

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) CIVIL ACTION NO.
)
v.)
)
EVOLVE BANK & TRUST,)
)
Defendant.)
)

COMPLAINT

The United States of America alleges:

1. This action is brought by the United States to enforce the provisions of the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f.

Jurisdiction and Venue

2. This Court has jurisdiction over this action under 28 U.S.C. § 1345, 42 U.S.C. § 3614(a) and 15 U.S.C. § 1691(h).
3. Venue is proper pursuant to 28 U.S.C. § 1391 because the principal place of business of the Defendant is in the Western District of Tennessee.

Factual and Legal Background

4. Defendant Evolve Bank & Trust (“Evolve”) is a bank headquartered at 6070 Poplar Avenue, Memphis, Tennessee 38119. Evolve is wholly owned by Evolve Bancorp Inc. Evolve is engaged in the financing of residential housing.
5. Social Security Disability Insurance (“SSDI”) is a monthly benefit for people who have worked in the past and paid Social Security taxes. SSDI benefits may be paid to people who are unable to work for a year or more because of their disability.
6. Social Security benefits, including SSDI, are “public assistance benefits” for purposes of Equal Credit Opportunity Act and its implementing regulation, Regulation B, 12 C.F.R. § 202.1, et seq.
7. All recipients of SSDI have been determined to have a disability within the meaning of 42 U.S.C. § 423(d)(1) by the Social Security Administration.
8. Before March 2013, Evolve did not provide its employees that are involved in lending with written policies related to documentation of disability income.
9. Evolve’s written policy states that it utilizes industry standard Automated Underwriting Systems, including those provided by Fannie Mae.
10. The Fannie Mae 2010 Selling Guide and 2011 Selling Guide state that “[t]he lender must document the likelihood of continued receipt of income for at least three years,” but also says that SSDI benefits do not have defined expiration dates and therefore the lender may conclude that the income is likely to continue, and the lender is not expected to require additional documentation from the borrower.

11. Nothing in any of the Automated Underwriting Systems directs the lender to require a letter from a doctor or information about an individual's disability to document disability income.
12. From at least January 1, 2008, until March 29, 2013, it was the policy and practice of Evolve to require some borrowers with a disability to document the continuation of SSDI income or other disability income by providing a letter from a doctor or other information about the borrower's disability. Most if not all of these applicants have a disability as defined by the Fair Housing Act, 42 U.S.C. § 3602(h).
13. Evolve did not require borrowers with wage or salary income to document the continuation of income.
14. In some cases, if a borrower with a disability refused to provide a letter from a doctor or other information about the borrower's disability, or was unable to provide a letter from a doctor or other information about the borrower's disability, Evolve denied the loan application.
15. The requirement that borrowers with a disability provide a letter from a doctor or other information about the borrower's disability to show that income will continue is an intrusive and burdensome requirement that Evolve imposed on borrowers with a disability and did not impose on other borrowers.
16. As a result of the practice of requiring a letter from a doctor or other information about the borrower's disability, mortgage applicants with a disability sustained monetary damages.

17. From at least January 1, 2008, until March 29, 2013, Evolve did not properly train its underwriters, loan officers, and other employees regarding appropriate documentation for SSDI income and other disability income.
18. Evolve is subject to the federal laws governing fair lending, including the Fair Housing Act and the Equal Credit Opportunity Act 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 Board of Governors of the Federal Reserve, 12 C.F.R. § 202.1, et seq. The Fair Housing Act prohibits financial institutions and others from, *inter alia*, discriminating on the basis of disability in their home-mortgage lending practices. The Equal Credit Opportunity Act prohibits financial institutions and others from, *inter alia*, discriminating on the basis of receipt of public assistance in their home-mortgage lending practices.
19. As described herein, Evolve's practice of requiring mortgage applicants who received SSDI income and other disability income to provide a letter from a doctor or other information about the borrower's disability constitutes discrimination on the bases of disability and receipt of public assistance. Evolve's practice was intended to deny and discourage, or had the effect of denying or discouraging, equal opportunity to persons who have disabilities and are receiving SSDI or other disability income, to obtain lending services.

