

The Chuckwagon

a quarterly production by

MONTANA FAIR HOUSING

Volume 27/August 2001

In true Montana spirit, the Chuckwagon . . . the newsletter to fill your fair housing appetite.

Tales Roun' the Campfire

A synopsis and/or update of cases filed with the Montana Human Rights Bureau (HRB), the Department of Housing and Urban Development (HUD), and/or federal or district court. This synopsis is not necessarily all inclusive . . .

MFH vs. Matranga - In December of 2000, the complainant, a single mother attending classes at the university, attempted to purchase a mobile home placed on a lot owned by the Matrangas. In a meeting for application to the mobile home court, the owners allegedly made statements referencing the complainant's marital status, sex, and familial status as reasons for denying her application. Following an investigation by Montana Fair Housing, administrative complaints were filed in June. The complaints allege discrimination on the basis of sex, familial status, and marital status.

MFH vs. Schaberg - In May 2001, J. Schaberg of Missoula allegedly denied housing to a single male based on his sex. Both state and federal fair housing laws prohibit discrimination in housing against anyone based on his/her sex. An investigation by MFH provided information supporting the complainants' allegations and administrative complaints were filed in June with both HUD and HRB alleging discrimination in housing against the respondent, J. Schaberg.

MFH vs. Blacker/Gregor - In 1994 and again in 1996 MFH filed administrative complaints with the Montana Human Rights Commission against Joseph and Carolyn Blacker, and Pearl Gregor. The respondents had denied families with children the opportunity to rent housing operated by Pearl Gregor and owned by the Blackers. Despite cause findings in both cases, Blackers nor Gregor would cooperate with efforts by the Human Rights Commission to reach settlement agreements. In 2000 the Human Rights Bureau, which has since replaced the Human Rights Commission, elected to file the case with the Fourth Judicial District Court, Missoula County. The parties reached agreement in July, settling the case for \$2500 in financial compensation, and affirmative relief requiring the respondents to include in all advertising and signage the EHO logo, and the posting of MFH posters. The settlement also requires that employees and agents of the Blackers attend fair housing training and nondiscrimination policies be included in employees personnel files and attached to all new rental agreements.

MFH vs. George Lewis, Westview Mobile Home Park, Leanne Ravalin, Marilyn Ruguleiski, et. al. - The Urbush family contacted MFH in 1997 describing discrimination by the mobile home park owner on the basis of their minor son's disability. Travis, a ten year old, has cerebral palsy and cognitive delays requiring close supervision. The respondents decided to remove the Urbush family's fence despite requests by the family

to leave it in place for the safety and well being of their disabled son. The fence allowed the child some freedom to play without outside events or distractions presenting a danger.

MFH investigated and found supporting evidence to confirm discrimination at the park. The Urbushes and MFH filed complaints with HUD, the Human Rights Commission, and an action in State Court in Missoula, Montana. The HRC also filed an action in the district court after finding cause.

This year lawyers for the Urbushes and MFH asked the judge to find the owner liable, even before trial, for violating the fair housing laws. The motion is based on admissions that no reasonable accommodation request would be granted at Westview unless it was in writing and for refusing to even respond to the request made on behalf of the Urbushes' disabled son. A hearing on the motion is scheduled before Judge McLean in September.

MFH vs. Arcadia Gardens, et. al. - In May's newsletter we reported the potential settlement of this Design and Construction case. A settlement has been reached and an agreement is signed, as per the overview outlined in our last newsletter.

Roundin' 'em Up

Articles and/or local or national events to ensure our readers are keeping abreast of new information.

On Predatory Lending Practices . . . Are these practices covered under the Fair Housing Act?

Associates Home Equity Services v. Troup

A summary by
Ken Zimmerman, New Jersey Institute for Social Justice

In what appears to be the first appellate court decision recognizing that predatory lending can violate federal and state civil rights laws, the New Jersey Appellate Division handed down a significant decision on July 25, 2001 in the case of Associates Home Equity Services v. Troup (see <http://www/judiciary.state.nj.us/opinions/A3410-00.htm>).

