



Forensic Professionals Group USA, Inc.

Mortgage Analysis as a Part of a Credible Defense against Foreclosure – All Courts – All States

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LENDER COMPLIANCE ANALYSISsm DOCUMENT REVIEW AND OPINION

Borrower: [REDACTED]

Subject Property Address: [REDACTED] Ave, [REDACTED]

Supplied to Borrower's Attorney: [REDACTED] Esq. [REDACTED] Bar# [REDACTED]

General Counsel of [REDACTED] [REDACTED] Street, Suite [REDACTED]

January 8, 2010

EXECUTIVE SUMMARY

FPG-USA is a mortgage analysis firm, whose qualifying expert's statement follows at end of this report.

This an official certification of a TILA Audit review by Richard Kahn. FPG-USA's qualifying expert.

The review included:

1. A loan audit performed by the borrower and their representatives;
2. 108 pages of loan documentation supplied by the Title Company, allegedly the same as provided to the court in evidence; including
 - a. Final HUD-1 pages 60-62
 - b. Deed of Trust pages 1-7
 - c. Note page 37-39
 - d. Note Riders pages 8-11
 - e. Right to Cancel page 41 (One right to cancel only)
 - f. TIL page 42
 - g. 1003 - page 69-75
 - h. Written acknowledgement of receiving rescission notice page 44 - not signed by Borrower.

29 3. A statement made by the borrower “*Did not receive a Good Faith Estimate The fees were not*
30 *explained. Just had to sign when at the title office without being informed ahead of time*”
31

32 **TILA Violation Feasibility:**

33 Language must be liberally construed in favor of the consumer: [REDACTED] V. [REDACTED] Company
34 (U.S. Appeal Court [REDACTED] Circuit - [REDACTED] [REDACTED] 1994) "Congress intended the
35 statute to create a system of private attorneys general to aid its enforcement; thus, to further its remedial
36 purpose, we liberally construe its language in favor of the consumer. [REDACTED] v. [REDACTED], [REDACTED]
37 [REDACTED] 5th Cir [REDACTED] 1 [REDACTED] v. [REDACTED], [REDACTED] (3rd
38 Cir.1990)."

39
40 Even without an extended right of rescission to three years, the financial computation of setoffs and
41 offsets against the lender in foreclosure with no statute of limitations applicable in that case, can be
42 substantial. For instance, a credit of all loan closing fees and pre-paid finance charges, the statutory
43 penalty, attorneys fees and court costs might be tens of thousands of dollars in offsets.
44

45 **I: Factual Allegations:**

46 1. A loan application is present in evidence from the Title Company and Lender with a signing date
47 of July 28th 2006.¹
48

49 **2. No good faith estimate is included in any documents provided for review.**

50 **a. Cause of action: Failing to provide the required Good Faith Estimate, in violation of**
51 *TILA Reg. Z § 226.19(a) In a mortgage transaction subject to the Real Estate Settlement*
52 *Procedures Act (12 U.S.C. 2601 et seq.) that is secured by the consumer's principal*
53 *dwelling, other than a home equity line of credit subject to § 226.5b, the creditor shall*
54 *make good faith estimates of the disclosures required by § 226.18 before consummation,*
55 *or shall deliver or place them in the mail not later than three business days after the*
56 *creditor receives the consumer's written application, whichever is earlier.*
57

¹ See borrowers loan application in the evidence package pg 69-75

58 Creditor failed to provide the consumer disclosure statement at the consummation of the
59 credit transaction violates TILA. [REDACTED] v. [REDACTED] [REDACTED]
60 1994); In re [REDACTED] B.R. [REDACTED] (2006).

61
62 **3. Two copies of the right to rescind were not evidenced as required by the TILA Act.**

63 **Cause of Action:** There must be delivery to each borrower of two copies of a 3-day notice of
64 right to rescind the loan transaction (non-purchase money mortgages only). The notice must meet
65 all the requirements specified in 12 C.F.R. 226.23(b)(1), including setting forth the date the
66 rescission period expires, how to exercise the right, how to contact the creditor, and the effects of
67 rescission.

