

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>COMPLAINT</b>
	)	
SOUTHPORT BANK,	)	
	)	Case No. 13-C-1086
Defendant.	)	
	)	
	)	
_____	)	

Plaintiff, United States of America, alleges:

**INTRODUCTION**

1. The United States brings this action against Southport Bank of Kenosha, Wisconsin (“Southport” or “the bank”) for discriminating against African-American and Hispanic borrowers in its residential mortgage lending. The action to enforce the Fair Housing Act, 42 U.S.C. §§ 3601-3619 (“FHA”) and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (“ECOA”) is brought to remedy the discrimination based on race and national origin that Southport engaged in from 2007 to 2008 in its wholesale mortgage lending program.

2. In 2007 and 2008, Southport charged hundreds of African-American and Hispanic wholesale borrowers higher fees than non-Hispanic white (“white”) borrowers, not as a result of their creditworthiness or other objective criteria related to borrower risk, but because of their race and national origin.

3. It was Southport’s business practice to allow its mortgage brokers to vary their fees and thus alter the price set based on a borrower’s objective credit-related factors. This

subjective and unsupervised pricing discretion resulted in African-American and Hispanic borrowers paying more than white borrowers for home mortgage loans.

4. As a result of the bank's discriminatory practices, an African-American or Hispanic borrower paid, on average, thousands of dollars more for a Southport loan.

5. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345, 42 U.S.C. § 3614, and 15 U.S.C. § 1691e(h). Venue is appropriate pursuant to 28 U.S.C. § 1391.

### **PARTIES**

6. Southport is headquartered in the City of Kenosha, Wisconsin. In 2007 and 2008, 96% of the bank's home mortgage loans were made to borrowers in two Metropolitan Statistical Areas, Chicago-Naperville-Joliet and Milwaukee-Waukesha. Southport has two branches in Kenosha and a third in the Kenosha suburb of Salem. The bank is subject to the supervision of the Federal Deposit Insurance Corporation ("FDIC").

7. Southport is subject to the federal laws governing fair lending, including the FHA and ECOA and their respective implementing regulations, the fair housing regulations of the Department of Housing and Urban Development, 24 C.F.R. § 100.1, et seq., and Regulation B of the Consumer Financial Protection Bureau, 12 C.F.R. § 1002.1, et seq. The FHA and ECOA prohibit financial institutions from discriminating on the basis of, *inter alia*, race and national origin in their mortgage lending practices.

8. Southport is a "creditor" within the meaning of section 702(e) of ECOA, 15 U.S.C. § 1691a(e), and is engaged in "residential real estate-related transactions" within the meaning of section 805 of the FHA, 42 U.S.C. § 3605. The bank also is subject to the Home Mortgage Disclosure Act ("HMDA"), 12 U.S.C. § 2803, which requires mortgage lenders to maintain data on the race and ethnicity of each borrower.

## FACTUAL ALLEGATIONS

9. The FDIC's regular statistical analyses of 2007 and 2008 HMDA data for Southport revealed substantial disparities in the amount paid by minority borrowers for wholesale mortgage loans. The agency determined through interviews with bank personnel that the bank permitted considerable discretion in compensation to wholesale brokers who delivered applications to the bank's mortgage lending division, ComCor Mortgage Company,<sup>1</sup> for origination.

10. Based on its analyses, the FDIC found reason to believe that Southport had engaged in a pattern or practice of discrimination by allowing wholesale brokers to charge African-American and Hispanic borrowers higher fees for home loans than white borrowers. On May 21, 2012, the FDIC referred the lending practices of Southport to the United States Department of Justice pursuant to 15 U.S.C. § 1691e(g). After receiving the FDIC's referral, the Department of Justice conducted its own analyses of HMDA data supplemented with information provided by the bank.

11. Wholesale loans, originated by more than 150 brokers, accounted for approximately 80 percent of Southport's home mortgage loans<sup>2</sup> in 2007 and 2008. During that period, the relationship of the bank with its brokers was governed by a Broker Agreement, which provided that the broker would submit applications for home mortgage loans to ComCor.

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<sup>1</sup> In September 2008, the bank began to wind down its mortgage lending activities and after November of that year made virtually no new home mortgage loans. On December 31, 2008, Southport closed ComCor. The bank does not currently originate mortgage loans.

<sup>2</sup> For purposes of this Complaint, and consistent with HMDA, the term "home mortgage loan" or "home loan" refers to loans originated for the purchase or refinance of conventional, first-lien, owner-occupied, one-to-four family homes.

