

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)
Department of Housing and Urban)
Development, on behalf of)
██████████ and ██████████,)
)
Charging Party,)
)
)
Home Federal Bank and Ed Bolkema)
)
Respondents.)
)
)
_____)

HUD ALJ No
FHEO No. 08-10-0179-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about September 21, 2010, the complainants, ██████████ (“Complainant ██████████”) and ██████████ (“Complainant ██████████”) (collectively, the “Complainants”) filed a verified complaint with the United States Department of Housing and Urban Development (the “HUD Complaint”), alleging that Respondent Home Federal Bank (“Respondent Bank”) and Respondent Ed Bolkema (“Respondent Bolkema”) (collectively “Respondents”), committed discriminatory housing practices on the basis of race in violation of the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the “Act”). The Complaint was subsequently amended on June 14, 2011 and August 17, 2011.

The Act authorizes the issuance of a charge of discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated to the General Counsel, who has redelegated to the Regional Counsel, the authority to issue such a charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee. 24 C.F.R. §§ 103.400, 103.405; 76 Fed. Reg. 42462, 42465 (July 18, 2011).

The Office of Fair Housing and Equal Opportunity Region VIII Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD Complaint and Determination of Reasonable Cause, Respondents Home Federal Bank and Ed Bolkema are charged with discriminating against Complainants [REDACTED] and [REDACTED] based on race in violation of 42 U.S.C. § 3605 of the Act as follows:

1. It is unlawful for any person or other entity whose business includes engaging in residential real-estate related transactions, including the making of loans, to discriminate against any person in making available such a transaction, or in terms or conditions of such a transaction, because of race. 42 U.S.C. § 3605; 24 C.F.R. § 100.120(a).
2. Complainant [REDACTED] and Complainant [REDACTED] are married and are African American.
3. Complainant [REDACTED] is a veteran of the United States Army.
4. Complainants are aggrieved persons as defined by the Act. 42 U.S.C. § 3602(i).
5. The United States Department of Veterans Affairs ("VA") maintains a home loan guaranty insurance program (hereafter "VA mortgage loan" or "VA home loan") administered by private lenders to benefit eligible service members and veterans in obtaining loans to purchase and refinance homes.
6. Respondent Bolkema is an underwriter for the Respondent Bank. He is one of two underwriters employed by Respondent Bank qualified to underwrite VA mortgage loans.
7. Respondent Home Federal Bank is a federally chartered bank doing business in South Dakota and Minnesota. Respondent Bank is a wholly owned subsidiary of HF Financial Corporation, the largest publically traded financial institution in South Dakota. Respondent Bank maintains a branch location at 322 South Coteau, Pierre, South Dakota.
8. On or about August 24, 2010, Complainants applied online for a VA home mortgage loan with Respondent Bank in the amount of \$ [REDACTED] for the purchase of a single family home located at [REDACTED], Pierre, South Dakota 57501 ("subject property").
9. After submitting the application online, Complainant [REDACTED] called Respondent Bank and spoke to Cynthia Fredrich ("Fredrich"), a Home Loan Specialist employed by Respondent Bank. Fredrich began processing Complainants' loan application;

including obtaining a credit report and running the Desktop Underwriting Program (“DU”)¹ to evaluate Complainants’ loan data.

10. Complainants’ loan application submitted to Respondent Bank indicated that both Complainants were African American. The loan application listed Complainant [REDACTED] as the borrower and Complainant [REDACTED] as the co-borrower.
11. Complainants’ loan application showed Complainant [REDACTED] had been employed at the same job for four (4) years and ten (10) months and that Complainants had made rental payments at their current residence for three (3) years and ten (10) months.
12. Complainants’ loan application showed Complainants had a monthly income of \$ [REDACTED], cash assets of \$ [REDACTED] on deposit with a bank, liabilities of \$ [REDACTED], and a net worth of \$ [REDACTED].
13. The Complainants’ credit report obtained by Fredrich and Respondent Bank indicated that Complainant [REDACTED] had credit scores of [REDACTED] and Complainant [REDACTED] had credit scores of [REDACTED] from the three major credit-reporting agencies.
14. Complainants’ credit report showed [REDACTED] and [REDACTED]. Complainants’ credit report showed [REDACTED] in 2006, [REDACTED] in 2008, [REDACTED] in July 2010, and [REDACTED]. Complainants credit report also showed [REDACTED] in 2007 and [REDACTED] in 2008.
15. The non-biased DU’s evaluation of Complainants’ loan data came back with a recommendation of “Approve/Eligible” for their loan and stated that “[n]o determination of ratios or credit worthiness is required” and “[n]o explanation of credit inquiries required.”
16. An “Approve/Eligible” recommendation indicates that the loan appears to meet both Fannie Mae’s credit risk and eligibility requirements.
17. Fredrich contacted Complainant [REDACTED] and informed him of the items on the credit report. Complainant [REDACTED] was unaware of the unpaid medical bill, immediately paid the bill, and provided Fredrich with a receipt, dated August 24, 2010, showing that the bill in question had been paid in full. The medical bill in question totaled

