

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

| | | |
|---|---|-----------------------|
| Secretary, United States Department of |) | |
| Housing and Urban Development, on behalf of |) | |
| Complainants [REDACTED] |) | |
| [REDACTED], and a minor |) | |
| child, |) | |
| |) | |
| Charging Party, |) | ALJ No. _____ |
| |) | |
| v. |) | FHEO No. 04-11-0791-8 |
| |) | |
| Fifth Third Bank, Fifth Third Mortgage Company, |) | |
| Cranbrook Mortgage Corporation, d/b/a Cranbrook |) | |
| Loans, Michael Ayoub, and David Ambo, |) | |
| |) | |
| Respondents |) | |
| _____ |) | |

CHARGE OF DISCRIMINATION

I. JURISDICTION

On May 12, 2011, Complainants [REDACTED] and his wife, [REDACTED] (“Complainants”) filed a complaint with the U.S. Department of Housing and Urban Development (“HUD”), alleging that Respondents Cranbrook Mortgage Corporation (“Cranbrook Mortgage”), Michael Ayoub, and David Ambo, discriminated because of disability in processing Complainants’ Federal Housing Administration (“FHA”) refinance loan, in violation of subsection 804(f)(2) and section 805 of the Fair Housing Act (“Act”). 42 U.S.C. §§ 3601-19. The complaint was amended on March 5, 2012, April 25, 2012, June 28, 2012, and September 12, 2012, to, *inter alia*, add a violation of subsection 804(c), add [REDACTED] as a complainant, and allege that Fifth Third Bank and Fifth Third Mortgage Company (“Fifth Third Mortgage”) (collectively “Fifth Third Respondents”) discriminated because of disability.¹

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of aggrieved persons 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 that authority to the General Counsel (24 C.F.R. §§ 103.400 and

¹ The term “disability” is used herein in place of, and has the same meaning as, the term “handicap” in the Act and its implementing regulations.

103.405), who has redelegated the authority to the Assistant General Counsel for Fair Housing Enforcement. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Regional Director for Region IV, 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 and has authorized and directed the issuance of this Charge of Discrimination. See 42 U.S.C. § 3610(g)(2); 76 Fed. Reg. 73984, 73990 (Nov. 29, 2011).

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the aforementioned complaint and the Determination of Reasonable Cause, Respondents Cranbrook Mortgage Corporation, Michael Ayoub, David Ambo, Fifth Third Bank, and Fifth Third Mortgage Company are charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to make, print, or publish or cause to be made, printed or published, any notice or statement, with respect to the sale of a dwelling that indicates any discrimination based on disability or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.50(b)(4).
2. It is unlawful to discriminate against any person in the provision of services in connection with a dwelling because of a disability of that person or a person intending to reside in that dwelling after it is sold or made available. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
3. It is unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of disability. 42 U.S.C. § 3605; 24 C.F.R. § 100.130(a).

B. Parties and Subject Property

4. Complainants [REDACTED] are married. Each is a person with a disability, as defined by 42 U.S.C. § 3602(h), and is an aggrieved person as defined by 42 U.S.C. § 3602(i). They reside at [REDACTED], Macon, Georgia.
5. Complainants [REDACTED] son, Complainant [REDACTED] and a minor granddaughter reside with them. [REDACTED] and the granddaughter are aggrieved persons as defined by 42 U.S.C. § 3602(i).
6. Complainants [REDACTED] each receive Social Security Disability Insurance benefits ("SSDI") from the Social Security Administration ("SSA"). Two Notices of Decision from the SSA establish Complainants as persons with a disability. The SSA determined that Complainants [REDACTED] were persons

with a disability in 1993 and 1991, respectively.

