

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMERICAN UNITED MORTGAGE COMPANY,
a corporation,

Defendant.

07C 7064

Civil Action No.

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

JUDGE DER-YEGHIAYAN

COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE AND OTHER RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its Complaint alleges as follows:

1. Plaintiff brings this action under Sections 5(a)(1), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 53(b), and 56(a); and Section 621 of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §1681s, to obtain monetary civil penalties, and injunctive or other equitable relief for Defendant's violations of the FCRA, 15 U.S.C. §1681 *et seq.*, including the Disposal of Consumer Report Information and Records Rule ("Disposal Rule"), 16 C.F.R. Part 682, issued pursuant to Section 628 of the FCRA, as amended by Section 216 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), 15 U.S.C. § 1681w; the Privacy of Customer Financial Information Rule ("Privacy Rule"), 16 C.F.R. Part 313, issued pursuant to Title V, Subtitle A, of the Gramm-Leach-Bliley Act ("GLB Act"), 15

U.S.C. §§ 6801- 6809; and the Standards for Safeguarding Customer Information Rule (“Safeguards Rule”), 16 C.F.R. Part 314, issued pursuant to the GLB Act, 15 U.S.C. §§ 6801-6809.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 53(b), 56(a), and 1681s.

3. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391 (b) - (c) and 1395(a).

DEFENDANT

4. Defendant American United Mortgage Company (“American United”) is an Illinois corporation with its principal place of business located at 3100 Dundee, Suite 102, Northbrook, Illinois 60062. At all times relevant to this Complaint, American United has transacted business in the Northern District of Illinois.

COMMERCE

5. At all times relevant to this Complaint, Defendant has maintained a course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT’S COURSE OF CONDUCT

6. Defendant provides services in connection with financing home purchases and refinancing existing home mortgages, including, but not limited to, accepting, receiving, and processing loan applications, in person, by mail, and online. In providing these services, Defendant collects personal information about consumers, including, but not limited to,

consumer names, social security numbers, bank and credit card account numbers, income histories, credit histories, and consumer reports (collectively, “consumers’ personal information”), from consumers, consumer reporting agencies, banks and other lenders, real estate brokers, and others. Defendant maintains consumers’ personal information in paper and electronic files.

7. American United, a mortgage company, is a “financial institution,” as that term is defined in Section 509(3)(A) of the GLB Act, 15 U.S.C. § 6809(3)(A), and is therefore subject to the requirements of the Privacy Rule and the Safeguards Rule. It also receives consumer reports from consumer reporting agencies and maintains the reports and information derived therefrom and is therefore subject to the requirements of the Disposal Rule.

8. Since at least December 2005, Defendant has engaged in a number of practices, that, taken together, failed to provide reasonable and appropriate security for consumers’ personal information. Among other things, Defendant failed to: (1) implement reasonable policies and procedures requiring the proper disposal of consumers’ personal information, including consumer reports and information derived therefrom; (2) take reasonable actions in disposing of such information, such as burning, pulverizing, or shredding consumer reports and information derived therefrom, so that it could not practicably be read or reconstructed; (3) identify reasonably foreseeable internal and external risks to customer information; and (4) develop, implement, or maintain a comprehensive written information security program.

9. As a result of Defendant’s failures described above, intact American United documents containing consumers’ personal information were found on multiple occasions in and around a dumpster near its office, that was unsecured and easily accessible to the public. In

February 2006, for example, hundreds of intact American United documents containing consumers' personal information were found in and around the dumpster, many in open trash bags. These documents included intact consumer reports and information derived therefrom, for thirty-six (36) individual consumers.

10. On or about March 3, 2006, Commission staff notified Defendant in writing that the disposal of documents containing consumers' personal information in the manner described in Paragraph 9 created a risk of unauthorized access to consumers' personal information and could violate the Safeguards and Disposal Rules.

11. Subsequent to this notice, on at least two occasions, additional intact American United documents containing consumers' personal information were found in and around the same dumpster adjacent to American United's office.

12. Additionally, from July 1, 2001, until March 2006, Defendant failed to provide American United customers with a privacy notice, as required by the Privacy Rule, describing its information collection and sharing practices with respect to affiliated and non-affiliated third parties.

COUNT I

VIOLATION OF THE DISPOSAL RULE

13. The Disposal Rule, which implements Section 216 of the FACT Act, as it amends the Fair Credit Reporting Act, was promulgated by the Commission on November 24, 2004, and became effective on June 1, 2005. The Rule requires any person who maintains or otherwise possesses consumer information for a business purpose to take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

14. Section 621 of the FCRA, 15 U.S.C. §1681s, authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FCRA by all persons subject thereto except to the extent that enforcement specifically is committed to some other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act.

15. Defendant maintains and possesses consumer information as that term is defined in the Disposal Rule, 16 C.F.R. § 682.1(b).

