

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CHEVY CHASE BANK, F.S.B.,)
 through its Successor in Interest,)
)
 Defendant.)
 _____)

CIVIL ACTION NO. 1:13-CV-1214

SETTLEMENT AGREEMENT AND ORDER

I. INTRODUCTION

This Settlement Agreement and Order (“Agreement”) resolves the claims in the United States’ Complaint that, during and between 2006 and 2009, Chevy Chase Bank, F.S.B. (“Chevy Chase Bank”) engaged in a pattern or practice of discrimination on the basis of race and national origin in residential mortgage lending in violation of the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. §§ 1691-1691f, and the Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601-3619. In 2009, Chevy Chase Bank was acquired by Capital One, N.A. (“Successor”), which is the successor in interest to Chevy Chase Bank.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. The parties have entered into the Agreement to avoid the risks, expense, and burdens of litigation and to resolve voluntarily the claims in the United States’ Complaint.

II. BACKGROUND

In February 2009, the Office of the Comptroller of the Currency (“OCC”) conducted an analysis of Chevy Chase Bank’s home mortgage lending activity in connection with the sale of Chevy Chase Bank to Successor. As a result of its review, the OCC determined that it had reason to believe that Chevy Chase Bank had engaged in a pattern or practice of discrimination on the basis of race, color, and ethnicity, in violation of the FHA and the ECOA. Pursuant to 15 U.S.C. § 1691e(g), the OCC referred the matter to the United States Department of Justice on September 24, 2010.

In its Complaint, the United States alleges that between 2006 and 2009, Chevy Chase Bank engaged in a pattern or practice of discrimination on the basis of race and national origin in violation of both the FHA and the ECOA. Specifically, the United States claims that between 2006 and 2009, Chevy Chase Bank’s business practice allowed its employees who originated loans through its retail channel to vary a loan’s interest rate and other fees from the price initially set based on a borrower’s objective credit-related factors. The United States alleges that this subjective and unguided pricing discretion resulted in African-American and Hispanic borrowers paying more – not based on borrower risk – than White borrowers.

In addition, the United States claims that between 2006 and 2007, Chevy Chase Bank’s policies gave third party mortgage brokers that submitted loans to Chevy Chase Bank’s wholesale channel for origination the discretion to vary the interest rates, fees, and costs paid by borrowers. The United States alleges that these discretionary charges were not related to the borrower’s credit risk or objective qualifications, and that the discretion resulted in African-American and Hispanic borrowers who received loans through Chevy Chase Bank’s wholesale

lending channel paying higher interest rates, fees and costs than similarly-situated white borrowers.

Following its acquisition of Chevy Chase Bank, Successor voluntarily made payments to 279 Chevy Chase Bank borrowers to compensate them for overcharges that Successor had identified in connection with a review of Chevy Chase Bank's lending data.

The United States' claims against Chevy Chase Bank relate solely to loans originated by Chevy Chase Bank prior to Successor's acquisition of Chevy Chase Bank, and do not relate to any mortgage lending practices of Successor. Successor denies all of the allegations and claims as set forth in the United States' Complaint.

Successor has represented to the United States that Successor and its subsidiaries do not originate and price loans employing policies and procedures that the United States alleges resulted in the discriminatory practices at issue in the Complaint. The Agreement does not contain any injunctive measures with respect to the current operations of Successor or any of its subsidiaries.

III. REMEDIAL ORDER

1. The Effective Date of the Agreement will be the date on which it is approved and entered by the Court.
2. Successor will deposit in an interest-bearing escrow account the total sum of \$2,850,000 to compensate for monetary damages that borrowers nationwide who obtained a loan through Chevy Chase Bank may have suffered as a result of the alleged violations of the FHA and the ECOA (the "Settlement Fund"). Title to this account will specify that it is "for the benefit of affected borrowers pursuant to Agreement of the Court in United States v. Chevy Chase Bank, F.S.B." Successor will provide written verification of the deposit to the United

States within 5 days of the Effective Date of the Agreement. Any interest that accrues will become part of the Settlement Fund and be utilized and disposed of as set forth herein.

