

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,  
Plaintiff

Civil Action No.98CV-237 (GK/AK)

v.

CAPITAL CITY MORTGAGE CORP.,  
a Maryland Corporation, MARCIA C. FIDIS  
and CAROLINE KOESTNER NASH, in their  
capacities as representatives of  
the ESTATE OF THOMAS K. NASH, and  
ERIC J. SANNE,

Defendants, and

THOMAS K. NASH FAMILY TRUST and  
ALAN W. NASH in his capacity as trustee,  
and NASH MARITAL TRUST UNDER WILL  
OF THOMAS K. NASH and MARCIA C.  
FIDIS and CAROLINE KOESTNER NASH,  
in their capacities as co-trustees,

Relief Defendants.

**CONSENT DECREE AND ORDER FOR PERMANENT INJUNCTION AND OTHER  
EQUITABLE RELIEF AS TO DEFENDANT ERIC J. SANNE**

**WHEREAS**, Plaintiff, the Federal Trade Commission ("FTC"), has commenced this action against Defendant Eric J. Sanne ("Sanne") by filing the First and Second Amended Complaints herein; Defendant Sanne has been served the Summons and Complaint; Plaintiff the FTC and Defendant Sanne have been represented by the attorneys whose names appear hereafter; Plaintiff the FTC and Defendant Sanne have agreed to settlement of all matters in dispute between them in this action upon

the following terms and conditions, without further adjudication of any issue of fact or law and without Defendant Sanne admitting liability for any of the matters alleged in the First and Second Amended Complaints or otherwise except for the jurisdictional facts;

**THEREFORE**, on the joint motion of Plaintiff the FTC and Defendant Sanne, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction of the subject matter and of the parties. Venue is proper in the United States District Court for the District of Columbia.

2. The Second Amended Complaint states a claim upon which relief may be granted against Defendant Sanne under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), and Section 814 of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692l.

3. Among other things, the FTC has alleged in the Second Amended Complaint that Defendant Sanne, as to borrowers whose loans were serviced by Defendant Capital City Mortgage Corporation ("Capital City"):

- a. sent debt collection letters that identify him as "Attorney at Law" or "General Counsel," but not as an employee of Capital City, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692(e);
- b. made false and misleading representations in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692(e) and Section 5(a)(1) of the FTC Act, 15 U.S.C. § 5(a)(1); and

c. engaged in unfair or unconscionable debt collection practices, in violation of Section 808 of the FDCPA, 15 U.S.C. § 1692f, and Section 5(a) of the FTC Act, 15 U.S.C. § 5(a)(1).

4. Defendant Sanne has generally and specifically denied all liability under any and all of the aforementioned statutes.

5. The activities of Defendant Sanne are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defendant Sanne waives all rights to seek appellate review, or otherwise challenge the validity of this Consent Decree for Permanent Injunction and Other Equitable Relief as to Defendant Eric J. Sanne ("Consent Decree"). Defendant Sanne further waives and releases any claim he may have in existence as of the date of the entry of the Consent Decree against the FTC, its employees, representatives, or agents.

7. Defendant Sanne agrees that this Consent Decree does not entitle him to seek or obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and Defendant Sanne further waives any rights to attorneys' fees that may arise under said provision of law. Each settling party shall bear its own expenses, costs, and attorneys' fees and disbursements of any sort associated with the investigation, prosecution, defense, negotiation, settlement and any other aspect of this settlement.

8. Entry of this Consent Decree is in the public interest.

**ORDER**

**I. INJUNCTION**

**IT IS THEREFORE ORDERED** that as of the date of entry of this Consent Decree, Defendant Sanne, his successors and assigns, and his agents, servants and employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise are hereby permanently enjoined, directly or through any corporation, subsidiary, division or other device,

A. In connection with the collection of a "debt" from a "consumer" as those terms are defined in Sections 803(3) and(5), respectively of the FDCPA, 15 U.S.C. § 1692a(3) and (5), from:

1. Misrepresenting his status as that of an independent attorney or making any false or misleading representation in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692(e).
2. Collecting or attempting to collect any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law, in violation of Section 808(1) of the FDCPA, 15 U.S.C. § 1692f(1).
3. Engaging in any unfair or unconscionable debt collection practice, in violation of Section 808 of the FDCPA, 15 U.S.C. § 1692f.
4. Failing to comply in any other respect with the FDCPA, as amended.