12. Southport's policies and practices established a two-step process for the pricing of wholesale mortgage loans. First, the bank used daily rate sheets that it shared with brokers to negotiate interest rates with potential borrowers. In addition to establishing the range of rates for each loan product, Southport also set the corresponding yield spread premium (YSP) it would pay brokers.<sup>3</sup>

13. The bank's second step of pricing wholesale mortgage loans authorized mortgage brokers to impose subjective additional charges on applicants unrelated to their credit risk characteristics. Mortgage brokers who supplied Southport with wholesale loans were compensated in two ways: through YSPs and through direct fees paid by the borrower to the broker.

14. Southport did not provide brokers with pricing guidelines or procedures. Mortgage brokers exercised the fee pricing discretion Southport gave them without being held to any objective credit standards on any loan application they brought to the bank. The bank affirmed or ratified these discretionary fee pricing decisions for all the brokered loans it originated and funded. In addition, Southport did not conduct any type of broker monitoring to determine whether there were disparities between the total fees charged to minority and white borrowers.

15. Under the Broker Agreement, Southport retained sole discretion to approve or reject any application submitted by a broker.

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<sup>3</sup> A YSP is "a payment by a lender to a broker based on the extent to which the interest rate on the loan exceeds a base or 'par' rate. The lender's payment of a [YSP] to the broker, and the broker's imposition of a higher interest rate are unrelated to the borrower's creditworthiness." *Ware v. Indymac Bank, FSB*, 534 F. Supp. 2d 835, 839 (N.D. Ill. 2008).

16. For each loan originated by Southport, information about each borrower's race and national origin and the amounts and types of broker fees paid was available to and reasonably should have been known by the bank prior to the approval and funding of the loan. Southport was required to collect, maintain, and report data with respect to certain loan terms and borrower information for residential loans, including the race and national origin of each wholesale residential loan borrower, pursuant to HMDA, 12 U.S.C. § 2803.

17. In 2007, Southport's African-American home mortgage customers were charged total broker fees that, on average, were 43 basis points higher for home purchase loans and 134 basis points higher for refinance loans as a percentage of the loan amount than the total broker fees charged to white customers. In 2008, the average disparities were 119 and 116 basis points, respectively. These disparities are statistically significant and are not based on borrowers' individual credit risk characteristics.

18. These disparities in total broker fees mean, for example, that in 2007, an African-American customer borrowing \$166,654<sup>4</sup> for a home purchase loan paid an average of \$717 more in total broker fees than white customers. In 2008, an African-American customer borrowing \$200,308 for a home purchase loan paid an average of \$2,384 more than white customers. For refinance loans in 2007, Southport charged its African-American customers borrowing \$171,000 for a refinance loan an average of \$2,291 more in total broker fees than white customers. In 2008, Southport charged its African-American customers borrowing \$195,804 for a refinance loan an average of \$2,271 more than white borrowers.

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<sup>4</sup> The examples cited in Paragraphs 18 and 20 as to the amounts overpaid by minority borrowers use the average home loan amounts that the bank originated to either African-American or Hispanic borrowers for home purchase or refinance loans in 2007 and 2008.

19. In 2007, Hispanic home mortgage customers were charged total broker fees that, on average, were 61 basis points higher for home purchase loans and 64 basis points higher for refinance loans than the total fees charged to white customers. In 2008, the average disparities rose to 78 and 82 basis points, respectively. These disparities are also statistically significant and are not based on borrowers' individual credit risk characteristics.

20. These disparities in total broker fees mean, for example, that in 2007, a Hispanic customer borrowing \$205,152 for a home purchase loan paid an average of \$1,251 more than white customers. In 2008, a Hispanic customer borrowing \$211,600 for a home purchase loan paid an average of \$1,650 more than white customers. For refinance loans in 2007, Southport charged its Hispanic customers borrowing \$244,213 for a refinance loan an average of \$1,562 more in total broker fees than white customers. In 2008, Southport charged its Hispanic customers borrowing \$188,509 for a refinance loan an average of \$1,546 more than white borrowers.

21. In setting the terms and conditions for its loans, Southport accounted for individual borrowers' differences in credit risk characteristics by utilizing rate sheets for each loan product that included an assessment of applicant creditworthiness. Mortgage brokers' deviations from the rate sheet prices, as measured by total broker fees, were separate from and not controlled by the credit risk adjustments already reflected in the rate sheet prices. The bank was aware of these total broker fees and charged them to borrowers in the loans it originated and funded. Accordingly, the race and national origin-based broker fee disparities described in Paragraphs 17 and 19 are not adjusted for borrowers' credit risk characteristics.