3. Within thirty days of the Effective Date of the Agreement, Successor shall enter into a contract retaining a Settlement Administrator (“Administrator”), subject to approval by the United States, to conduct the activities set forth in Paragraphs 5 through 10. Successor shall bear all costs and expenses of the Administrator. Successor’s contract with the Administrator shall require the Administrator to comply with the provisions of the Agreement as applicable to the Administrator.¹ The Administrator’s contract shall require the Administrator to work cooperatively with the United States in the conduct of its activities, including reporting regularly to and providing all reasonably requested information to the United States. The Administrator’s contract shall require the Administrator to comply with all confidentiality and privacy restrictions applicable to the party who supplied the information and data to the Administrator. The Administrator’s contract shall require the Administrator, as part of its operation, to establish cost-free means for affected borrowers to contact it, including an email address, a toll-free telephone number, and means for persons with disabilities to communicate effectively, including TTY. The Administrator’s contract shall require the Administrator to provide Spanish language translations by a certified translator of all documents sent to affected borrowers. The United States must be provided with translated documents at least 20 days before they are finalized if there are more than three documents being submitted for approval or pending approval at once,

¹ In the event that the United States has reason to believe that the Administrator is not materially complying with the terms of its contract with Successor, the United States and Successor shall meet and confer for the purpose of mutually agreeing upon a course of action to effect the Administrator’s material compliance with its contract with Successor. In the event that the United States and Successor are unable to agree upon a course of action to effect the Administrator’s material compliance with its contract with the Successor, the parties shall present the matter to the Court.

or 15 days before they are finalized if there are three or fewer documents, and must approve all translations. The Administrator's contract shall require the Administrator to provide Spanish language interpretations for telephone and email communications with affected borrowers, including Spanish language operators for the toll free telephone number. The Administrator will neither determine who is an affected borrower nor determine the amount of damage to be received by any affected borrower.

4. Within 30 days of the Effective Date of the Agreement, the United States shall provide to Successor a list of loans originated to African-American and Hispanic borrowers allegedly affected by the conduct alleged in the Complaint, and the initial estimate of the amount each allegedly affected borrower (hereinafter "Borrower") will receive from the Settlement Fund for each of the loans affected by the conduct alleged in the complaint, if all Borrowers choose to participate. The United States shall base these initial estimates on the loan fees and costs of the individual loans. No individual may request that the Court or the Administrator review the identification of Borrowers or the amount to be received.

5. Within 15 days after the United States provides the list of loans referenced above, Successor will provide to the United States and the Administrator the name, property address, mailing address, and Social Security number for each borrower on each listed loan. Such information and data shall be used by the United States and the Administrator only for the law enforcement purposes of implementing the Agreement. Successor shall supply the requested information that is within its control, or the control of any affiliated entity. To the extent that the requested data is not within the control of those parties, Successor shall supply any data within the control of those parties that identifies other parties that may have the requested data.

6. The Administrator's contract shall require the Administrator to adopt effective methods, as have been agreed to by the parties, to locate each identified Borrower, to inform each identified Borrower of his or her right to receive a payment from the Settlement Fund no smaller than the amount calculated by the United States pursuant to Paragraph 4, and to confirm his or her identity and willingness to release his or her individual claims in order to receive a payment from the Settlement Fund. The Administrator's contract shall require the Administrator to complete this responsibility and provide to the United States a list of Borrowers who have confirmed their identities and willingness to release individual claims within a period of 90 days from the date the Successor provides the information described in Paragraph 5, subject to an extension of time as provided by Paragraph 18.

7. For each Borrower who confirms his or her identity and willingness to release individual claims pursuant to Paragraph 6, the United States shall specify the final amount each such Borrower shall receive from the Settlement Fund ("Final Payment Amount"). The United States shall provide the list of Final Payment Amounts to the Administrator no later than 30 days after the Administrator's deadline for locating Borrowers in Paragraph 6 has passed. Final Payment Amounts are to be paid on a per loan basis; if there is a borrower and co-borrower, they will share the compensation equally. No individual may request a review by the Court or the Administrator of the Final Payment Amounts. The parties agree that the total amount of the Settlement Fund shall not be altered based on the number of Borrowers who confirm their identity and willingness to release individual claims pursuant to Paragraph 6.