68
69 **4. Lender/Service failed to act on the borrower's rescission cancellation made within the
70 three year extended right of rescission period.**

71 **Cause of Action:** Creditors are also liable for actual damages, statutory damages in the amount
72 of twice the finance charge, up to \$2,000, and attorney's fees and costs. 15 U.S.C. § 1640(a).
73 Failure to respond to the rescission notice as spelled out above results in another violation and an
74 addition award of statutory damages. [REDACTED] v. [REDACTED] [REDACTED] U.S. Dist. [REDACTED] at
75 * [REDACTED] (E.D. Pa. [REDACTED] 2001); [REDACTED] v. [REDACTED] [REDACTED] [REDACTED] Supp. [REDACTED] (E.D.
76 Pa. 1989).

77
78 Liability for TILA claims for monetary damages runs against assignees where the violation is
79 apparent on the face of the loan documents. 15 U.S.C. § 1641(a).

80
81 **5. On the face of the TILA disclosure is an isolated reference to a rate that is confusing** "The
82 current index used for this calculation is 5.572%" which is confusing and misleading. This rate is
83 not the note rate, nor does it include any mention of the margin, as required in the Adjustable
84 Rate Disclosures. It is an isolated number set into a TIL disclosure and is misleading.

85 **Cause of Action:** U.S.C. § 1632(a). Disclosures must be organized in the contrast so that each
86 section of the disclosure statement is complete without any extra information that confuses the
87 consumers. Reg. Z. § 226.5(b)(1). [REDACTED] [REDACTED] 1993). See also, In re [REDACTED] B.R. [REDACTED]
88 [REDACTED] [REDACTED] 1987) (information in the disclosure statement referred back and forth violates

89 TILA, because the required disclosures must be simplified and grouped in a single location and
90 segregated from everything else). 1) A paragraph at the bottom of the contract referring to the
91 "property described above" is ambiguous and does not comply with the requirement that
92 disclosures be grouped together. [REDACTED] v. [REDACTED] [REDACTED]
93

94 **6. A predatory loan scenario unfolded in**

- 95 a. According to the loan application², the borrower's income was \$4414 per month with
96 \$574 incorrectly calculated but properly stated on the loan application. With the payment
97 of approximately \$2000 in 25 months, this produces a debt ratio of 58% without
98 considering any of the borrower's other regular bills. Historically, this fits the classic
99 predatory loan defaulting scenario if the loan produces significant mortgage fees.
- 100 b. At the closing table on this refinance, the mortgage broker/lender earned \$9,346³ paid by
101 the borrower in two fees; mortgage origination and application fees. Other closing fees
102 were charged.
- 103 c. On top of an index of 5.572%⁴ in the Truth in Lending Disclosure, this loan carried a
104 high margin of 6.100% to the current index.⁵ The initial start rate of the note is said on
105 the face to bear an interest rate of 7.5%⁵ This interest rate was fixed for two years. This
106 wide margin above the index has historically resulted in fees paid by the lender to the
107 mortgage broker/lender originating the loan. No such fees for this high margin fixed for
108 two years were indicated on the HUD-1.
- 109 d. The borrower is a police officer working at the [REDACTED] [REDACTED] department at
110 the time for 14 years.⁶

111

112 **7. On June 3, 2009 the borrower sent certified letter loan cancellation notices under TILA to**
113 **the lender and their servicing parties, as required under the TILA.**

114

115 **8. A TILA Audit was performed by the borrower and their attorney and representatives on Jan. 07,**
116 **2010. To save money, this audit was performed directly. Our firm was hired to certify the audit.**

² loan application in the evidence package pg 70/71

³ Final HUD-1 pages 60-62

⁴ TIL page 42 (middle of page)

⁵ The Adjustable Rate Note pg 37

⁶ loan application in the evidence package pg 71

117 In fact there were several errors, none of which affect the cause of action by the borrower to
118 successfully prosecute their cause of action.