7. Complainants own a single-family house, located at [REDACTED], Macon, Georgia ("subject property"). The subject property is a dwelling, as defined by the Act. 42 U.S.C. § 3602(b).
8. Respondent Fifth Third Bank is a member of the Federal Deposit Insurance Corporation and a state member bank headquartered at 38 Fountain Square Plaza, Cincinnati, Ohio. Respondent Fifth Third Bank is, and was at all times relevant, engaged in residential real estate-related transactions as defined by the Act. 42 U.S.C. § 3605(b)(1); 24 C.F.R. § 100.115.
9. Respondent Fifth Third Mortgage is a mortgage company headquartered at 38 Fountain Square Plaza, Cincinnati, Ohio. Fifth Third Mortgage is a subsidiary of Fifth Third Bank, and purchases and funds mortgage loans for Fifth Third Bank. Respondent Fifth Third Mortgage is, and was at all times relevant, engaged in residential real estate-related transactions as defined by the Act. 42 U.S.C. § 3605(b)(1); 24 C.F.R. § 100.115.
10. Respondent Cranbrook Mortgage, d/b/a Cranbrook Loans, is a mortgage broker located at 41800 Hayes Road, Clinton Township, Michigan. Respondent Cranbrook Mortgage is an approved mortgage broker for Respondent Fifth Third Mortgage and is authorized to originate loans on Respondent Fifth Third Mortgage's behalf. At all relevant times, Cranbrook Mortgage was an agent of Fifth Third Bank and Fifth Third Mortgage.
11. At all relevant times, Respondent Michael Ayoub was President of Cranbrook Mortgage and the loan officer on Complainants' loan. At all relevant times, Respondent Ayoub supervised Respondent David Ambo. Respondent Ayoub was also an agent of Fifth Third Bank and Fifth Third Mortgage. Respondent Ayoub is and was at all times relevant, engaged in residential real estate-related transactions as defined by the Act. 42 U.S.C. § 3605(b)(1); 24 C.F.R. § 100.115.
12. At all relevant times, Respondent David Ambo was a loan officer and processor at Cranbrook Mortgage. Respondent Ambo was also an agent of Fifth Third Bank and Fifth Third Mortgage. Respondent Ambo is and was at all times relevant, engaged in residential real estate-related transactions as defined by the Act. 42 U.S.C. § 3605(b)(1); 24 C.F.R. § 100.115.

C. Factual Allegations

13. At all times relevant, Federal Housing Administration ("FHA") underwriting guidelines required lenders to show that the borrower's income was expected to continue for at least three years. The FHA guidelines did not require a physician's statement or other medical evidence to verify the continuance of a borrower's disability or income.
14. Under "Government Assistance Programs," the FHA Handbook states: "Income received from government assistance programs is acceptable for qualifying, as long as the paying agency provides documentation indicating that the income is expected to continue for at

least three years.”

15. Under “Social Security Income,” the FHA Handbook states: “Social Security income must be verified by the Social Security Administration (SSA) or from Federal tax returns. If any benefits expire within the first full three years of the loan, the income may *only* be considered as a compensating factor...Not all Social Security income is for retirement-aged recipients; therefore, documented continuation is required.” (emphasis in original).
16. The “Fifth Third FHA Lending Manual,” applicable at all relevant times, required borrowers receiving disability-related income to verify three years of income continuance by one of the following: “*statement from physician*, statement from insurance company, copy of award letter or distribution letter including income and continuance.” (emphasis added). In the category of Social Security income, the Fifth Third FHA Lending Manual required three years of income continuance. It further stated that if a borrower is at least 62 years of age, continuance is considered evident. Thus, the Fifth Third Respondents’ policy explicitly specified a physician’s statement as appropriate evidence for establishing continuance of disability income.
17. On or about July 14, 2010, Complainants applied for an FHA-insured refinance loan with Respondent Fifth Third Mortgage through Respondent Cranbrook Mortgage. Complainants sought to refinance the subject property.
18. Respondent Cranbrook Mortgage submitted Complainants’ loan application to Respondent Fifth Third Mortgage’s Wholesale Division for underwriting.
19. Complainants’ loan application was underwritten through the Federal National Mortgage Association (“Fannie Mae”) automated underwriting system, Desktop Underwriter, using the FHA Technology Open to Approved Lenders (TOTAL Scorecard).
20. On or about July 23, 2010, Respondent Fifth Third Mortgage issued a “Notice of Loan Approval” to Respondent Cranbrook Mortgage regarding Complainants’ loan. The Notice specified that Fifth Third Mortgage agreed to purchase the loan conditioned, in relevant part, on Complainants providing the most recent documentation evidencing three year’s continuance of their SSDI income.
21. On or about July 24, 2010, and July 26, 2010, consistent with the Fifth Third Respondent’s Notice of Loan Approval and policy, Respondents Cranbrook Mortgage and Ambo requested documentation from Complainants establishing three years continuance of Complainants’ SSDI income.
22. On or about July 26, 2010, Complainant [REDACTED] responded to Respondent Ambo by email, stating, in relevant part, that he had a request pending at the SSA for an SSDI proof of benefits statement for his wife and himself. He further stated that the SSA would only provide a proof of income statement, not a continuation of benefits statement. He wrote that he already provided proof of income statements from the previous year and the statements had not changed. In addition, Complainant [REDACTED] requested

that Respondent Ambo provide him with an authorization request to obtain the information quickly from the SSA.