B. In connection with any credit transaction from:

1. Misrepresenting the amount of any debt, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
2. Requiring borrowers to pay monies not due under their loan instrument or by operation of law, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## II. BAN ON DEBT COLLECTION

**IT IS FURTHER ORDERED** that, as of the date of entry of this Consent Decree, and continuing thereafter, Defendant Sanne is permanently restrained and enjoined from owning, managing, engaging in, participating in, or assisting in any manner or in any capacity whatsoever, whether directly or indirectly, in concert with others, or through any intermediary, third party, business entity or device, any business engaging in activities falling within the definition of "debt collector," as that term is defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

## III. MONETARY PAYMENT

**IT IS FURTHER ORDERED** that Defendant Sanne shall pay Plaintiff the FTC in settlement of all claims alleged in the Second Amended Complaint the amount of twenty thousand dollars (\$20,000), which shall be deemed to satisfy completely Plaintiff's claims in this action for monetary remedies from Sanne, including but not limited to monies sought under the FDCPA and the FTC Act. On or before five (5) calendar days after the date of entry of this Consent Decree, Defendant Sanne shall pay by certified or cashiers's check the sum to the FTC or such agent as the FTC may direct,

pursuant to instructions provided by the FTC. All sums paid pursuant to this paragraph shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including but not limited to redress to borrowers and any attendant expenses for the administration of any redress fund. The FTC shall have sole discretion in choosing an independent administrator to administer any redress program. The FTC shall determine which borrowers are eligible for redress, if any, as well as the amounts to be paid. If the FTC determines in its sole discretion that direct redress to borrowers is wholly or partially impracticable or funds remain after redress is completed, the FTC in its sole discretion may apply the funds for such other equitable relief (including information remedies) as it determines to be reasonably related to Defendant's practices as alleged in the Second Amended Complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury. Defendant Sanne shall have no right to challenge the FTC's exercise of discretion with respect to the choice of remedies under this paragraph.

#### **IV. DEFAULT**

**IT IS FURTHER ORDERED** that, in the event that Defendant Sanne defaults on any obligation to make a payment set forth in this Consent Decree, the entire unpaid amount together with interest, computed pursuant to 28 U.S.C. § 1961(a) from the date of default to the date of payment, shall immediately become due and payable.

#### **V. RIGHT TO REOPEN**

**IT IS FURTHER ORDERED** that the FTC's agreement to, and the Court's approval of, this Consent Decree is expressly premised upon the truthfulness, accuracy, and completeness of the

sworn financial statement of Defendant Sanne dated February 17, 2004, which contains material information relied upon by the FTC in negotiating and agreeing to the terms of this Consent Decree.

A. If, upon motion by the FTC and notice to Defendant Sanne, this Court should find that Defendant Sanne made a material misrepresentation or omitted material information concerning his financial condition in such financial statement, then the Court shall enter a judgment holding Defendant Sanne liable to Plaintiff the FTC in the amount of fifty thousand (\$50,000) dollars. This amount shall immediately become due and payable by Defendant Sanne, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance. Any such judgment shall not constitute an admission of liability under the FTC Act or the FDCPA.

B. Defendant Sanne further agrees that the facts as alleged in the Second Amended Complaint filed in this action shall be taken as true in any subsequent litigation filed by Plaintiff, the FTC, brought pursuant to this Section, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy case.

C. Any proceedings instituted under this section are in addition to, and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Consent Decree.

## **VI. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the limited purpose of monitoring and investigating compliance with Sections I and II. herein,

A. Within thirty (30) days of receipt of written notice from a representative of the Commission, Defendant Sanne shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in his possession or direct or indirect control to inspect the business operation, *provided*, that Defendant Sanne, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c).

B. In addition, the Commission is authorized to monitor compliance with this Consent Decree by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of court, using the procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. posing as consumers and suppliers to: Defendant Sanne, Defendant Sanne's employees, or any other entity managed or controlled in whole or in part by Defendant Sanne, without the necessity of identification or prior notice; and

C. Defendant Sanne shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Consent Decree. The person interviewed may have counsel present.