16. Through the acts and practices alleged in Paragraphs 6 -11, Defendant failed to take reasonable measures to protect against unauthorized access to or use of consumer information in connection with its disposal, in violation of the Disposal Rule, 16 C.F.R. Part 682.

COUNT II

VIOLATION OF THE SAFEGUARDS RULE

17. The Safeguards Rule, which implements Section 501(b) of the GLB Act, 15 U.S.C. § 6801(b), was promulgated by the Commission on May 23, 2002, and became effective on May 23, 2003. The Rule requires financial institutions to protect the security, confidentiality, and integrity of customer information by developing a comprehensive written information security program containing reasonable administrative, technical, and physical safeguards, including safeguards used to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.

18. Through the acts and practices alleged in Paragraphs 6 -11, Defendant failed to develop or implement reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information, in violation of the Safeguards

Rule. In addition, Defendant failed to identify reasonably foreseeable internal and external risks to customer information, and failed to develop, implement, or maintain a comprehensive written information security program, as required by the Rule, 16 C.F.R. Part 314.

COUNT III

VIOLATION OF THE PRIVACY RULE

19. The Privacy Rule, which implements Sections 501-509 of the GLB Act, 15 U.S.C. §§ 6801-6809, was promulgated by the Commission on May 24, 2000, and became effective on July 1, 2001. The Rule requires financial institutions to provide consumers, no later than when a customer relationship arises and annually for the duration of that relationship, “a clear and conspicuous notice that accurately reflects [the financial institution’s] privacy policies and practices” including its security policies and practices, 16 C.F.R. §§ 313.4(a), 313.5(a)(1), and 313.6(a).

20. As set forth in Paragraph 12, from July 1, 2001 until March 2006, Defendant failed to provide its customers with a copy of its privacy policy in violation of the Privacy Rule, 16 C.F.R. Part 313.

CONSUMER INJURY

21. Consumers in the United States have suffered and will suffer injury as a result of Defendant’s violations of the Disposal, Safeguards, and Privacy Rules. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers and harm the public interest.

THIS COURT’S POWER TO GRANT RELIEF

22. Section 621(a)(2) of the FCRA, 15 U.S.C. § 1681s(a)(2), authorizes the Court to award monetary civil penalties of not more than \$2,500 per violation of Section 628 of the

FCRA.

23. Each instance in which American United failed to comply with the Disposal Rule, 16 C.F.R. Part 682, constitutes a separate violation of the FCRA for the purpose of assessing monetary civil penalties.

24. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction prohibiting Defendant from violating the FCRA, including violations of Section 628.

PRAYER FOR INJUNCTIVE AND MONETARY RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court, pursuant to 15 U.S.C. §§ 45(a), 53(b), and 1681s, and pursuant to this Court's own powers:

1. Enter judgment against Defendant and in favor of Plaintiff for each violation alleged in this Complaint;
2. Award Plaintiff monetary civil penalties for each violation of the Disposal Rule as alleged in this Complaint;
3. Enjoin Defendant from violating the Disposal, Safeguards, and Privacy Rules;
4. Award such additional relief as the Court deems just and proper.

DATED: December 17, 2002

Respectfully submitted,

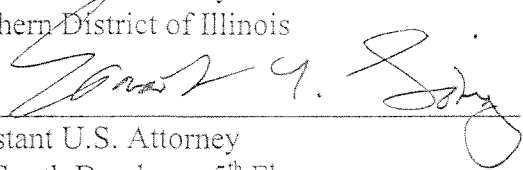
Of Counsel:

FOR THE UNITED STATES OF AMERICA

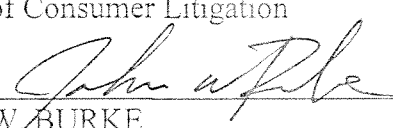
C. STEVEN BAKER
Director
Federal Trade Commission
Midwest Region

JEFFREY S. BUCHOLTZ
Acting Assistant Attorney General
Civil Division
U.S. Department of Justice

THERESA M. MCGREW
ROLANDO BERRELEZ
Federal Trade Commission
Attorneys
55 West Monroe, Suite 1825
Chicago, Illinois 60603
(312) 960-5634 [Telephone]
(312) 960-5600 [Facsimile]

PATRICK FITZGERALD
United States Attorney
Northern District of Illinois
By: 
Assistant U.S. Attorney
219 South Dearborn, 5th Floor
Chicago, Illinois 60604
(312) 353-5300 [Telephone]
(312) 353-2067 [Facsimile]

EUGENE M. THIROLF
Director,
KENNETH L. JOST
Deputy Director,
Office of Consumer Litigation

By: 
JOHN W. BURKE
Trial Attorney, Office of Consumer Litigation
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044-0386
(202) 616-0219 [Telephone]
(202) 514-8742 [Facsimile]
josh.burke@usdoj.gov [email]