Among other noteworthy features, the court: (1) defined predatory lending and set forth the standards by which a civil rights claim may be established in the predatory lending context, (2) determined that, even after traditional affirmative civil rights statutes of limitations have expired, a predatory lending victim may raise civil rights claims in foreclosure proceedings by way of equitable recoupment, and (3) concluded that the FTC Holder Rule should be applied despite a range of technical defenses, such as the failure to include the requisite language in the loan documents.

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This case stems from foreclosure proceedings initiated by Associates Home Equity Services against Beatrice Troup, a 74 year old African-American woman, who had lived in her home in Newark for over forty years. She had owned her home free and clear when she was targeted by a home repair contractor who convinced her to undertake home repairs that she eventually financed in an amount exceeding \$46,000. Although she initially made several interim payments to the home repair contractor, the home repair contractor arranged for the financing through East Coast Mortgage which almost immediately assigned the loan to the Associates. Despite a virtually unblemished credit record, the terms of Ms. Troup's loan were excessive: the initial interest rate was 11.65% adjustable after 6 months with a margin of 8.15, the term of the loan was 15 years with a balloon payment of over \$41,000, and the Troups were charged four points. In addition, the Associates paid East Coast Mortgage a yield spread premium of \$2600.

Associates initiated foreclosure proceedings two years and a week after the closing date. Ultimately, Ms. Troup raised in her defense civil rights claims against the Associates under the Fair Housing Act, Section 1981, and New Jersey's Law Against Discrimination. In addition, based on expert testimony that the home repair work actually performed on her home was significantly deficient and worth only a fraction of what she had paid, she sought to hold East Coast Mortgage liable for any consumer law violations undertaken by the contractor pursuant to the FTC's Holder Rule. The chancery judge ultimately refused to allow these claims to go forward, dismissing both East Coast Mortgage and the Associates from the case. He dismissed the civil rights claims against the Associates because the two year affirmative statute of limitations had expired, and failed to address East Coast Mortgage's potential liability for the contractor's alleged wrongdoing under the Holder Rule.

In this decision handed down last week, the Appellate Division reinstated the claims against both the Associates and East Coast Mortgage. The Court first discussed the phenomenon of predatory lending, citing both the Troup's expert Calvin Bradford and the amicus' expert, Elvin Wyly, who had submitted a declaration regarding the dual housing market that exists in New Jersey. The court adopted standards used by several trial courts, including the federal district court in *Hargraves v. Capital City Mortgage*, and found that a civil rights violation may be established by demonstrating that defendants' lending practices were "unfair and predatory" and that defendants either targeted on the basis of race or that there was a disparate impact on the basis of race. This appears to be the first time an appellate court anywhere in the country has adopted these standards.

In a ruling that is a matter of first impression in New Jersey and perhaps elsewhere, the Court then went on and rejected the Associates' arguments that Ms. Troup was precluded from raising the civil rights claims in her defense because the two year statute of limitations had expired. In the chancery court, Ms. Troup sought to raise these claims by way of the common law theory of equitable recoupment offset by any claims she was due from the Associates due to their violations of her civil rights. The Court rejected the Associates assertion that such a claim was inappropriate in a foreclosure proceeding. Particularly given that many victims of predatory lending are unaware of the problems with their loan until long after two years have expired, this ruling significantly expands the ability of victims to raise civil rights claims.

The Court similarly concluded that East Coast Mortgage should not be dismissed given its potential liability under the Holder Rule. As with the civil rights statutes, the court concluded that the Holder Rule needed to be read and applied broadly to fulfill its remedial intent. In this instance, this meant that the Rule should be applied even though some payments were initially made to the contractor, the bold-typed notice required by the Rule was not included, and the loan was subsequently assigned. To do otherwise, the Court concluded, would allow "ECM and Ahrens [the contractor] to evade the remedial reach of the Holder Rule." At least as significant as the equitable recoupment finding, this holding offers a means of addressing the close relationship between home repair contractors and predatory lenders.

Based on these findings, the case was remanded back to the chancery court to allow the Troups to proceed with discovery on their claims against the Associates and East Coast Mortgage. At this time, it is unclear whether either the Associates or East Coast Mortgage will appeal the decision.

