

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION

Civil Action No. 98CV-237 (GK/AK)

v

and CAROLINE KOESTNER NASH, in their capacities as representatives of the ESTATE OF THOMAS K. NASH, and ERIC J. SANNE,

Defendants, and

THOMAS K. NASH FAMILY TRUST and ALAN W. NASH in his capacity as trustee, and NASH MARITAL TRUST UNDER WILL OF THOMAS K. NASH and MARCIA C. FIDIS and CAROLINE KOESTNER NASH, in their capacities as co-trustees,

Relief Defendants.

have been represented by the attorneys whose names appear hereafter; Plaintiff the FTC and Defendant Sanne have agreed to settlement of all matters in dispute between them in this action upon

the following terms and conditions, without further adjudication of any issue of fact or law and without Defendant Sanne admitting liability for any of the matters alleged in the First and Second Amended Complaints or otherwise except for the jurisdictional facts;

THEREFORE, on the joint motion of Plaintiff the FTC and Defendant Sanne, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows.

FINDINGS

1. This Court has jurisdiction of the subject matter and of the parties. Venue is proper in the United States District Court for the District of Columbia.

Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), and Section 814 of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692l.

3. Among other things, the FTC has alleged in the Second Amended Complaint that Defendant Sanne, as to borrowers whose loans were serviced by Defendant Capital City Mortgage Corporation ("Capital City"):

a. sent debt collection letters that identify him as "Attorney at Law" or "General Counsel,"

b. made false and misleading representations in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692(e), and Section 5(a)(1) of the FTC Act, 15 U.S.C. § 5(a)(1); and

c. engaged in unfair or unconscionable debt collection practices, in violation of Section 808 of the FDCPA, 15 U.S.C. § 1692f, and Section 5(a) of the FTC Act, 15 U.S.C. § 5(a)(1)

4. Defendant Sanne has generally and specifically denied all liability under any and all of the aforementioned statutes.

5. The activities of Defendant Sanne are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defendant Sanne waives all rights to seek appellate review, or otherwise challenge the validity of this Consent Decree for Permanent Injunction and Other Equitable Relief as to Defendant Eric J. Sanne ("Consent Decree"). Defendant Sanne further waives and releases any claim

7. Defendant Sanne agrees that this Consent Decree does not entitle him to seek or

own expenses, costs, and attorneys' fees and disbursements of any sort associated with the

8. Entry of this Consent Decree is in the public interest.

ORDER

I. INJUNCTION

IT IS THEREFORE ORDERED that as of the date of entry of this Consent Decree, Defendant Sanne, his successors and assigns, and his agents, servants and employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise are hereby permanently enjoined, directly or through any corporation, subsidiary, division or other device,

A. In connection with the collection of a "debt" from a "consumer" as those terms are defined in Sections 803(3) and(5), respectively of the FDCPA, 15 U.S.C. § 1692a(3) and (5), from:

1. Misrepresenting his status as that of an independent attorney or making any false or misleading representation in violation of Section 807(5)(4) FDCPA, 15 U.S.C. § 1692(e).
2. Collecting or attempting to collect any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is in violation of Section 808(1) of the FDCPA, 15 U.S.C. § 1692f(1).
3. Violating Section 808 of the FDCPA, 15 U.S.C. § 1692f.
4. Failing to comply in any other respect with the FDCPA, as amended.

1. Misrepresenting the amount of any debt, in violation of Section 5(a) of the FTC

15 U.S.C. § 45(c)

2. Requiring borrowers to pay monies not due under their loan instrument or by operation of law, in violation of Section 5(a) of the FTC Act, 15 U.S.C.

§ 45(a).

II. BAN ON DEBT COLLECTION

IT IS FURTHER ORDERED that, as of the date of entry of this Consent Decree

and continuing thereafter, Defendant Sanne is permanently restrained and enjoined from owning,

managing, engaging in, participating in, or assisting in any manner or in any capacity whatsoever

whether directly or indirectly, in concert with others, or through any intermediary, third party, business entity or device, any business engaging in activities falling within the definition of "debt collector," as that term is defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

(\$20,000) which shall be deemed to satisfy completely Plaintiff's claims in this action for monetary

On or before five (5) calendar days after the date of entry of this Consent Decree, Defendant Sanne shall pay by certified or cashiers's check the sum to the FTC or such agent as the FTC may direct,

pursuant to instructions provided by the FTC. All sums paid pursuant to this paragraph shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including but not limited to, the following: (1) the cost of any redress program; (2) the cost of any investigation or litigation; (3) the cost of any other equitable relief; (4) the cost of any other equitable relief (including information remedies) as it may be determined by the FTC in its sole discretion. The FTC shall have sole discretion in choosing an independent administrator to administer any redress program. The FTC shall determine which borrowers are eligible for redress, if any, as well as the amounts to be paid. If the FTC determines in its sole discretion that direct redress to borrowers is wholly or partially impracticable or funds remain after redress is completed, the FTC in its sole discretion may apply the funds for such other equitable relief (including information remedies) as it

Treasury. Defendant Sanne shall have no right to challenge the FTC's exercise of discretion with respect to the choice of remedies under this paragraph.

IV. DEFAULT

IT IS FURTHER ORDERED that in the event that Defendant Sanne defaults on any obligation to make a payment set forth in this Consent Decree, the entire unpaid amount together with interest, computed pursuant to 28 U.S.C. § 1961(a) from the date of default to the date of payment, shall immediately become due and payable.

