

Delaware County Fair Housing News

May 2002

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National Fair Housing Month Pressing Issues in Fair Housing 2002

On Friday April 5th FHCSF hosted its second annual workshop "Pressing Issues in Fair Housing" to celebrate National Fair Housing month. 58 people attended this practical workshop for government employees, elected officials, housing counselors, non-profit employees and others interested in better understanding fair housing issues as they relate to our communities. The topics presented at this year's workshop included: Predatory Lending, Resources to Combat Predatory Lending and "The State of the Region: Impacts on Equity & Access to Opportunity."



Karen L. Black, Esq. presents the Philadelphia Metropolitan Policy Center's study "Flight or Fight" Metropolitan Philadelphia and Its Future



Robert Salvin, Esq. presents information about what Community Impact Legal Service's can do to help victims of predatory lending in Bucks, Chester, Delaware &

OCC Orders Eagle National Bank In Upper Darby To Cease Payday Lending Program

The Office of the Comptroller of the Currency (OCC) announced in January that Eagle National Bank of Upper Darby, PA had signed a Consent Order directing it to cut its ties and cease all payday lending activities by June 15, 2002. Eagle has been engaged in payday lending through arrangements with Dollar Financial Group of Berwyn, PA. The OCC acted after finding that Eagle was in material noncompliance with an earlier Memorandum of Understanding entered into with the OCC and was engaged in numerous unsafe and unsound activities.

Payday loans are small loans made when a borrower writes a postdated check for the amount of the loan plus a fee of about \$15 per \$100 borrowed. Few loans exceed \$500, and most have a term of 14 days or less.

Other practices criticized by the OCC included Eagle's lack of knowledge that Dollar had actively promoted rollovers of payday loans booked by the bank by providing an incentive to Dollar's employees, which resulted in a higher volume of rollovers than new loan originations and misuse of the loan product for long-term credit.

The action follows a recent examination of Eagle in which the OCC determined that: the bank had risked its financial viability by concentrating in one line of business—payday lending; the bank relinquished supervision of the program to a single third-party originator of payday loans; and the payday lending program was conducted on an unsafe and unsound basis, in violation of a multitude of standards of safe and sound banking, compliance requirements, and OCC guidance.

"Eagle had effectively turned over the management of the bank's main business to a third party, and then virtually ignored how that business was being conducted," said Comptroller of the Currency John D. Hawke, Jr. "The bank essentially rented out its national bank

charter to a payday lender in order to facilitate that nonblank entity's evasion of the requirements of state law that would otherwise be applicable to it."

Gary Peller, a professor of law at Georgetown University, said that the OCC order bolsters his case against Ace Cash Express, Inc. of Irving, TX, and its bank partner, \$329 million-asset Goleta National Bank in California. Mr. Peller filed a suit in August on behalf of consumers, claiming that Ace rents Goletas national charter to skirt state usury laws. He added that the OCC's order calls into question Goletas and Ace's claims that they are protected by the National Bank Act, which says that a national bank operating in multiple states may charge interest at a rate allowed by its home state. Mr. Peller explained that Eagle's partnership with Dollar is very similar to the Goleta-Ace relationship. It seems fantastically irresponsible for the bank to put all of its assets at risk by renting their charter out to payday lenders.

Several payday lenders, including Ace and Dollar, have partnered with banks to make loans in states where the laws against payday lending are stricter. Critics of this practice, including several state regulators, say the bank is not actually making loans, because the payday lender originates and services the loans and ultimately buys them from the banks portfolio. They say banks are in effect simply renting out their charters to allow payday lenders to get around local laws and not taking any risk.

Thomas L. Gounaris, an Assistant Attorney General in Maryland, said that in light of the OCC order some banks might want to think twice about partnering with payday lenders. "I think the global impact of it is it is one more very strong statement by the OCC that these rent-a-center schemes are not what are contemplated by section 85 of the National Bank Act, he said.

Judge Holds That Architects May Be Liable For Accessibility Requirement Violations

An architect who designed a multifamily building may be liable if the building does not comply with the Fair Housing Act's accessibility requirements even if the architect was not involved in the construction of the building, a federal district judge for the Northern District of Illinois ruled in November.

Under the Fair Housing Act, new buildings of four or more units designed for first occupancy after March 13, 1991 must be built with certain accessible features. All ground floor units, all units in elevator buildings and all single-story townhouses must have accessible routes to and through the units, must have sufficiently wide doors to allow for the passage of wheelchairs, light switches and other environmental controls must be in accessible locations, reinforcements must be in bathroom walls to allow for later installation of grab bars, and the kitchens and bathrooms must be designed so a wheelchair can maneuver.

Phyllis and Karl Doering filed a complaint against numerous entities involved in the design and construction of Merrimac Square Condominiums, including Adrian-Zemenides, Ltd, the architectural firm responsible for the drawings and designs used in the construction of the condominiums. The Doerings alleged that the defendants had failed to comply with the accessibility requirements of Section 804(f) of the Fair Housing Act, which prohibits discrimination "in connection with the design and construction of covered multifamily dwellings."

