

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) **Case No.: 3:16-cv-01148-J-34JBT**
 v.)
)
 FIRST FEDERAL BANK OF FLORIDA,)
)
 Defendant.)
 _____)

CONSENT ORDER

1. The United States filed this lawsuit on September 9, 2016, to enforce the provisions of the Fair Housing Act, 42 U.S.C. §§ 3601-3619 (“FHA”). This action is brought pursuant to 42 U.S.C. § 3612(o) on behalf of Melody and Shawn Parker and Jamie and Scott French.

2. The United States alleged that Defendant, First Federal Bank of Florida (“First Federal” or “Bank”), discriminated against the Parkers and the Frenches in making available, or in the terms or conditions of, a residential real estate-related transaction because of familial status, in violation of the Fair Housing Act, 42 U.S.C. § 3605(a). More specifically, the United States alleged that First Federal delayed the closing of home mortgage loans for which both the Parkers and the Frenches had been approved until Ms. Parker and Ms. French, both of whom were temporarily away from their jobs on maternity leave, returned to work and provided documentary proof of their return. Both Ms. Parker and Ms. French cut short their scheduled maternity leave to return to work earlier than planned in order to close on their loans. Defendant First Federal denies that Ms. Parker returned to work earlier than planned.

3. First Federal's loan file for the Parkers' mortgage application included the following information:

- (a) In response to an email informing First Federal that Ms. Parker was on maternity leave, First Federal's closing coordinator emailed: "I have just spoken with the underwriter and she [Ms. Parker] must be back at work in order to close", and added that the delay in closing would result in the expiration of the loan's interest rate lock.
- (b) A note dated July 23, 2013, states that the "file was originally stopped because [Ms. Parker] was on maternity leave" and that her required pre-closing employment verification cannot be completed until after her return to work.
- (c) Another note dated July 19, 2013, states, in pertinent part: "UW [underwriting] said even though she [Ms. Parker] is on maternaty (sic) leave . . . they still cannot close until she is back at work."

4. Defendant First Federal claims that it was not informed that Ms. Parker was on maternity leave at the time the United States Department of Agriculture ("USDA") issued a conditional commitment to refinance the Parkers' existing loan. Defendant First Federal further claims that it relied on the USDA Annual Income Guidelines for verifying income in effect at the time of the Parkers' loan application. Defendant First Federal claims that it was during the income verification process that it discovered that Ms. Parker was on leave.

5. First Federal's loan file for the Frenches' mortgage application included the following information:

- (a) In response to an email to QR Lending, a division of First Federal that was processing this loan application, stating that Ms. French was on maternity

leave, a QR representative sent an email on March 11, 2013, that Ms. French “will need to be back to work” and that the verification of employment form must show “she is back full-time. . . .”

(b) After QR Lending was told by email that Ms. French believed that she was being discriminated against because she was on maternity leave, a loan underwriter sent a conditions sheet setting out the requirements the Frenches needed to satisfy before the loan could close, that included submission of a “Paystub evidencing coborrower Jamie French is back to work. . . .”

6. Defendant First Federal claims that it was not informed Ms. French was on maternity leave at the time the Frenches mortgage application to refinance their existing loan was completed.

7. The parties stipulate that this Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o)(1). There has been no factual finding or adjudication with respect to any matter alleged by the United States. Although the Bank denies the allegations contained in the Complaint, to avoid the risks of contested litigation, the parties have voluntarily agreed, as indicated by the signatures below, to resolve the United States’ claims against First Federal without the necessity of a hearing on the merits.

Wherefore, it is ORDERED, ADJUDGED and DECREED:

8. Defendant First Federal and its agents, employees, and all other persons in active concert or participation with any of them who receive actual notice of this Order are hereby enjoined from engaging in any act or practice that discriminates on the basis of familial status in the making of, or in the terms and conditions of, any real estate-related transaction, in violation of the Fair Housing Act, 42 U.S.C. § 3605. This prohibition includes, but is not limited to, the adoption, performance, or implementation of any policy, practice, or act that results in unlawful

discrimination against an applicant on maternity or paternity leave in the taking, processing, underwriting, or closing of a submitted or potentially submitted residential mortgage loan application. More specifically, First Federal shall not require that an applicant on maternity or paternity leave have physically returned to work before a loan can close.

9. Within thirty (30) days of entry of this Order, First Federal shall submit to the United States for its review and non-objection a written policy with respect to the treatment of a residential mortgage loan applicant, including a co-applicant, who is on maternity or paternity leave at the time of application or starts such leave during the processing or underwriting of the loan application that is fully consistent with that currently found at §5303.6 of the Federal Home Loan Mortgage Corporation (Freddie Mac) Single-Family Seller/Service Guide or at §B3-3.1-09 of the Federal National Mortgage Association (Fannie Mae) Seller Guide. First Federal shall implement this policy not later than five (5) business days of the United States' non-objection. It shall apply this policy to all residential mortgage loan applications pending but not closed as of the date of entry of this Order as well as to all such applications submitted thereafter.