22. No Southport policy directed its mortgage brokers to consider a borrower's credit risk characteristics for a second time in deviating from the interest rate fixed by its rate sheets for

a specific loan product for a borrower with specified credit qualifications or in assessing direct fees. Nevertheless, statistical regression analyses of total broker fees that control for credit risk factors such as the loan amount, the specific month of origination, and the state where the property was located demonstrate a similar pattern of race and national origin pricing disparities, with the magnitude only slightly diminished from the disparities described above. Thus, accounting for credit risk factors a second time does not explain the race and national origin disparities with respect to the amount of fees paid by minority borrowers as opposed to white borrowers, even if those factors were relevant to the total broker fees not based on borrower risk.

23. The statistically significant race and national origin-based disparities described in Paragraphs 17 and 19 for African-American and Hispanic borrowers whom Southport determined had the credit characteristics to qualify for a home mortgage loan resulted from the implementation and the interaction of the bank's policies and practices that: (a) included pricing terms based on the unsupervised discretion of brokers in setting total broker fees not based on borrower risk in the terms and conditions of loans Southport originated after interest rates had been established by reference to credit risk characteristics; (b) did not require mortgage brokers to justify or document the reasons for the amount of total broker fees not based on borrower risk; and (c) failed to monitor for or remedy the effects of racial and ethnic disparities in those broker fees. Total broker fees specifically measure the pricing variation caused by the unsupervised pricing adjustments not based on borrower risk. Southport continued to use these discretionary wholesale broker fee pricing policies, to document and review inadequately the implementation of that pricing component, and to incentivize upward broker adjustments to the established interest rates in 2007 and 2008.

24. The higher total broker fees charged to African-American and Hispanic borrowers as compared to white borrowers were a result of Southport's policy and practice of ratifying the unsupervised discretion of its brokers in the setting of their fees, and cannot be fully explained by factors unrelated to race or national origin. This policy and practice is not justified by business necessity or legitimate business interests.

**FAIR HOUSING ACT AND EQUAL CREDIT OPPORTUNITY ACT VIOLATIONS**

25. Southport's actions, policies, and practices, as alleged herein, constituted:

a. Discrimination on the basis of race or national origin in making available residential real estate-related transactions in violation of the FHA, 42 U.S.C. § 3605(a);

b. Discrimination on the basis of race or national origin in the terms, conditions, or privileges of sale of a dwelling in violation of the FHA, 42 U.S.C. § 3604(b); and

c. Discrimination against applicants with respect to credit transactions on the basis of race or national origin in violation of ECOA, 15 U.S.C. § 1691(a)(1).

26. Southport's actions, policies, and practices, as alleged herein, constituted:

a. A pattern or practice of resistance to the full enjoyment of rights secured by the FHA, 42 U.S.C. §§ 3601 et seq., and ECOA, 15 U.S.C. § 1691e(h); and

b. A denial of rights granted by the FHA to a group of persons that raises an issue of general public importance.

27. Persons who have been victims of Southport's discriminatory actions, policies, and practices are aggrieved persons as defined in the FHA, 42 U.S.C. § 3602(i), and as described in ECOA, 15 U.S.C. § 1691(e)(i), and have suffered injury and damages as a result of Southport's violation of both the FHA and ECOA, as described herein.

28. Southport's pattern or practice of discrimination was intentional and willful, and was implemented with reckless disregard for the rights of African-American and Hispanic borrowers.

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

(1) Declares that the policies and practices of the Defendant constitute a violation of the FHA, 42 U.S.C. §§ 3601-3619, and ECOA, 15 U.S.C. §§ 1691-1691f;

(2) Enjoins Defendant, its agents, employees, and successors, and all other persons in active concert or participation with Defendant, from:

(A) Discriminating on account of race or national origin in any aspect of its lending business practices;

(B) Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Defendant's unlawful practices to the position they would be in but for the discriminatory conduct;

(C) Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Defendant's unlawful practices, and providing policies and procedures to ensure all segments of Defendant's market areas are served without regard to prohibited characteristics;

(3) Awards monetary damages to all the victims of Defendant's discriminatory policies and practices for the injuries caused by the Defendant, pursuant to 42 U.S.C. § 3614(d)(1)(B) and 15 U.S.C. § 1691e(h); and

(4) Assesses a civil penalty against the Defendant in an amount authorized by 42 U.S.C. § 3614(d)(1)(C), in order to vindicate the public interest.

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

Dated: September 26, 2013

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