

1 KENNETH C. ANDERSON
2 PATRICIA J. BERELSON
3 STEVEN J. GORDON
4 U.S. Department of Justice
5 Antitrust Division
6 10th & Pennsylvania Avenue, N.W.
7 Room 7621
8 Washington D. C. 20530
9 (202) 739- 2220

10 UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,)

13 Plaintiff,)

14 v.)

15 FREMONT BANK,)

16 Defendant.)

Civil Action No.

C-76-1347-LHB

Relief Sought:

Filed: June 30, 1976

17 COMPLAINT

18 The United States of America, plaintiff, by its
19 attorneys, acting under the direction of the Attorney General
20 of the United States, brings this civil action to obtain
21 equitable relief against the above-named defendant, and
22 complains and alleges as follows:

23 I.

24 JURISDICTION AND VENUE

25 1. This Complaint is filed and this action is
26 instituted under Section 4 of the Act of Congress of July 2,
27 1890, as amended, 15 U.S.C. §4, commonly known as the Sherman
28 Act, in order to prevent and restrain the continuing violation
29 by the defendant as hereinafter alleged of Section 1 of the
30 Sherman Act, 15 U.S.C. §1.

31 2. Defendant Fremont Bank maintains offices, transacts
32 business and is found within the Northern District of
33 California.

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II.

DEFINITIONS

3. As used herein:

(a) "mortgages" means long-term loans for the purchase of single-family residences, the loans to be secured by the properties purchased;

(b) "GNMA" means the Government National Mortgage Association, an agency of the federal government, created to subsidize mortgages for residential buildings;

(c) "GNMA mortgages" means low-interest mortgages, subsidized by GNMA, for the purchase of single-family homes;

(d) "lender" means commercial banks, mortgage brokers, savings and loan associations, and others authorized by GNMA to originate loans under its subsidized mortgage program;

(e) "take-out commitment" means a promise by a lending institution to a builder to set aside a specified amount of funds which can be used at a later date by the builder's customers in financing their homes. Take-out commitments are made for both GNMA mortgages and conventional mortgages;

(f) "commitment fee" means a fee charged for the take-out commitment to the builder by the lender;

(g) "FNMA" means the Federal National Mortgage Association, a publicly-held corporation, that offers a secondary market for the purchase and sale of mortgages; and

(h) "FHLMC" means the Federal Home Loan Mortgage Corporation, a government corporation, that offers a secondary market for the purchase and sale of mortgages.

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III.

THE DEFENDANT

4. Fremont Bank is hereby made a defendant herein. Fremont Bank is wholly-owned by Fremont Bancorporation, a California corporation. Fremont is a state-chartered commercial bank and has two offices in Alameda County, California. Fremont is, among other things, a lender.

IV.

TRADE AND COMMERCE

5. During the early 1970's mortgages for single-family residences were either not available or were available only at high interest rates ranging between 9 and 10 1/2 percent. The housing industry was in a depressed state. The Congress responded by passing the Emergency Home Purchase Act of 1974 (12 U.S.C. 1723e) a central purpose of which was to authorize the Secretary of Housing and Urban Development to make available low interest home mortgage money whenever the Secretary deemed the economic circumstances to warrant such action. A 1975 amendment (12 U.S.C. 1723e §206) authorized the Secretary to make available a maximum of \$10 billion in mortgage money at any given time. Mortgages under this program have a maximum interest rate of 7 1/2 percent.

6. The Act provides that the Secretary of Housing and Urban Development shall delegate the overall administration and policy direction of the emergency mortgage program to GNMA. GNMA distributes the mortgage funds to lenders through FNMA and FHLMC.

7. Each participating lender receives an allocation of GNMA mortgage money. A builder will then request that the lender commit a portion of its allocation of this money to his proposed project. The builder, in turn, will be able to guarantee that qualifying purchasers will be able to finance

1 the purchase of the builder's homes at an interest rate
2 considerably below the prevailing market rate for conventional
3 mortgages. Thus, this take-out commitment of GNMA mortgage
4 money is valuable to the builder as it makes his homes more
5 attractive to home buyers.