V. RIGHT TO REOPEN

IT IS FURTHER ORDERED that the FTC's agreement to, and the Court's approval of, this Consent Decree is expressly premised upon the truthfulness, accuracy, and completeness of the information provided by Defendant Sanne.

A. Within thirty (30) days of receipt of written notice from a representative of the Commission, Defendant Sanne shall submit additional written reports, sworn to under penalty of

during normal business hours to any business location in his possession or direct or indirect control to

without court action and for good cause shown, may file a motion with this Court seeking an order

B. In addition, the Commission is authorized to monitor compliance with this Consent Decree by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of court, using the procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. posing as consumers and suppliers to Defendant Sanne, Defendant Sanne's employees, or any other entity managed or controlled in whole or in part by

C. Defendant Sanne shall permit representatives of the Commission to interview any

such an interview, relating in any way to any conduct subject to this Consent Decree. The person interviewed may have counsel present.

Provided, however, that nothing in this Consent Decree shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to

deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VII. COMPLIANCE REPORTING BY DEFENDANT

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this

For a period of three (3) years from the date of entry of this Consent Decree

1. Defendant Sanne shall notify the Commission of the following:

- a. Any changes in residence, mailing addresses, and primary residential telephone numbers of Defendant Sanne, within thirty (30) days of the date of such change;
- b. Any changes in employment status (including self-employment) of Defendant Sanne, and any change in the ownership of Defendant Sanne in any business entity, within thirty (30) days of the date of such change.

Defendant Sanne is employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement

- c. Any changes in the Defendant Sanne's name or use of any aliases or fictitious names; and

2. Defendant Sanne shall notify the Commission of any changes in corporate structure of any business entity that Defendant Sanne directly or indirectly controls or has an ownership interest in that may affect compliance obligations arising under this Consent Decree, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Decree; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, provided that with respect to any

that thirty (30) days prior to the date such action is to take place, Defendant

knowledge.

Defendant Sanne shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Consent

telephone numbers of Defendant Sanne;

2 The then-current employment and business addresses and telephone numbers

employer or business, and the title and responsibilities of Defendant Sanne, for each such employer or business;

3. Any other changes required to be reported under subparagraph A of this

4. A copy of each acknowledgment of receipt of this Consent Decree, obtained pursuant to Section IX.

C. For the purposes of this Consent Decree, Defendant Sanne shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Financial Practices
Federal Trade Commission
600 Pennsylvania Avenue, N.W., NJ-3158
Washington, DC 20580

Re: FTC v. Capital City Mortgage Corp. et al. Civ. No. 98CV 227 (CZ/AJ)

D. For purposes of the compliance reporting and monitoring required by this Consent Decree, the Commission is authorized to send written communications directly to Defendant Sanne, provided that the FTC concurrently transmits a copy to Sanne's attorneys:

Nathan I. Finkelstein and Laurie Horvitz
7315 Wisconsin Avenue, Suite 400 East

between the FTC and Sanne, the FTC agrees to provide Sanne's counsel with an opportunity to be present and/or to participate in such communications, *provided, however*, that if Defendant Sanne has failed to designate counsel, the FTC may contact him directly.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Consent Decree, Defendant Sanne and his agents, employees, officers, corporations, successors, and ~~partners and those persons in active concert or participation with him who receive actual notice of~~

to create and retain the following records:

A. all records reflecting any involvement by Defendant Sanne, including involvement as an

~~officer in the business of providing telecommunications services to small businesses after the date of this Consent~~

B. all records and documents necessary to demonstrate full compliance with each provision of this Consent Decree, including but not limited to, copies of acknowledgments of receipt of this Consent Decree, required by Section IX, and all reports submitted to the FTC pursuant to Section VII.

IX. DISTRIBUTION OF ORDER BY DEFENDANT

this Consent Decree, Defendant Sanne shall deliver copies of the Consent Decree as directed below:


A. For any business that Defendant Sanne controls, directly or indirectly, or in which

Decree as entered by the Court, Defendant Sanne must submit to the FTC a truthful sworn statement acknowledging receipt of this Consent Decree.

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that, this Court shall retain jurisdiction of this matter for the limited purposes of construction, modification and enforcement of this Consent Decree.

Dated: May 6, 2004

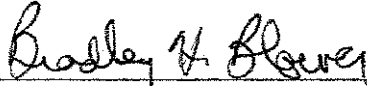


Gladys Kessler,
United States District Judge

The FTC and Defendant Sanne, by their respective counsel, hereby consent to the terms

and conditions of the Consent Decree as set forth and consent to the entry thereof

JOEL WINSTON
Associate Director for Financial Practices



BRADLEY H. BLOWER D.C. Bar No. 421112
SANDRA M. WILMORE D.C. Bar No. 170738
ALAIN SHEER D.C. Bar No. 411092
AMANDA QUESTER
Attorneys
Federal Trade Commission
600 Pennsylvania Avenue, N.W., NJ-3158
Washington, D.C. 20580
(202) 326-3224

~~ERIC J. SANNE~~

COUNSEL FOR DEFENDANT SANNE:



NATHAN I. FINKELSTEIN D.C. Bar No. 173632
LAURIE B. HORVITZ D.C. Bar No. 384702
FINKELSTEIN & HORVITZ, P.C.
7315 WISCONSIN AVENUE
SUITE 400 EAST
BETHESDA, MD 20814
(301) 951-8400