HUD Takes Action Against 55 Lenders

WASHINGTON, Aug. 3/PRNewswire -- U.S. Housing and Urban Development Assistant Secretary for Housing/Federal Housing Commissioner John C. Weicher today announced that HUD's Mortgagee Review Board has taken administrative action against 55 lenders in 22 states for violating federal lending regulations. The actions include withdrawing Federal Housing Administration (FHA) lending authority, and imposing sanctions ranging from indemnifications of loans to payments of almost \$3 million in fines.

"These administrative actions show that HUD is serious about protecting the American homebuyer," Weicher said. "Lenders who think about breaking the rules should take notice and understand that the consequences can be severe."

HUD's actions, published in the July 23 Federal Register, resulted from standard compliance reviews of FHA-approved lenders. HUD's four Home Ownership Centers -- in Atlanta, Denver, Philadelphia and Santa Ana, CA - conducted a majority of the reviews. HOCs refer the most serious violations of FHA requirements to HUD's Mortgagee Review Board, established to protect the FHA insurance fund. The MRB is comprised of the Federal Housing Commissioner and six senior HUD officials.

The MRB imposed its severest penalty against Mortgage Lending of America, Inc., Huntington Station, NY, with \$533,500 in civil penalties and a five-year withdrawal of authority to originate FHA-insured loans. Monetary fines and withdrawals of FHA authority were also imposed against:

*Capitol Mortgage Bankers, Inc.,
Millersville, MD (\$280,500/5 years)

*American Skycorp, Inc.,
Timonium, MD (\$220,000/5 years)

*Assurety Mortgage Group, Inc.,
Decatur, GA (\$195,500/8 years)

*Avstar Mortgage Corp.,
Blue Bell, PA (\$192,000/8 years)

*National Charter Mortgage Corp.,
Gardena, CA (\$100,000/3 years)

*Milestone Mortgage Corp.,
LaPalma, CA (\$88,000/5 years)

*Heartland Mortgage, Inc.,
Tucson, AZ (\$33,000/3 years)

*Morgan Home Funding Corp.,
Rockville, MD (\$25,000/3 years)

*Specialty Mortgage Corp.,
Hialeah, FL (\$8,000/3 years)

*Whitehall Funding, Inc.,
Indianapolis, IN (\$5,500/5 years)

Also the MRB immediately suspended all government business from Island Mortgage Network, Inc., Melville, NY and Sunstate Mortgage (d/b/a Sun America Mortgage), Daytona Beach, FL, for not having valid state licenses.

The MRB reached settlement agreements with 38 of the 55 lenders, which included imposing \$1.3 million in civil penalties or other assessments and the indemnification of 161 loans, equivalent to about \$4.8 million in potential savings to the FHA insurance fund.

A tip o' the hat . . .

Montana Fair Housing would like to acknowledge the organizations, agencies, companies and individuals who have made financial and/or in-kind contributions since January 1, 2001. This support allows us to provide a broader range of services to housing providers and consumers throughout the state of Montana:

First Interstate Bank, Missoula
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Tid Bits from the General Store Our Announcements

Montana Fair Housing is offering workshops for consumers and providers across the state. These workshops have been approved for accreditation by the Board of Realty Regulation, the Board of Social Workers, and the Montana Bar Association. The workshops can also be submitted for credit receipt through self report forms by architects.

Our workshops focus on the federal and state fair housing acts, design and construction issues, and regulations involving accessibility of public and common areas and dwelling units. Contact Pam Bean at mfhzng@montana.com or 406-542-2611/800-929-2611 for further information.

Our next workshop is scheduled in **Bozeman** on **October 10, 2001**, and will be held at the **Holiday Inn** from **1:00 to 5:00**. Please contact our office for registration and further information.

Montana Fair Housing is now offering our newsletter and other mailings via e-mail. If you would like to receive our mailings through e-mail services, please e-mail Pam at mfhzng@montana.com. Include your name, your company or agency affiliation if any, your e-mail address, phone number, and mailing address.

Mark your calendars! **Housing Conference 2002** is scheduled for April 23rd, 24th, and 25th, 2002. The conference will be held at the West Yellowstone Holiday Inn Conference Hotel in West Yellowstone, beginning at noon on the 23rd and ending at noon on the 25th. For suggestions on conference topics and/or speakers, please e-mail Pam at mfhzng@montana.com.

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