*Provided, however*, that nothing in this Consent Decree shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to



obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

**VII. COMPLIANCE REPORTING BY DEFENDANT**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Consent Decree may be monitored:

- A. For a period of three (3) years from the date of entry of this Consent Decree,
  1. Defendant Sanne shall notify the Commission of the following:
    - a. Any changes in residence, mailing addresses, and primary residential telephone numbers of Defendant Sanne, within thirty (30) days of the date of such change;
    - b. Any changes in employment status (including self-employment) of Defendant Sanne, and any change in the ownership of Defendant Sanne in any business entity, within thirty (30) days of the date of such change. Such notice shall include the name and address of each business that Defendant Sanne is employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of Defendant Sanne's duties and responsibilities in connection with the business or employment; and
    - c. Any changes in the Defendant Sanne's name or use of any aliases or fictitious names; and

2. Defendant Sanne shall notify the Commission of any changes in corporate structure of any business entity that Defendant Sanne directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Consent Decree, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Decree; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant Sanne learns less than thirty (30) days prior to the date such action is to take place, Defendant Sanne shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Consent Decree, Defendant Sanne shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Consent Decree. This report shall include, but not be limited to:

1. The then-current residence address, mailing addresses, and residential telephone numbers of Defendant Sanne;
2. The then-current employment and business addresses and telephone numbers

of Defendant Sanne, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant Sanne, for each such employer or business;

3. Any other changes required to be reported under subparagraph A of this Section; and
4. A copy of each acknowledgment of receipt of this Consent Decree, obtained pursuant to Section IX.

C. For the purposes of this Consent Decree, Defendant Sanne shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Financial Practices  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., NJ-3158  
Washington, DC 20580

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D. For purposes of the compliance reporting and monitoring required by this Consent Decree, the Commission is authorized to send written communications directly to Defendant Sanne, provided that the FTC concurrently transmits a copy to Sanne's attorneys:

Nathan I. Finkelstein and Laurie Horvitz  
Finkelstein & Horvitz, P.C.  
7315 Wisconsin Avenue, Suite 400 East  
Bethesda, MD 20814

or to such other attorneys as he may subsequently designate. With respect to oral communications

between the FTC and Sanne, the FTC agrees to provide Sanne's counsel with an opportunity to be present and/or to participate in such communications, *provided, however*, that if Defendant Sanne has failed to designate counsel, the FTC may contact him directly.

#### **VIII. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Consent Decree, Defendant Sanne and his agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with him who receive actual notice of this Consent Decree by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

A. all records reflecting any involvement by Defendant Sanne, including involvement as an attorney, in the business of lending to consumers or small businesses after the date of this Consent Decree; and

B. all records and documents necessary to demonstrate full compliance with each provision of this Consent Decree, including but not limited to, copies of acknowledgments of receipt of this Consent Decree, required by Section IX, and all reports submitted to the FTC pursuant to Section VII.

#### **IX. DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Consent Decree, Defendant Sanne shall deliver copies of the Consent Decree as directed below:

A. For any business that Defendant Sanne controls, directly or indirectly, or in which

Defendant Sanne has a majority ownership interest, Defendant Sanne must deliver a copy of this Consent Decree to all principals, officers, directors, and managers of that business. Defendant Sanne must also deliver copies of this Consent Decree to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Consent Decree. For current personnel, delivery shall be within (5) days of service of this Consent Decree upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. For any business where Defendant Sanne is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Consent Decree, Defendant Sanne must deliver a copy of this Consent Decree to all principals and managers of such business before engaging in such conduct.

C. Defendant Sanne must secure a signed and dated statement acknowledging receipt of the Consent Decree, within thirty days of delivery, from all persons receiving a copy of the Consent Decree pursuant to this Section.

**X. TAX IDENTIFICATION NUMBER**

**IT IS FURTHER ORDERED** that, Defendant Sanne shall, in accordance with 31 U.S.C. § 7701, furnish to the FTC his taxpayer identification number (social security number or employee identification number), which shall be used for the limited purpose of collecting and reporting on any delinquent amount arising out of this Consent Decree.

**XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**


**IT IS FURTHER ORDERED** that, within five (5) business days of receipt of this Consent

Decree as entered by the Court, Defendant Sanne must submit to the FTC a truthful sworn statement acknowledging receipt of this Consent Decree.

**XII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that, this Court shall retain jurisdiction of this matter for the limited purposes of construction, modification and enforcement of this Consent Decree.

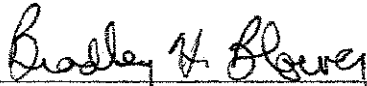
Dated: May 6, 2004

  
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Gladys Kessler,  
United States District Judge

The FTC and Defendant Sanne, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth and consent to the entry thereof.

FOR THE FEDERAL TRADE COMMISSION:

JOEL WINSTON  
Associate Director for Financial Practices

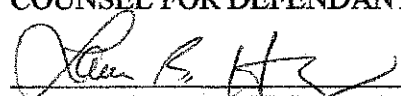


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