¹ DU is an automated underwriting system developed by Fannie Mae to help mortgage lenders make informed credit decisions on conventional conforming, non-conforming and government mortgage loans. DU considers a number of characteristics to assess the creditworthiness of borrowers. DU considers credit history; delinquent accounts; mortgage accounts; revolving credit utilization; public records, collections, and collection accounts; and credit inquiries. DU also considers non-credit risk factors such as liquid reserves, loan details, and occupancy status. The potential recommendations from DU are: Approve/Eligible; Approve/Ineligible; Refer/Eligible; Refer/Ineligible; refer with caution; or out of scope. An “Approve/Eligible” recommendation indicates that the loan appears to meet both Fannie Mae’s credit risk and eligibility requirements.

\$70.00.

18. On or about August 26, 2010, Complainants came to Respondent Bank at Fredrich's request to sign the loan application and discuss the derogatory items on their credit report. Complainants provided Fredrich with an explanation for each of the derogatory credit items listed on their credit report. Fredrich typed up the explanations and Complainant [REDACTED] signed the typed document. Complainants also provided Respondent Bank with letters from several past creditors showing that the derogatory account items had been resolved.
19. On August 30, 2010, Respondent Bolkema denied the Complainants' loan, basing the denial on "the fact of numerous derogatory items including late payment, collections and judgments and the time from over which they occurred from 2004 to currently delinquent." Respondent Bolkema also stated "I had understood earlier that everything had been previously paid off for a while, but they have 2 accounts that are currently delinquent or have been very recently paid. They would have to satisfy everything and then wait the 12 month period."
20. Respondent Bank's Internal Fair Lending Policy states, in regards to application denials, that the "lending staff will make every effort to meet the potential borrower's credit request by reviewing other types of flexible credit standards and alternative lending programs."
21. On or about August 30 or 31, 2010, Fredrich called Complainants and informed them that the mortgage loan would not be approved because of the recently paid medical bill.
22. The unpaid medical expense in question arose from an unpaid workman's compensation claim that should have been paid under Complainant [REDACTED] workman's compensation plan.
23. On or about September 8, 2010, Respondent Bank issued Complainants a denial letter with the stated reason for the denial as "Delinquent Past or Present Credit Obligations with Others."
24. Complainants were eligible and qualified to obtain a VA home loan.
25. Shortly after Respondent Bank denied Complainants' VA home loan, Complainants secured another VA home loan from a different lender to secure the purchase of the subject property.
26. During the time period from September 1, 2008 through September 30, 2010, Respondent Bank approved 76 VA home loans and denied 18 VA home loans, including Complainants.
27. Complainants were the only African-American VA home loan applicants during this

time period.

28. Five of the VA loan approvals by Respondent Bank during this time period were for applicants with equal to or less favorable credit data than Complainants.
29. Of the 18 loans denied by Respondent Bank, three borrowers, including Complainants, had received a recommendation of “Approve/Eligible” from the DU underwriting program.
30. Complainants were the only VA loan applicants to receive an “Approve/Eligible” from the DU underwriting program that were ultimately denied for the cited reason of “Delinquent Past or Present Credit Obligations with Others.”