8. The Administrator's contract shall require the Administrator to send a release, including the language set forth in Appendix A, to each Borrower (hereafter, "Release"). Each

Release shall list the Final Payment Amount. Any Borrower may decline all benefits from the Agreement, including a payment from the Settlement Fund, by not returning the Release. The Agreement does not affect the legal rights of any Borrower who does not return the Release or any individual not included on the list of Borrowers. The parties agree that the amount of the Settlement Fund shall not be altered based on the number of Borrowers who return a Release.

9. The Administrator's contract shall require the Administrator to deliver payment to each Borrower of the Final Payment Amount within 10 days of its receipt of a validly executed Release from the Borrower. For loans with a borrower and a co-borrower, or more than one co-borrower, each borrower and co-borrower must sign the Release in order for the Release to be valid; the Release may be separately signed in counterparts.

10. The Administrator's contract shall require the Administrator to set forth deadlines, subject to approval of the United States, so that the compensation is distributed and checks are presented for payment or become void prior to the date that is 6 months from the date the United States provides the Final Payment Amount to the Administrator in accordance with Paragraph 7.

11. The details in administration of the Settlement Fund set forth in Paragraphs 3-10 can be modified by agreement of the parties and without further Court approval. Payments from the Settlement Fund to Borrowers shall be subject to the following conditions:

(a) No Borrower shall be paid any amount from the Settlement Fund until he or she has executed and delivered to the Administrator a Release, including the language set forth in Appendix A; and

(b) The total amount paid by Successor to the Borrowers collectively shall not exceed the amount of the Settlement Fund, including accrued interest.

12. All money not distributed to Borrowers from the Settlement Fund, including accrued interest, shall be distributed to one or more organizations that provide services including credit and housing counseling (including assistance in obtaining loan modification and preventing foreclosure), legal representation of borrowers seeking to obtain a loan modification or to prevent foreclosure, financial literacy, and other related programs targeted at African-American and Hispanic potential and former homeowners in communities where the Complaint alleges significant discrimination occurred against African-American and Hispanic borrowers ("Organization"). Before selecting the qualified Organization(s), Successor will obtain proposals from the Organization(s) on how the funds will be used consistent with the above-stated purpose, submit such proposal to the United States, and consult with and obtain the non-objection of the United States. Successor will submit the proposals from the Organization(s) to the United States within 30 days of the date that the Administrator completes the delivery of the payments under Paragraphs 9 and 10, and the United States shall respond to Successor's request for non-objection within 10 days of Successor's request. The United States and Successor may request modification of the proposal before approving the Organization(s). Organization(s) must not be related to Successor, Successor's parent, or any entity owned by Successor's parent.

13. The parties shall obtain the Court's approval for the Organizations and the amount to be distributed to each prior to distribution provided by Paragraph 12. Within 15 days of the United States' non-objection to the Organizations, the parties shall move the Court to order the distribution of the funds. The parties shall provide the Court with information regarding how the

proposed organizations meet the requirements set forth in Paragraph 12. Successor shall require each Organization to submit to Successor and the United States a report detailing that funds are utilized for the purposes identified in Paragraph 12 within one year after the funds are distributed and every year thereafter until the funds are exhausted. Failure of any Organization to provide the report(s) required by Successor shall not affect the termination of this Agreement or serve as a basis for reopening this case or the Agreement.

14. Successor will not be entitled to a set-off, or any other reduction, of the amount of payments to Borrowers because of any debts owed by the Borrowers. Successor also will not refuse to make a payment based on a release of legal claims or loan modification previously signed by any Borrower.

IV. RECORD KEEPING AND REPORTING REQUIREMENTS

15. For the duration of the Agreement, Successor shall retain all records relating to its obligations hereunder as well as its compliance activities as set forth herein. The United States will have the right to review and copy such records upon request.

16. Successor shall submit a report to the United States confirming its compliance with the terms of the Agreement within 15 days after the Court approves distribution to the Organization(s) in accordance with Paragraph 13.

