

dent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

*It is further ordered,* That respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

FABBIS, INC., ET AL., DOING BUSINESS AS ROCHESTER  
PLUMBING AND HEATING CONTRACTORS

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

*Docket 8833. Complaint, Jan. 18, 1971—Decision Oct. 30, 1972.*

Order requiring a Rochester, New York, firm engaged in the sale of plumbing and heating equipment and installation services to the public, among other things to cease violating the Truth in Lending Act by failing to provide each customer with a notice of the right to rescind prior to consummation of the transaction; making any physical changes in customer's property or performing any work on such property before expiration of the rescission period; and failing to make any other necessary disclosures as required by Regulation Z of the said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Fabbis, Inc., a corporation, doing business as Rochester Plumbing and Heating Contractors, and Richard J. Fabrizio and James J. Rebis, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fabbis, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business

located at 123 Barberry Terrace, Rochester, New York. It is doing business under the name of Rochester Plumbing and Heating Contractors.

Respondents Richard J. Fabrizi and James J. Rebis are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale of plumbing and heating equipment and installation services to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents arrange, and for some time last past regularly have arranged, for the extension of consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents in the ordinary course and conduct of their business and in connection with their arranging for consumer credit, have caused, and are causing, customers to execute retail installment contracts, herein referred to as "the contract," which results or may result in a security interest being retained or acquired in real property which is used or is expected to be used as the principal residence of the customer. The customers thereby have the right to rescind such transactions, as provided in Section 226.9(a) of Regulation Z.

PAR. 5. In connection with the consumer credit transactions set forth in Paragraphs Three and Four hereof, respondents prepare documents containing consumer credit cost disclosures required by Section 226.8 of Regulation Z and obtain from customers written acknowledgment of receipt of these disclosures, but in some instances nevertheless fail to provide the customer with a copy of such disclosures, as required by Section 226.8(a) of Regulation Z.

PAR. 6. In connection with the consumer credit transactions set forth in Paragraphs Three and Four hereof, respondents complete notices of the right of rescission in the form required by Section 226.9(b) of Regulation Z and obtain from customers written acknowledgment of receipt of these notices, but in some instances nevertheless fail to provide each customer who has the right to rescind the transaction with two copies of such notices, as required by Sections 226.9(b) and (f) of Regulation Z. In many such instances, respondents fail to provide the customer with any copies of the required notice.

PAR. 7. Having entered into the consumer credit transactions set forth in Paragraphs Three and Four hereof, respondents in some instances fail to delay making any physical changes in the property of the customer and fail to delay performing any work or service for the customer until the three day rescission period provided for in Section 226.9(a) of Regulation Z has expired, in violation of Section 226.9(c) of Regulation Z.

PAR. 8. Pursuant to Section 103(k) of the Truth in Lending Act, respondents' aforesaid failures to comply with the requirements of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents thereby have violated the Federal Trade Commission Act.

*Mr. James M. Katz and Mr. Myer S. Tulko* supporting the complaint.

*Mr. Percival D. Oviatt, Jr., and Mr. Samuel P. Merlo, of Woods, Oviatt, Gilman, Sturman & Clarke, Rochester, New York* for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

JUNE 16, 1971

PRELIMINARY STATEMENT

Respondents, a corporation, and two individual officers, are charged with violating the Truth in Lending Act (15 U.S.C. 1601), as implemented by Federal Reserve Regulation Z (12 C.F.R. § 226). The complaint was issued on January 18, 1971, against Fabbis, Inc., doing business as Rochester Plumbing and Heating Contractors and its officers, Richard J. Fabrizi and James J. Rebis, individually and as officers of the corporation.

It charged that:

1. Respondents regularly arrange for the extension of consumer credit to their customers, and have failed to provide them with a duplicate copy of consumer credit cost disclosures, to retain, as required by Section 226.8(a) of Regulation Z.
2. In rescindable transactions, respondents have failed to provide their customers with requisite copies of notices of the right of rescission, as required by Section 226.9(b) of Regulation Z.
3. In rescindable transactions, respondents have failed to delay during the three day rescission period, making any physical changes in the customers' property, commencement of the work or deliveries to customers' residences for the duration of the rescission period, in violation of Section 226.9(c) of Regulation Z.

Respondents' Answer admitted the following facts:

1. Respondent Fabbis, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 123 Barberry Terrace, Rochester, New York. It is doing business under the name of Rochester Plumbing and Heating Contractors.

2. Respondents Richard J. Fabrizi and James J. Rebis are officers of said corporation. Their address is the same as that of the corporate respondent. Respondents are now, and for some time last past have been, engaged in the sale of plumbing and heating equipment and installation services to the public.

3. As a part of their business, in the ordinary course and conduct of their business as aforesaid, respondents arrange, and for some time last past regularly have arranged, for the extension of consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

Respondents' Answer either flatly denied, or denied knowledge of, all of the other allegations in the complaint.

A prehearing conference was held in Washington, D.C., on March 2, 1971. Evidentiary hearings were held in Rochester, New York commencing on March 18, 1971, and were concluded on March 22, 1971.

The following abbreviations will sometimes be used herein making references to the record: Transcript—Tr.; Commission Exhibits—CX; Respondents' Exhibits—RX; Complaint Counsels' proposed findings of fact—CPF; <sup>1</sup> Respondents' proposed findings of fact—RPF; Complaint—C; Answer—A.