COUNT I
(Discrimination on the Basis of Disability)

20. Defendant's actions as alleged herein constitute:

- a. Discrimination in the sale of, or otherwise making unavailable or denying, dwellings to buyers because of disability, in violation of the Fair Housing Act, 42 U.S.C. § 3604(f)(1);
- b. Discrimination in the terms, conditions, or privileges of the sale of a dwelling, or in the provision of services in connection with such a dwelling, because of disability in violation of the Fair Housing Act, 42 U.S.C. § 3604 (f)(2);
- c. Discrimination in making available a loan for the purchase of a dwelling, or in the terms or conditions of such a loan, based on disability in violation of the Fair Housing Act, 42 U.S.C. § 3605;
- d. Making any inquiry to determine whether an applicant has a disability or making inquiry as to the nature or severity of a disability of such a person in violation of 24 C.F.R. § 100.202(c); and
- e. Using different policies, practices or procedures in evaluating or in determining creditworthiness on the basis of disability in violation of 24 C.F.R. § 130(b)(1).

COUNT II
(Discrimination on the Basis of Receipt of Public Assistance)

21. Defendant's actions as alleged herein constitute:
 - a. Discrimination with respect to credit transactions, on the basis of receipt of public assistance, in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(2); and
 - b. Discrimination against applicants with respect to credit transactions by taking receipt of public assistance into account in evaluating creditworthiness, in

violation of the Equal Credit Opportunity Act, Regulation B, 12 C.F.R. 202.4, 202.5, and 202.6.

COUNT III
(Pattern or Practice of Discrimination)

22. Defendant's actions as alleged herein constitute:
 - a. A pattern or practice of resistance to the full enjoyment of rights secured by the Fair Housing Act, in violation of 42 U.S.C. § 3614(a); and/or
 - b. A pattern or practice of violating the Equal Credit Opportunity Act, 15 U.S.C. § 1691e(h); and/or
 - c. A denial of rights granted by the Fair Housing Act to a group of persons that raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).
23. Persons who have been victims of Evolve's discriminatory policies and practices are aggrieved persons as defined in 42 U.S.C. § 3602(i) and as described in 15 U.S.C. § 1691(e)(i), and have suffered damages as a result of Evolve's conduct in violation of both the Fair Housing and the Equal Credit Opportunity Acts, as described herein.

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

1. Declares that the discriminatory practices of Defendant, as set forth above, violate subsections 804(c), 804(f)(1)-(2), and 805 of the Fair Housing Act, 42 U.S.C. §§ 3604(c), 3604 (f)(1)-(f)(2), 3605, and the implementing regulations of the Fair Housing Act, 24 C.F.R. §§ 100.202(c), and 130(b)(1);
2. Declares that the discriminatory lending practices of Defendant, as set forth above,

violate the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(2), and Regulation B, 12 C.F.R. §§ 202.4, 202.5, and 202.6;

3. Enjoins Defendant, its agents, employees, and successors, and all other persons in active concert or participation with any of them, from:
 - a. discriminating because of disability or receipt of public assistance against any person in any aspect of home mortgage lending;
 - b. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, aggrieved persons to the position in which they would have been but for Defendant's unlawful conduct;
 - c. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any conduct that violates the Fair Housing Act or the Equal Credit Opportunity Act in the future and to eliminate, to the extent practicable, the effects of Defendant's unlawful conduct; and
4. Awards such monetary damages as would fully compensate aggrieved persons for injuries caused by Defendant's discriminatory conduct; and
5. Awards any additional relief as may be appropriate pursuant to 42 U.S.C. § 3612(g)(3).

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

Dated: January 19, 2016

LORETTA LYNCH
Attorney General

EDWARD L. STANTON, III
United States Attorney
Western District of Tennessee

s/ Vanita Gupta
VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

By: s/ Gary A. Vanasek
GARY A. VANASEK (BPR 4675)
Assistant United States Attorney
Western District of Tennessee
Suite 800
167 North Main Street
Memphis, TN 38103

Telephone: (901) 544-4231
Facsimile: (901) 544-4230
Email: gary.vanasek@usdoj.gov

s/Lucy G. Carlson
LUCY G. CARLSON (D.C. Bar 462404)
Acting Deputy Chief
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW – G St.
Northwest Building, 7th Floor
Washington, DC 20530

Telephone: (202) 305-0017
Facsimile: (202) 514-1116
Email: lucy.carlson@usdoj.gov