

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

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ORIG. FILED
APR 15 1998
JOSEPH HAAS
Clerk

UNITED STATES OF AMERICA,
Plaintiff,
v.
FIRST NATIONAL BANK
OF GORDON, NEBRASKA,
Defendant.

CIVIL ACTION NO.

COMPLAINT

The United States of America alleges:

1. This action is brought by the United States to enforce provisions of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f, and Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619.
2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 and 15 U.S.C. § 1691(h).
3. Defendant, First National Bank of Gordon, Nebraska (hereinafter "the bank"), is a national bank with its principal place of business at 134 North Main Street, Gordon, Nebraska. The bank includes the Pine Ridge Indian Reservation located

in the District of South Dakota within its delineated community under the Community Reinvestment Act, 12 U.S.C. §§ 2901-2906. The Pine Ridge Reservation is home to the Oglala Sioux Tribe. The bank is a primary depository and lending facility for the residents of the reservation. The bank is wholly owned by Isham Management Company. Its business includes regularly extending credit to persons, including persons residing in the Pine Ridge Indian Reservation.

4. As of September 1995, the bank had approximately \$57,067,000 in deposits, total assets of approximately \$63,770,000, equity capital of \$5,849,000 and no branch offices.

5. The bank has offered and extended general consumer loans to its customers. The majority of the consumer loans were unsecured personal loans and loans for the purchase of automobiles. The bank also has provided consumer loans for the purchase of mobile homes and for home improvements.

6. As a national bank, First National Bank of Gordon is subject to the regulatory authority of the Office of the Comptroller of the Currency. In August 1993, the Comptroller of the Currency began an examination of the lending practices of the bank to evaluate its compliance with applicable consumer protection statutes and regulations, including the Equal Credit Opportunity Act and the Fair Housing Act. This examination continued through 1994.

7. At least since September, 1992, and continuing through March, 1994, the bank had no formal standards or written criteria for setting the interest rates on its consumer loans. Rather, loan officers possessed the discretion to set interest rates on consumer loans within broad parameters bounded by a minimum interest rate or fee the bank would accept and the maximum rate permitted by state usury law. Interest rate or pricing decisions by loan officers were not further reviewed by other bank officials. During this time period, interest rates charged for consumer loans ranged from 9 percent to 18 percent.

8. During this time period, American Indian borrowers were charged higher interest rates for consumer loans than similarly situated white borrowers and the bank failed to provide a non-discriminatory explanation that fully justified the disparity.

9. Based on information gathered in its examination, the Comptroller determined that he had reason to believe that the bank had engaged in a pattern or practice of discrimination on the basis of race in establishing the interest rates or prices that the bank charged to American Indian borrowers for consumer loans. Pursuant to 15 U.S.C. § 1691e(g), the Comptroller referred this matter to the United States Department of Justice on January 31, 1995, for appropriate enforcement action.

10. The Department of Justice has conducted additional investigation and analysis of the consumer lending practices of the bank and agrees that the bank has discriminated unlawfully

against American Indians in extending consumer credit. The difference in interest rates between the loans made to the bank's American Indian borrowers and those made to similarly situated white borrowers could not have occurred by chance and cannot be fully explained by factors unrelated to race, color, or national origin such as differences in the borrowers' creditworthiness or by differences in the size and duration of the loans.

11. The bank has subjected its American Indian customers to terms and conditions for general consumer loans that resulted in those customers paying more for their loans than similarly situated white customers. On information and belief, all persons subjected to this disparate treatment reside in the state of South Dakota.

12. The bank's policies and practices, as alleged herein, constitute:

- a. discrimination against applicants with respect to credit transactions, on the basis of race, color, or national origin, in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1); and
- b. discrimination on the basis of race, color, or national origin in the terms or conditions of residential real estate-related transactions in violation of Section 805 of the Fair Housing Act, 42 U.S.C. § 3605(a).

13. The bank's policies and practices, as alleged herein, constitute:

- a. a pattern or practice of resistance to the full enjoyment of rights secured by the Equal Credit Opportunity Act, as amended, 15 U.S.C. §§ 1691-1691f;
- b. a pattern or practice of resistance to the full enjoyment of rights secured by the Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619; and
- c. a denial to a group of persons of rights granted by Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619, that raises an issue of general public importance.

14. Persons who have been victims of the bank's discriminatory policies and practices as alleged herein are aggrieved persons under the Equal Credit Opportunity Act and the Fair Housing Act and have suffered injury and damages as a result of the bank's conduct.

15. The discriminatory policies and practices of the bank as described herein were, and are, intentional and willful, and have been implemented with reckless disregard for the rights of American Indian persons.

WHEREFORE, the United States prays that the Court enter an ORDER that:

(1) Declares that the policies and practices of the bank constitute a violation of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f and Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619;

(2) Enjoins the bank, its agents, employees and all other persons in active concert or participation with the bank, from discriminating on account of race, color, or national origin in the making of the bank's consumer loans or in any other aspect of the bank's lending;

(3) Requires the bank to develop and submit to the Court for its approval a detailed plan that: (a) remedies the vestiges of the bank's discriminatory policies and practices; and (b) ensures that future American Indian applicants are treated in a nondiscriminatory manner that does not differ from the treatment afforded to white applicants for credit;

(4) Awards such damages as would fully compensate the victims of the bank's discriminatory policies and practices for the injuries caused by the bank;

(5) Awards punitive damages to the victims of the bank's discriminatory policies and practices; and

(6) Assesses a civil penalty against the bank, in order to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

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