119 a. Errors noted in this certification:

120 i. No finance charge error. Escrow charges were mistakenly included as finance
121 charges.

122 ii. According to the 108pg document package reviewed, the consumer handbook on
123 adjustable rate mortgages requirement seems to be satisfied by similar
124 information disclosure in the body of the 108 page document package.⁷
125

126 **SUMMARY OF BORROWER'S ACTUAL DAMAGE CLAIM**

127 In not complying with a timely rescission cancellation notice, the lender/servicer is likely liable for
128 cancellation and all remedies associated under TILA. The borrower has a strong TILA Violations claim.
129 In addition to the cancellation remedies, by willfully keeping a good faith disclosure from this borrower,
130 a police officer, surely able to price a loan of \$223,000 with a \$9400 mortgage broker fee and a 6%
131 margin over a 5% plus index (very high in my expert opinion for a civil servant with 14 years of
132 employment history at the sheriff's department) and issuing a loan that would increase some \$500 per
133 month to \$2,000 per month based upon a salary of only \$4,400 per month of which less than \$3900 was
134 available for all the police officer's expenses, a mortgage was issued that resulted in actual damages that
135 can be measured by using the comparables in brokerage fees, interest rate and margins. By reason of this
136 aforesaid violations of the Act and Regulation Z Real Estate and Settlement Procedures Act in not
137 providing a good faith estimate the lender is likely liable to the borrower in the amount of actual
138 damages to be established at trial.
139

140 **FPG-USA EXPERT'S STATEMENT**

141 **FPG-USA is an independent third party mortgage analysis firm** hired to perform loan compliance

⁷ Pg 58 of the 108 page document package.

142 analysis for the borrower. Our book Winning Against Foreclosure is an authoritative source on pooled
143 mortgage backed assets sold to investors. Our area of expertise is reflected in our patent protected TILA-
144 RESPA-HOEPA Lender Compliance Analysis sm and Forensic Lender Discovery sm audit examination
145 and reporting systems.

146

147 **Expert's Information, Qualifications and Availability:** Our senior forensic loan audit expert, Richard
148 Kahn is available to the court on a conference call basis. Mr. Kahn has personally reviewed this case and
149 is the supervising mortgage analyst signing off on this report. Mr. Kahn is the author of our book and
150 co-inventor of our patent protected systems. He has had a professional career in mortgage analysis,
151 residential and commercial real estate, mortgage backed securities and lender financing that has spanned
152 more than thirty years and billions of dollars in equity and mortgages. He has experience in County,
153 State and Federal Courts from Circuit to Supreme and District to Appeals including Bankruptcy. Mr.
154 Kahn is FPG-USA's qualifying expert witness on all FPG-USA issuances. Mr. Kahn has held licenses in
155 securities, real estate brokerage and mortgage lending. Mr. Kahn's resume is online at [http://www.fpg-](http://www.fpg-usa.com/RK_Resume.cfm)
156 [usa.com/RK_Resume.cfm](http://www.fpg-usa.com/RK_Resume.cfm)

157

158 **Submitted under [REDACTED] Rules of Evidence:**

159 [REDACTED] This report contains relevant evidence to make the existence of facts and consequences known to
160 the court that do not appear to be currently evidenced. (Rule [REDACTED]). The contents are conditioned on
161 relevant undisputable written facts in a form considered to support fulfillment of the findings.(Rule [REDACTED]).
162 Specialized mortgage analysis knowledge presented is designed to assist the Trier of fact to understand
163 the evidence and determine the material issues. (Rule [REDACTED]). Upon written request, a complimentary
164 [REDACTED] of the expert's book Winning Against Foreclosure will be emailed to the