10. First Federal shall distribute a copy of this policy and this Order to all of its employees and agents who have any involvement in the taking, processing, or underwriting of residential real estate-related loan applications within five (5) days of the implementation of the policy. Each such employee or agent shall sign the certification attached as Attachment A hereto verifying that he or she has received and read this policy and Order and will comply with them. During the term of this Order, First Federal shall provide a copy of this policy to each new employee or agent who has any involvement in the taking, processing, or underwriting of residential real estate-related loan applications within five (5) days of his or her assuming that position and obtain the signed certification found at Attachment A.

11. Within thirty (30) days of the implementation of this policy, First Federal shall distribute written notice of this policy to all persons or entities who have acted as a broker with respect to residential real estate-related loans it originated within the previous six (6) months and to all new persons or entities who act in such a capacity during the term of this Order. First Federal shall retain a list of all persons or entities to which this notice was sent.

12. In the event that a governmental agency or entity that insures residential mortgage loans First Federal originates, or to which it sells residential mortgage loans it originates, changes its underwriting requirements in a manner that First Federal reasonably believes is inconsistent with the policy described in Paragraph 9 during the term of this Order, the Bank shall promptly notify counsel for the United States of that change and consult with counsel for the United States to discuss any necessary change to its policy that ensures its continued nondiscriminatory treatment of borrowers on temporary maternity or paternity leave.

13. Upon implementation of the policy described in Paragraph 9, First Federal shall implement a monitoring program designed to ensure compliance with the Order, including a process by which individuals can submit claims of unlawful discrimination. The program shall be designed to monitor its underwriting activities for compliance with the policy established in Paragraph 9 and for detection of any discrimination toward applicants related to maternity or paternity leave or becoming a parent.

14. Within ninety (90) days of the entry of this Order, First Federal shall provide fair lending training to its management officials and employees or agents who participate in processing, underwriting, and closing residential mortgage loan applications. This training shall provide to each participant training on the terms of the Order, the policies adopted pursuant to it, the requirements of the FHA, and his or her responsibilities under each. For the duration of the

Order, First Federal shall provide this fair lending training to newly-employed covered management officials and employees within fifteen (15) days of their assuming such positions. The training may be conducted by any means that allows the participant(s) to interact in real time with the individual(s) conducting the training (such as through a videoconference or a webinar). The content of the training program required by this Paragraph shall be approved in advance by the United States. Any expenses associated with this training program shall be borne by First Federal.

15. First Federal shall secure from each management official, employee, or agent specified in Paragraph 14 a signed statement acknowledging that he or she has completed this fair lending training. These statements shall be substantially in the form of Appendix B. During the term of this Order, each new management official or employee whose responsibilities include those set forth in the preceding Paragraph shall participate in this fair lending training and shall sign the acknowledgment form statement (Attachment B) within thirty (30) days of beginning his or her employment in that position.

16. Within ten (10) days of entry of this Order, First Federal shall issue a check payable to Melody and Shawn Parker in the amount of twenty thousand dollars (\$20,000.00) and a check payable to Jamie and Scott French in the amount of twenty-five thousand dollars (\$25,000.00) as compensation for their monetary losses and the emotional stress incurred by what they understood to be First Federal's requirement that Ms. Parker and Ms. French cut short their maternity leaves and return to work before it would close on their mortgage loan applications. The Bank shall send the checks to counsel for the United States, who shall send them to the named individuals after receipt of a signed release of claims in the form of

Attachment C. Counsel for the United States shall promptly provide the signed releases to counsel for First Federal.

17. During the term of this Order, First Federal shall preserve all records related to its obligations under and compliance with the terms of this Order, including, but not limited to, the following: (a) complete loan files, including emails and notes of conversations, of all applicants for residential mortgage loans who were on maternity/paternity leave at any time during the initial application, processing, underwriting, or closing of such a loan; (b) complete loan files, including emails and notes of conversations, of all applicants for residential mortgage loans who were on temporary or short-term disability leave at any time during the initial application, processing, underwriting, or closing of such a loan; (c) all signed copies of Attachments A and B; (d) the description and results of its monitoring program established pursuant to Paragraph 13; and (e) the list of persons and entities to which it sent its nondiscrimination policy pursuant to Paragraph 11.

18. Ninety (90) days after entry of this Order, First Federal shall submit to the United States copies of all the signed Attachments A and B and the description of its monitoring program. Six (6) months after entry of this Order, and every six (6) months thereafter for a total of three (3) years, First Federal shall submit to the United States any new signed Attachments A and B during the time period since the previous report and, electronically, complete loan files, including emails and notes of conversations, of all applicants for residential mortgage loans who were on maternity/paternity leave or any other kind of temporary or short-term disability leave at any time during the initial application, processing, underwriting, or closing of such a loan.

19. During the term of this Order, First Federal shall notify the United States of any complaint it learns of against it alleging discrimination in its residential mortgage lending

activities in violation of the FHA within fifteen (15) days of its receipt. This notice shall include a copy of the complaint together with the name of and contact information for the complainant. First Federal shall provide the United States any information it requests relating to the complaint, and it shall notify the United States with ten (10) days of any resolution of the complaint.