V. ADMINISTRATION

17. The Agreement will terminate 3 months after Successor submits its report to the United States pursuant to paragraph 16. Notwithstanding the above, the Agreement may be extended further upon motion of the United States to the Court, for good cause shown.

18. Any time limits for performance fixed by the Agreement may be extended by mutual written agreement of the parties. Other modifications to the Agreement may be made only upon approval of the Court, upon motion by either party. The parties recognize that there may be changes in relevant and material factual circumstances during the duration of the Agreement which may impact the accomplishment of its goals. The parties agree to work cooperatively to discuss and attempt to agree upon any proposed modifications to the Agreement resulting therefrom.

19. The Agreement will be binding on Successor, including its officers, employees, agents, assignees, and successors in interest, and all those in active concert or participation with any of them. In the event Successor seeks to transfer or assign all or part of its operations², and the successor or assign intends on carrying on the same or similar use, as a condition of sale, Successor will obtain the written accession of the successor or assign to any obligations remaining under the Agreement for its remaining term.

20. Nothing in the Agreement will excuse Successor's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Successor that imposes additional obligations on Successor.

² For purposes of this paragraph, the requirements relating to the transfer or assignment of "operations" do not include the transfer or assignment of portions of Successor's portfolio of mortgage accounts or receivables to an independent third party entity.

21. The parties agree that, as of the date of entry of the Agreement, litigation is not “reasonably foreseeable” concerning the matters described in the Agreement. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in the Agreement, the party is no longer required to maintain such a litigation hold, with the exception of documents, electronically-stored information, or other things relating to loans originated by Chevy Chase Bank between January 1, 2006, and December 31, 2009.

22. In the event that any disputes arise about the interpretation of or compliance with the terms of the Agreement, the parties will 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 Successor has violated any provision of the Agreement, it will provide Successor 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 Successor to perform in a timely manner any act required by the Agreement or an act by Successor in violation of any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity.

23. Successor’s compliance with this Settlement Agreement shall fully and finally resolve all claims related to the allegations of the complaint, including under the FHA and ECOA, that the United States may have against Chevy Chase Bank or Successor relating to discrimination against African-American and Hispanic borrowers based on racial or national origin disparities in loan pricing, including without limitation all claims for equitable relief and monetary damages and penalties arising from those claims, as well as any claims under any other

legal theory based on the same allegations of discriminatory conduct addressed in the Complaint, for retail and wholesale loans originated between January 1, 2006, and December 31, 2009.

24. Each party to the Agreement will bear its own costs and attorneys' fees associated with this litigation.

25. No later than 3 months after Successor submits its report to the United States in accordance with Paragraph 16, the parties will jointly move the Court to dismiss the case with prejudice.

26. The Court will retain jurisdiction for the duration of the Agreement to enforce the terms of the Agreement.

SO ORDERED, this 2nd day of October, 2013.



Anthony J. Trega
United States District Judge
UNITED STATES DISTRICT JUDGE

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

For Plaintiff United States of America:

Dated: September 30, 2013

Respectfully submitted,

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For Capital One, N.A.:

Dated: September 30, 2013

Respectfully submitted,


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APPENDIX A

Release

In consideration for the parties' agreement to the terms of the Settlement Agreement entered in United States v. Chevy Chase Bank, F.S.B. through its Successor in Interest (E.D.VA.), and the payment to me of \$ _____ pursuant to the Settlement Agreement, I hereby release and forever discharge all claims of every type accruing prior to the entry of the Settlement Agreement, related to the allegations in the litigation referenced above, that I may have against Chevy Chase Bank, F.S.B. or Capital One, N.A., all related entities, parents, predecessors, successors, subsidiaries, and affiliates, and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, successors, or assigns. I acknowledge that I am aware that I may discover facts in addition to, or different from, those facts which I now know or believe to be true with respect to the subject matter of this release, but that I release fully, finally and forever all claims related to the allegations in the litigation referenced above, notwithstanding the discovery or existence of any such additional or different facts.

Executed this ___ day of _____.

Signature of Borrower

Signature of Co-Borrower (if any)

Print Name

Print Name

Address

Address