

94-16

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02CJ.4/MARTINE/CHF

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

Division 9

STATE OF KANSAS, *ex rel.* )  
ROBERT T. STEPHAN, Attorney General, )  
 )  
Plaintiff, )

vs. )

COMMUNITY HOME FUNDING CORPORATION, )  
A Kansas Corporation, )  
 )  
Defendant. )

Case No. '94 C 7 1 7 3

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 24th day of June 1994, the plaintiff's petition for approval of consent judgment comes before the court for consideration. The State of Kansas *ex rel.* Robert T. Stephan, Attorney General, appears by and through Martin J. Peck and Kathy Greenlee, Assistant Attorneys General. Defendant Community Home Funding Corporation ["Community"] appears by and through Jeffrey D. Zimmerman, Zimmerman & Holmberg, Shawnee, Kansas.

WHEREUPON, the parties advise the court that they have stipulated and agreed as follows:

DISTRICT COURT  
JOHNSON COUNTY, KS.

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1. Robert T. Stephan is the Attorney General of the State of Kansas.

2. Community is a Kansas corporation with its principal place of business at 8900 State Line Road, Suite 150, Leawood, Kansas 66206.

3. Defendant is a supplier as defined by K.S.A. 1993 Supp. 50-624(i).

4. Defendant has engaged in consumer transactions as defined by K.S.A. 1993 Supp. 50-624(c) within the State of Kansas.

5. Defendant admits the court has personal and subject matter jurisdiction over the parties.

6. During 1993 and 1994, defendant entered into contracts with consumers guaranteeing that the consumers would receive, at a future date, a home mortgage loan at a rate of interest guaranteed at the time of contracting.

7. These contracts were improperly hedged, thus exposing the company to the risk that the contracts would not be able to be honored.

8. The Attorney General alleges that in the course of this improper hedging, the the defendant committed numerous violations of the Kansas Consumer Protection Act, K.S.A. 1993 Supp. 50-626 & -627.

9. Defendant Community admits committing violations of the Kansas Consumer Protection Act.

10. Defendant agrees and is hereby ordered to pay damages calculated according to paragraph 12 to consumers described in paragraph

11. Damages shall be paid first to consumers pro-rata based on the consumer's lock-in fee.

11. Consumers included in this judgment shall be all of those who, during 1993 or 1994, were promised an interest rate on a home mortgage by

Community that Community was or will be eventually unable or unwilling to provide. Receipt of a full or partial refund by a consumer shall not prevent recovery under this judgment, except that any amount so refunded shall be deducted from the amount ordered to be paid.

12. Damages shall be calculated as follows:

$$\text{Damages} = [L - (\text{PMT}_1 \times P_{A2})] + \text{PTS}_2;$$

where

$$\text{PMT}_1 = \frac{L}{P_{A1}},$$
$$P_{A1} = \frac{1 - (1 + r_1)^{-360}}{r_1},$$

and

$$P_{A2} = \frac{1 - (1 + r_2)^{-360}}{r_2};$$

where

(a)  $r_1$  is the interest rate agreed upon by Community and the consumer;

(b)  $r_2$  is the interest rate on a 30-year fixed mortgage actually obtained by the consumer. In the event a mortgage other than a 30-year fixed mortgage or no mortgage was obtained,  $r_2$  shall be deemed to be the Federal Home Loan Mortgage Corp. mortgage rate for closing within 30 days published in the *Wall Street Journal* for the day of the closing; if closing was on a day for which no rate was published, the rate shall be that of the next day for which a rate is published;

(c)  $r_1$  and  $r_2$  shall be expressed in monthly terms; this shall be obtained by dividing the typically stated interest rate and dividing by 1200;

(d)  $\text{PMT}_1$  is the monthly payment for the first loan;

(e) L is face amount of the loan agreed upon between Community and the consumer; and

(f)  $PTS_2$  is the up-front cost or fee of the new loan. This is to include "points" and "closing costs."

13. An example of calculation of damages is attached as Appendix A.

14. Defendant agrees and is hereby ordered to not cause any negative credit history to be included in any affected consumer's credit report.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings and orders of the court pursuant to K.S.A. 1993 Supp. 50-632(b).

SO ORDERED.

**JAMES W. BOUSKA**

DISTRICT COURT JUDGE

prepared and approved by:

  
Robert T. Stephan, #05340  
Attorney General

  
Martin J. Peck, #16273  
Kathy Greenlee, #13759  
Assistant Attorneys General  
Attorneys for plaintiff

approved by:

 President, Community Home Funding Corp.  
Community Home Funding Corporation  
by Paul Kueffer, president  
Defendant

  
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