6 8. For this take-out commitment, the lender can charge
7 the builder a commitment fee of a maximum of 1 percent of
8 the amount of the commitment. This commitment fee is then
9 remitted by the lender to GNMA.

10 9. In July, 1975, \$2 billion of GNMA mortgage funds
11 were released for distribution to lenders. The defendant
12 received an allocation of \$2,374,000. The defendant committed
13 its entire allocation of these funds to builders in Northern
14 California and it used various instrumentalities of interstate
15 communications systems in doing so. Documentation concerning
16 the mortgages and the commitment fees received from the
17 builders by the defendant were forwarded in interstate
18 commerce to FHLMC or FNMA in Washington, D.C. Mortgages held
19 by the defendant under this program were sold and forwarded
20 from California in interstate commerce to FHLMC or FNMA.
21 Thus, the allocation and commitment of GNMA mortgage funds,
22 the fees for such commitments, and the GNMA mortgages them-
23 selves are in interstate commerce.

24 10. Building materials used by builders are shipped
25 in interstate commerce in substantial quantities. The avail-
26 ability of low interest GNMA mortgage funds has a direct
27 influence on the decision of a builder to build houses, since
28 it increases the saleability of these houses. Thus,
29 allocation and commitment of GNMA mortgage funds and the
30 terms under which such allocation and commitments are made
31 have a direct and substantial effect on homebuilding and
32 the interstate flow of building materials.

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V.

VIOLATION ALLEGED

11. Beginning in July, 1975, the exact date being unknown to the plaintiff, and continuing thereafter up to the date of the filing of this complaint, the defendant has entered into contracts with builders for the commitment of GNMA mortgage funds which have been and are in unreasonable restraint of the above-described interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1). Said violation is continuing and will continue unless the relief hereinafter prayed for is granted.

12. Under the terms of these contracts, the defendant would commit GNMA mortgage funds to the builders on the condition that the builder purchase a take-out commitment for conventional mortgages from the defendant. The commitment fee paid for the take-out commitment on conventional mortgages is kept by the lender.

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VI.

EFFECTS

13. The aforesaid violation has had, among others, the following effects:

(a) builders who enter such contracts are restrained from obtaining conventional take-out commitments from other lenders; and

(b) lenders which compete with defendant are deprived of the opportunity to issue conventional take-out commitments to such builders.

PRAYER

WHEREFORE, plaintiff prays:

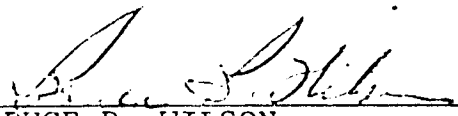
1. That the Court adjudge and decree that the defendant has entered into contracts, agreements, or understandings in interstate trade and commerce, as hereinabove alleged, in

1 violation of Section 1 of the Sherman Act.

2 2. That the corporate defendant, its successors,
3 assignees, transferees, directors, officers, agents, employees,
4 representatives, and all other persons or corporations acting
5 or claiming to act on its behalf, be enjoined and restrained
6 from, in any manner, directly or indirectly, continuing,
7 maintaining, or renewing the aforesaid violations, and from
8 engaging in other contracts, agreements, understandings, or
9 practices which condition the availability of GNMA mortgage
10 commitments upon the builder's agreement to obtain his
11 conventional take-out commitments from the defendant.

12 3. That the plaintiff have such other and further
13 relief as the Court may deem just and proper.

14 4. That the plaintiff recover the cost of this suit.

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16 _____
17 BRUCE B. WILSON
18 Acting Assistant Attorney General

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20 PATRICIA J. BERELSON

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23 WILLIAM E. SWOPE

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25 STEVEN J. GORDON

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27 Justice

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30 Attorneys, Department of Justice

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32 U. S. Attorney