On the basis of the entire record <sup>2</sup> the hearing examiner makes the following findings, conclusions and order. All proposed findings not found expressly or in substance are denied as erroneous, irrelevant or immaterial.

1. Respondent Fabbis, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 123 Barberry Terrace, Rochester, New York. It is doing business under

<sup>1</sup> References to proposed findings of the parties include the citation of authority or reasons submitted therewith on the accuracy of which the hearing examiner has relied in light of the requirements of the ninety (90) day rule.

<sup>2</sup> In accordance with the Commission rules reference is made to the principal supporting items of evidence. The citation of particular references in no way indicates that the entire record has not been considered. The findings are based on the record as a whole and not only on the citations to the exhibits or transcript pages specifically noted.

the name of Rochester Plumbing and Heating Contractors (Tr. 44; C., A.).

2. Respondents are now, and for some time last past, have been engaged in the sale of plumbing and heating equipment and installation services to the public (Tr. 44; C., A.). There was no proof that respondents have engaged in interstate commerce (Tr. 98-101, 411, 423-425).

3. In the ordinary course and conduct of their business as aforesaid, respondent corporation under the direction and control of the individual respondents has arranged and for some time last past, regularly has arranged, for the extension of consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System (C., A.; Tr. 85-88, 95, 443-444, 528).

A number of customer witnesses testified expressly that respondent corporation arranged for the extension of consumer credit to them: (Tr. 61-62; Tr. 110; Tr. 137). Commission Exhibits 25A-59G (Tr. 390) are the bank records in evidence of thirty-six additional instances in which respondent corporation arranged credit for customers.

4. Subsequent to July 1, 1969, respondent corporation in the ordinary course and conduct of its business and in connection with arranging for consumer credit, has caused, and is causing, customers to execute retail installment contracts to finance home improvements on real property that is used as the principal residence of the customer.

A number of customer witnesses testified that respondent corporation performed work on a structure which was used as a home and that was the principal residence of the witness and his or her spouse (Tr. 56-57; 105-106; 132; 166; 182; 236-237; 253; 263-264; 280; 315; 335-336; 357).

5. Respondent corporation employed workmen to install the plumbing and heating equipment it sold to its customers (Tr. 80).

6. No waivers of workmen's liens were presented at the hearing (CPF 6), however, the corporate respondent specifically waived any security interest or right of lien in connection with each transaction (RPF 5).

7. In consumer credit transactions respondents have failed to render consumer credit cost disclosures to their customers prior to consummation of their transactions.

A number of customer witnesses who testified at the hearing indicated that he or she discussed the method of payment with respondents' salesman before or at the time the sales agreement was executed

and that it was understood that respondents would arrange for the extension of credit to them (Tr. 61; 110; 137; 173; 189-190; 212-213; 242; 256-257; 282-283; 317; 340-342; 361-362).

Mr. Apostalou, one of the respondents' salesmen, testified that the first thing discussed with a customer who indicated an intent to make a purchase was the method by which payment would be made (Tr. 478-479). Mr. Rease testified that the company wants to know that it is going to be paid so that the method of payment is discussed with the customer (Tr. 432, 440).

Mr. Apostalou testified that he would contact Mr. Rease after a contract was signed in order to have him come out to a customer's home and seek execution of the bank papers (Tr. 478).

Mr. Rease's testimony indicated that by the time he arrived at the home of a customer, to arrange for the extension of consumer credit, the sales contract would already be signed (Tr. 432).

Thus, the consumer witnesses would not receive the consumer credit cost disclosures prior to execution of the sales proposal or of the retail installment contract. (Tr. 62; 108-112; 116; 135-137; 168-169; 186-189; 212-214; 241-243; 258; 282-284; 317-318; 357-361).

8. In connection with consumer credit transactions respondents obtained from customers written acknowledgment of receipt of documents containing spaces for consumer credit cost disclosures, but in some instances, nevertheless, failed to provide customers with a completed copy of such disclosures.

Customer witnesses presented by counsel supporting the complaint testified that respondents failed to provide them with a fully completed retainable copy of consumer credit cost disclosures. The documents in evidence, nevertheless, reveal that each customer signed an acknowledgment of receipt of the disclosures. (Tr. 116-117, CX 10-A; Tr. 137, CX 12-A; Tr. 169, CX 8-B; Tr. 187-189, CX 11-A; Tr. 214-216, CX 14-B; Tr. 241, CX 9-C; Tr. 258-260, CX 17-C; Tr. 285-286, 288 CX 21-B; Tr. 323, CX 15-B; Tr. 345-346, CX 24-A; Tr. 360, CX 13-B).

9. In connection with consumer credit transactions, respondents obtained from customers written acknowledgment of receipt of notices of right of rescission, but failed, in fact, to provide each such customer who it is claimed had the right to rescind with any copies of such notices.

Customer witnesses testified that they did not receive a copy of these notices of right of rescission to retain. However, the documents reveal that receipt thereof was acknowledged (e.g. Tr. 170; 116-117; CX 10-C, 10-D; Tr. 137, 148, CX 12-C, D; Tr. 216; Tr. 258, CX 17-C, D; Tr. 288; Tr. 323, CX 15-D, E; Tr. 345-346, CX 24-C, D; Tr. 360, CX 13-D, E).