Borrower A

31. Respondent Bank approved Borrower A’s VA home loan in the amount of \$ [REDACTED] and closed in December 2009. Respondent Bolkema was the underwriter assigned to Borrower A’s loan.
32. Neither Borrower A nor Borrower A’s co-borrower (Collectively, “Borrower A”) are African American.
33. Borrower A had credit scores of [REDACTED], and his co-borrower had scores of [REDACTED].
34. Borrower A’s credit report showed that they had [REDACTED], [REDACTED], and [REDACTED]. The credit report shows they had [REDACTED]; [REDACTED] in 2005, [REDACTED] in 2006, and [REDACTED] in 2009.
35. Respondent Bank closed Borrower A’s VA home loan in December 2009 with two collections either open or having been paid within the twelve months prior to loan application.
36. Borrower A’s December 31, 2009, loan application showed a monthly income of \$ [REDACTED], assets of \$ [REDACTED], including gift funds, liabilities of \$ [REDACTED], and a net worth of negative \$ [REDACTED].
37. Borrower A’s July 14, 2009, loan application showed assets of \$ [REDACTED], liabilities of \$ [REDACTED], and a net worth of negative \$ [REDACTED].
38. Borrower A’s loan file contained letters explaining credit inquires, but no letter from the borrower explaining other derogatory items on the credit report, such as the collections.
39. In comparison to Complainants, Borrower A had lower credit scores and over six times more past-dues in their credit history.

40. At the time Respondent Bank approved Borrower A's loan, Borrower A did not have twelve months of a clean credit history; [REDACTED] of Borrower A's collections were resolved less than twelve months prior to Respondent Bank approving the loan.
41. Respondent Bolkema approved Borrower A's VA home loan without Borrower A having a twelve month clean credit history.

Borrower B

42. Respondent Bank approved Borrower B's VA Home loan in the amount of \$ [REDACTED] and closed in February 2009. Respondent Bolkema was the underwriter assigned to Borrower B's loan.
43. Borrower B is not African American.
44. Borrower B had credit scores of [REDACTED] from the three major credit reporting agencies.
45. Borrower B's credit report showed he [REDACTED] at the time of his loan application with Respondent Bank. Borrower B paid [REDACTED] [REDACTED] the month of closing.
46. Respondent Bank closed Borrower B's VA home loan in February 2009 with two collections either open or having been paid within the twelve months prior to loan application.
47. Borrower B's October 29, 2008, loan application showed a monthly income of \$ [REDACTED], assets of \$ [REDACTED], liabilities of \$ [REDACTED], and a net worth of negative \$ [REDACTED]. On a previously submitted application, signed and dated September 25, 2008, Borrower B listed an income of \$ [REDACTED], assets of \$ [REDACTED], liabilities of \$ [REDACTED], and a net worth of negative \$ [REDACTED].
48. Borrower B did not provide Respondent Bank with a written explanation of his [REDACTED] outstanding collections to be approved for the VA loan.
49. Respondent Bank approved Borrower B's VA home loan without Borrower B having a twelve month clean credit history.
50. Respondent Bolkema approved Borrower B's VA home loan without Borrower B having a twelve month clean credit history.

Borrower C

51. Respondent Bank approved Borrower C's VA Home loan in the amount of \$ [REDACTED] and closed in December 2009.

52. Borrower C and the co-borrower (collectively, "Borrower C") are not African American.
53. Borrower C had credit scores of [REDACTED] and the co-borrower had scores of [REDACTED].
54. Borrower C had [REDACTED], [REDACTED], and [REDACTED] past dues reported on their credit report. Borrower C's credit report showed [REDACTED] with the last activity status in 2003, [REDACTED] in 2004, [REDACTED] in 2007, and [REDACTED] in 2009.
55. Respondent Bank closed Borrower C's VA home loan in December 2009 with three collections either open or having been paid within the twelve months prior to loan application.
56. Borrower C's loan application showed a total income of \$ [REDACTED] per month, assets of \$ [REDACTED], liabilities of \$ [REDACTED], and a net worth of a negative \$ [REDACTED]. A previously submitted loan application, signed and dated June 22, 2009, showed assets of \$ [REDACTED], liabilities of \$ [REDACTED], and a net worth of a negative \$ [REDACTED].
57. Borrower C's file contained letters from creditors explaining that accounts had been paid in full and a letter from Borrower C explaining recent credit inquiries. Borrower C's letter did not provide an explanation of other derogatory items on the credit report, such as the collections.
58. Respondent Bank neither requested nor received a written explanation from Borrower C as to the collections reflected in the file.
59. Respondent Bank approved Borrower C's VA home loan without Borrower C having a twelve month clean credit history

