

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FRED BERRY, JR. and HENRY :
IDA BERRY, :
 :
Plaintiffs, :
 : CIVIL ACTION NO.
v. :
 : 1:10-CV-03259-MHS
BENEFICIAL MORTGAGE CO. OF :
GEORGIA, and BENEFICIAL :
FINANCIAL, INC., :
 :
Defendants. :
 :

ORDER

Presently before the Court is the Magistrate Judge's Report and Recommendation ("R&R"). Defendants filed objections to the R&R, and plaintiffs filed a response to defendants' objections.

Plaintiffs filed an amended complaint alleging violations of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq., including 12 C.F.R. § 226.1 et seq., and the Georgia Fair Lending Act ("GFLA"), O.C.G.A. § 7-6A-1 et seq., against defendants. Defendants moved to dismiss the complaint in its


entirety with prejudice. The R&R recommends denying defendants' motion to dismiss.

A district judge has broad discretion to accept, reject, or modify a magistrate judge's proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 680 (1980). After a de novo review, the Court finds that the R&R is correct and that defendants' objections lack merit.

Additionally, in their response to defendants' objections, plaintiffs explain that Magistrate Judge Johnson's logic in the R&R implies that a plaintiff must not allege an ability to tender in order to state a claim for TILA rescission, even though Magistrate Judge Johnson did not explicitly say this. Plaintiffs request that the Court explicitly state as much. The Court has already found that the R&R is correct, and the Court notes further that the R&R is thorough and well reasoned and written. The Court denies plaintiffs' request to add explicit language to the R&R because if Magistrate Judge Johnson intended to include this language, he could have done so.

Accordingly, the Court **OVERRULES** defendants' objections [#20]; **ADOPTS** the Magistrate Judge's R&R [#18]; and **DENIES** defendants' motion to dismiss [#15].

IT IS SO ORDERED, this 27 day of June, 2011.



Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia