 2002 title to the real property was identical to the ownership of record at the time of the prior insurance policies.

We are asked to review a factual finding and a legal conclusion. First, Fields challenges the Bankruptcy Court's finding that Option One did not know or should not have known that Fields qualified for a lower title insurance rate. As noted above, we may not disturb the factual findings of a bankruptcy court unless they are clearly erroneous. IT Group, 448 F.3d at 667. Fields cannot meet her burden to show the finding of the Bankruptcy Court was clearly erroneous. She cannot remember any substantive details of any relevant loan transaction and the record does not reveal that Fields produced any evidence of her prior title insurance at the time of the closing. Furthermore, the documents that were present at the closing do not conclusively prove that the property in question had been insured for the requisite period. Thus, the Bankruptcy Court did not clearly err when it found Option One did not know of Fields' prior title insurance or that the lender should have known about it.

We also review the Bankruptcy Court's legal conclusion that no portion of the fee Option One charged for title insurance should be included in the "points and fees" calculus for HOEPA purposes. As noted above we review the legal conclusions of a bankruptcy court de novo. Flint Glass, 197 F.3d at 80. We have previously explained that a title insurance fee will be included in "points and fees" unless the charge is reasonable, the lender does not receive any direct or indirect compensation with respect to the charge, and the charge is not paid to any affiliate of the

lender. Although the parties have stipulated that the Manual's title insurance rates are reasonable, Fields disputes the reasonableness of Option One's charge to her under the circumstances of this case. To be reasonable a service must actually have been performed for the fee.

Unless the conditions for a reduced rate are satisfied, a lender may reasonably charge the basic rate for title insurance. Although the parties agree that the realty had been insured for the previous ten years, Fields did not produce "evidence of the earlier policy" at the time of the closing as required by the Manual to get the "reissue" rate. Therefore, Option One was not required to give Fields the "reissue" rate or the further reduced "refinance" rate. In addition, the record demonstrates that the service of insuring title was actually performed for the fee in question. The Bankruptcy Court did not err when it held the basic title insurance fee was reasonable in its entirety and refused to include any portion of it in the points and fees calculation.

Accordingly, the March 24, 2006 order of the Bankruptcy Court will be affirmed.

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

_____	:	CIVIL ACTION
IN RE MARGARET FIELDS	:	
	:	
_____	:	
MARGARET FIELDS	:	
	:	
v.	:	
	:	
OPTION ONE MORTGAGE	:	
CORPORATION, et al.	:	NO. 06-1753
_____	:	

ORDER

AND NOW, this 31st day of July, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the March 24, 2006 Order of the United States Bankruptcy Court is AFFIRMED.

BY THE COURT:

/s/ Harvey Bartle III

C.J.