23. Between July 26, 2010 and July 29, 2010, Respondent Ambo held several telephone conversations with Complainants regarding the doctor's letter requirement. Respondent Ambo admits he had a conversation with Complainants during which he advised them to obtain a physician statement verifying that they would continue to receive income for at least three years due to a diagnosed disability.
24. During the conversations between July 26, 2010 and July 29, 2010, Respondent Ambo told Complainants the SSA continuation of benefits document was required because they were not 62 years of age. Respondent Ambo told Complainants that SSA award letters were unacceptable because the letters did not specifically state Complainants' income continued for three years.
25. As President of Cranbrook Mortgage and the loan officer on Complainants' loan, Respondent Ayoub directed his loan processor, Respondent Ambo, to obtain a doctor's letter from Complainants. Respondent Ayoub would have finalized Complainants' loan if they had provided the doctor's letter.
26. On or about August 2, 2010, Complainant [REDACTED] sent an email to Respondent Ambo stating, in relevant part, that he had not heard from Respondent Ambo since July 29, 2010, and assumed that Respondent Ambo was unable to provide a contact at the SSA to provide the statement of continuation of benefits. Complainant [REDACTED] confirmed his understanding of Respondent's requirement as to "obtain a 3 Year Continuation of Benefit statement from the SSA for both myself and Mrs. [REDACTED] (because we are both under the age of 62 and are currently receiving Social Security Disability Benefits as opposed to Social Security Retirement Benefits[]) (which will not convert over until we reach the age of 62 respectively)."
27. In the same August 2, 2010 email, Complainant [REDACTED] stated, "I am not going to continue to go with the doctors anymore because they do not declare you as being eligible for benefits (they only provide medical reports/findings)...the SSA and only the SSA does."
28. Later on August 2, 2010, Complainant [REDACTED] sent another email to Respondent Ambo stating, "Just as a follow-up...received statement of benefits from SSA in the mail today. Will get them to you ASAP if they serve any purpose." Respondent Ambo replied by email, stating, "Will be looking for it."
29. On or about August 3, 2010, Respondent Ambo held another telephone call with Complainants. Respondent Ambo suggested Complainants go to an urgent care center to obtain the required statement.
30. On or about August 4, 2010, Complainant [REDACTED] sent an email to Respondent Ambo, stating that he faxed the statements of benefits from the SSA on August 3, 2010.

He further wrote that the request for a doctor's note was "unfair, unreasonable, and prejudicial." He requested that Cranbrook Mortgage approve or disapprove the loan by the close of business on August 6, 2010, and if the loan was disapproved, include the reasons for denial in writing.

31. A notice from Respondent Cranbrook Mortgage to Complainants, dated August 4, 2010, states as the reason for credit denial "Description of Action Taken: Cannot provide 3 year continuance of Income." The principal reason for credit denial is marked as "Unable to verify income."
32. On October 25, 2010, Respondent Fifth Third Mortgage's underwriting platform automatically closed Complainants' file due to inactivity and coded the application as "Approved, Not Accepted."

D. Legal Allegations

33. As described in paragraphs 16-17 and 20-32 above, Respondents violated subsection 804(c) of the Act when they made statements and employed written policies requiring a doctor's letter to establish continuance of income for persons, including Complainants, who were under the age of 62 and receiving SSDI income. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.50(b)(4).
34. As described in paragraphs 20-32 above, Respondents violated subsection 804(f)(2) of the Act when they imposed different terms and conditions on Complainants' loan because of disability. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
35. As described in paragraphs 20-32 above, Respondents violated subsection 805 of the Act when they discriminated against Complainants in making available a residential real estate-related transaction, because of disability. 42 U.S.C. § 3605; 24 C.F.R. § 100.130(a).
36. As a result of Respondents' discriminatory conduct, Complainants suffered actual damages, including emotional distress.

III. CONCLUSION

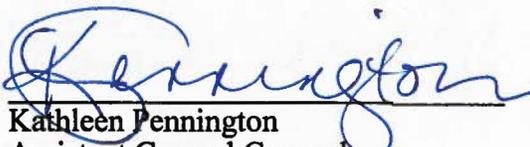
WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents Cranbrook Mortgage Corporation, Michael Ayoub, David Ambo, Fifth Third Bank, and Fifth Third Mortgage Company with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(c), (f)(2) and 42 U.S.C. § 3605; 24 C.F.R. §§ 100.50(b)(4), 100.202(b), and 100.130(a), and requests that an Order be issued that:

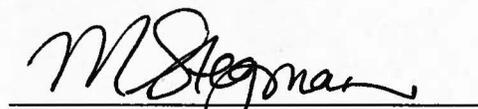
1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate subsections 804(c), 804(f)(2), and section 805 of the Act, 42 U.S.C. § 3604(c), (f)(2); 42 U.S.C. § 3605.

2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of disability against any person in any aspect of home mortgage lending;
3. Awards such monetary damages as will fully compensate Complainants and any other aggrieved persons;
4. Awards a civil penalty against each respondent for each of their violations of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
5. Awards any additional relief as may be appropriate pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 15th day of August, 2013.

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