Borrower D

60. Respondent Bank approved Borrower D's VA home loan in the amount of \$ [REDACTED] and closed in July 2009.
61. Borrower D and the co-borrower (collectively "Borrower D") are not African American.
62. Borrower D had credit scores of [REDACTED] and the co-borrower had scores of [REDACTED].
63. Borrower D's credit report showed that throughout the history of their accounts they had [REDACTED], [REDACTED], and [REDACTED]

- █████ reported on their credit report. The credit report also showed █████, resolved in 2005, █████ resolved in 2006, and █████ resolved in 2009.
64. Borrower D also had █████; █████ recorded in 2003 (showing as not satisfied on the credit report), █████ filed in 2005 (█████ satisfied in 2006 and █████ in 2007), █████ filed in 2006 (█████ satisfied in 2006 and █████ in 2007), █████ filed and satisfied in 2007, and █████ filed in 2009.
 65. Respondent Bank closed Borrower D's VA home loan in July 2009 with seven collections or judgments open or having been paid within twelve months prior to the loan application.
 66. On a May 7, 2009, loan application, Borrower D had a stated monthly income of \$█████, assets of \$█████, liabilities of \$█████, and a net worth of \$█████.
 67. Borrower D's file contained letters from creditors explaining that accounts were paid in full. There was also a letter from Borrower D explaining a recent credit inquiry, but the letter did not explain the other derogatory items on the credit report. A document in the file expressed Respondent Bank's loan officer's willingness to put them in touch with a credit repair agency, which turned out not to be required.
 68. Respondent Bank neither requested nor received a written explanation from Borrower D as to the collections reflected in the file.
 69. Respondent Bank approved Borrower D's VA home loan without Borrower D having a twelve month clean credit history.

Borrower E

70. Respondent Bank approved Borrower E's VA home loan for \$█████ and closed in October 2010.
71. Borrower E is not African American.
72. Borrower E had credit scores of █████.
73. Borrower E's credit report showed he had █████ and █████ reported on his credit report. Borrower E's credit report showed he had █████ paid in 2004, and █████ in 2010.
74. Respondent Bank closed Borrower E's VA home loan in October 2010 with Borrower E having two collections open or paid within the twelve months prior to his loan application.
75. Borrower E's October 29, 2010 loan application showed an income of \$█████ per

month. Borrower E had assets of \$ [REDACTED], liabilities of \$ [REDACTED], and a net worth of negative \$ [REDACTED]. An earlier application showed an income of \$ [REDACTED] per month, assets of \$ [REDACTED], liabilities of \$ [REDACTED] and a negative net worth of \$ [REDACTED].

76. Borrower E's file had one letter explaining past derogatory credit items. The letter stated, "The reason why I had a [REDACTED] item was [REDACTED]. I was making payments to the hospital but they didn't tell me that u (spelling original) had to set up a payment plan. By the time I found that out they had already sent it to the collection people."
77. At the time Respondent Bank approved Borrower E's VA home loan, Borrower E did not have twelve months of a clean credit history; [REDACTED] of his collections were resolved less than twelve months prior to Respondent Bank approving his loan.
78. Borrower E explained only one of the collections in his file and did not address the remaining adverse credit information in the file.
79. Respondents violated the Act by treating Complainants less favorably than similarly situated borrowers not of the Complainants' protected class. 42 U.S.C. § 3605; 24 C.F.R. §100.120(a).
80. As a result of Respondents' discriminatory conduct, Complainants suffered damages including but not limited to physical and emotion distress, anxiety, and inconvenience.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of Section 3605 of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate the Fair Housing Act, as amended 42 U.S.C. § 3601 *et seq.*;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating against any person because of race in any aspect of a residential real-estate related transaction, including, but not limited to the making of residential real-estate loans.
3. Awards such damages as will fully compensate the Complainants for their actual damage, inconvenience, and economic loss caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3); and

4. Assesses a \$16,000 civil penalty against each Respondent for each violation of the Act committed pursuant to 42 U.S.C. §3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3) (2004).

Respectfully submitted,

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Date: May 24, 2012