20. This Order shall expire three (3) months after submission of First Federal's final report – *i.e.*, three years and three months after entry thereof. Notwithstanding the foregoing, the Order may be extended further upon motion of the United States, for good cause shown.

21. Nothing in this Order shall prohibit First Federal's compliance with any currently or subsequently effective law, regulation, or order of a federal or state banking regulator with authority over the Bank that imposes additional obligations not inconsistent with this Order on the Bank.

22. The parties agree that, as of the entry of this Order, litigation is not "reasonably foreseeable" concerning the matters described in the Order. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in the Order, the party is no longer required to maintain such a litigation hold.

23. In the event that any disputes arise about the interpretation of or compliance with the terms of this Order, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. If the United States believes that Defendant has violated any provision of the Order, it will provide the Defendant written notice thereof and allow 30 days to resolve the alleged violation before presenting the matter to this Court. In the event of either a failure by Defendant to perform in a timely manner any act required by this Order or an act by Defendant in violation of any provision hereof, the United

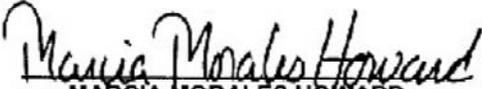
States may move this Court to impose any remedy authorized by law or equity, including attorneys' fees and costs.

24. The United States and Defendant shall bear their own costs and attorneys' fees associated with this litigation.

25. The Court will retain jurisdiction for the duration of this Order to enforce its terms.

26. The Clerk of the Court is directed to enter the Consent Order as the Judgment of the Court and close the file.

SO ORDERED, this 12th day of October, 2016.


MARCIA MORALES HOWARD
United States District Judge

The undersigned hereby apply for and consent to the entry of this Order:

For Plaintiff United States of America:

A. LEE BENTLEY, III
United States Attorney
Middle District of Florida

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

s/Yohance A. Pettis
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For Defendant First Federal Bank of Florida:

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ATTACHMENT A

Employee/Agent Acknowledgment

I acknowledge that on _____, I was provided copies of the Consent Order entered by the Court in *United States v. First Federal Bank of Florida*, Case No.: 3:16-cv-01148-J-34JBT (M.D. Fla.), and the loan policies developed pursuant thereto. I have read and understand these documents and have had my questions about these documents answered. I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

ATTACHMENT B

Employee/Agent Training Certification

I certify that on _____, I received training with respect to my responsibilities under the Consent Order entered by the Court in *United States v. First Federal Bank of Florida*, Case No.: 3:16-cv-01148-J-34JBT (M.D. Fla.), and the federal fair lending laws. I have had the opportunity to have my questions about them answered. I understand my legal responsibilities not to discriminate under the federal fair lending laws, including the Fair Housing Act, and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

ATTACHMENT C

Release – Jamie and Scott French

In consideration for the parties' agreement to the terms of the Consent Order entered in *United States v. First Federal Bank of Florida*, Case No.: 3:16-cv-01148-J-34JBT (M.D. Fla.), and the payment to us of \$25,000.00 pursuant to the Consent Order and effective upon that payment, we hereby release and forever discharge all claims, rights, remedies, and recoveries related to the allegations of housing discrimination on the basis of sex and familial status with respect to the closing of residential mortgage loans, specifically including our 2013 mortgage loan, at issue in the litigation referenced above, and release and forever discharge all claims, rights, remedies, and recoveries arising from housing discrimination on the basis of sex and familial status, known and unknown, up to and including the date of execution of this release.

We understand that this releases those claims, rights, remedies, and recoveries against First Federal Bank of Florida and against any and all related entities, parents, predecessors, successors, subsidiaries, and affiliates, and against any and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, successors in interest, or assigns.

Executed this ____ day of _____, 2016.

Signature

Signature

Print Name

Print Name

ATTACHMENT C

Release – Melody and Shawn Parker

In consideration for the parties' agreement to the terms of the Consent Order entered in *United States v. First Federal Bank of Florida*, Case No.: 3:16-cv-01148-J-34JBT (M.D. Fla.), and the payment to us of \$20,000.00 pursuant to the Consent Order and effective upon that payment, we hereby release and forever discharge all claims, rights, remedies, and recoveries related to the allegations of housing discrimination on the basis of sex and familial status with respect to the closing of residential mortgage loans, specifically including our 2013 mortgage loan, at issue in the litigation referenced above, and release and forever discharge all claims, rights, remedies, and recoveries arising from housing discrimination on the basis of sex and familial status, known and unknown, up to and including the date of execution of this release.

We understand that this releases those claims, rights, remedies, and recoveries against First Federal Bank of Florida and against any and all related entities, parents, predecessors, successors, subsidiaries, and affiliates, and against any and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, successors in interest, or assigns.

Executed this ____ day of _____, 2016.

Signature

Signature

Print Name

Print Name