Adrian-Zemenides moved to dismiss the claims against it, arguing that it was not liable under the section because it had designed, but not constructed, the condominium. District Court Judge Joan Gottschall, citing other cases, rejected Adrian-Zemenides' argument in an order denying its motion to dismiss. In Baltimore Neighbroods,

Inc., v. Rommel Builders, for example, a district court judge ruled that "when a group of entities enters into the design and construction of a covered dwelling, all participants in the process as a whole are bound to follow the [Fair Housing Act]." Judge Gottschall also relied on another case from the Northern District of Illinois in which the court said, "The notion that each of two parties working together, one performing the [design] function and the other performing the [construction] function, is thereby insulated from liability is a frank absurdity." [*Phyllis Doering, et al. v. Pontarelli builders, Inc., et. al.*]

Delaware Valley REALTORS® Association

Presents: "It's Your Move"

The Delaware Valley REALTORS® Association (DVAR) will send experienced REALTOR® members to area high schools and home school associations to present "It's Your Move." The program, geared towards high school seniors, focuses primarily on the first housing decision typically made by a high school graduate – renting an apartment. While it is impossible, in a one-hour program, to cover all that there is to know about renting an apartment, DVAR has selected the topics that are most important, most often encountered, and most often confused. Topics within the module include: how to find an apartment, choosing the right apartment, understanding the rental agreement, responsibilities of the tenant and landlord, and the importance of establishing and maintaining a good credit history.

The presentation is offered at no charge to interested groups of students and/or their parents. Ideally the program lasts one hour but can be tailored to fit any schedule. Each attendee will receive a 20-page reference workbook. The goal is to provide a base on which students (and their families) can build a deeper understanding of consumer housing issues. For more information or to schedule a presentation for your group contact Paula Tansey at (610) 356-6505 or

Bank To Refund Fees in Predatory Lending Cases

*By Joseph N. DiStefano, Inquirer Staff Writer
Philadelphia Inquirer, Friday, April 26, 2002*

One of the nation's biggest banks has agreed to refund brokers' fees to thousands of Pennsylvanians whose lawyers say they were victims of "predatory-lending" practices. Bank of America Corp.'s EquiCredit division plans to refund \$2.5 million - an average of more than \$200 each - to 12,000 Pennsylvania homeowners whose lawyers said they were duped by aggressive loan brokers into taking out high-cost loans. The bank has also agreed to write off one-quarter of the money it had demanded from 800 Pennsylvania families who are facing foreclosure proceedings because they can't pay EquiCredit back, said Philadelphia lawyer David Searles, representing the borrowers. And it will pay up to \$625,000 in legal fees.

An attorney for EquiCredit, Leonard Bernstein of the Philadelphia office of Reed Smith L.L.P., said it would be "inappropriate" to discuss details before the agreement is formally presented to federal Judge Eduardo C. Robreno at a scheduled meeting this afternoon [April 26, 2002]. Bernstein also said that, as part of the settlement agreement, the bank and its affiliates do not acknowledge "that anyone did anything wrong."

At EquiCredit's peak in the late 1990s, "we would get at least a case a week involving an elderly homeowner, usually female and African American, who had gotten a loan with EquiCredit, but did not know the terms of the loan or how

much it was costing them," said Alan White, an attorney with Community Legal Services of Philadelphia, which also represented borrowers in the case. When borrowers could not pay, Bank of America tried to take over their homes. In Philadelphia alone, Bank of America has filed foreclosure papers on more than 500 homes since 1998, according to court records.

City foreclosures rose rapidly in the 1990s, a problem that housing activists, City Council and some bankers blamed on the proliferation of aggressive, high-cost lenders, such as EquiCredit, that specialize in "subprime" loans to risky borrowers. But subprime lenders argue they provide a useful service by lending to people traditional banks refuse to serve.

The lead plaintiff in the case, Mildred Samuel of North Philadelphia, borrowed \$18,000 for home repairs two years ago through a broker who charged \$1,700 for setting up an EquiCredit loan, according to court papers. Without telling Samuel, the broker enlarged the loan to pay her outstanding utility bills and additional fees so the home-repair loan could be approved, according to Searles. EquiCredit charged 13 percent interest and set payments at \$357 a month over 15 years - about 40 percent of Samuel's income. Samuel was unable to pay, and EquiCredit tried to take her home.

Last year, Bank of America announced plans to shut down EquiCredit and to stop making subprime mortgage loans. For information about the settlement, call Community Legal Services at 215-227-2400.

Anti-Defamation League Kicks Off Second Season Of NO PLACE FOR HATE® CAMPAIGN

On Friday February 22, 2002 The Anti-Defamation League (ADL) announced the second season of its hugely successful No Place For Hate® campaign. No Place For Hate® is a community-wide campaign that empowers Philadelphia neighborhoods and communities in Bucks, Chester, Delaware and Montgomery counties to challenge racism, hate and bigotry of all forms. Building on the success of the first stage of the program, the goal is to motivate and guide communities to become No Place For Hate®. Ten communities, at least one from each of the five counties, have signed up to participate in the program: Abington, **Darby, East Lansdowne, Eddystone**, Feltonville, **Lansdowne**, Lower Merion, **Middletown**, Pottstown, and **Upper Chichester**.

The tragic events of September 11 resulted in a spate of vicious attacks and threats against persons thought to be of Muslim and Arab background - spurred by fear and ignorance and abetted by scapegoating and stereotyping. These revealed how a threat from a seemingly distant outside enemy can expose fissures and cracks within our society, test the cohesiveness of our diverse population, and disturb the sense of security and peace enjoyed by minority groups. NO PLACE FOR HATE® could not be more timely and the need to participate in it more crucial.

No Place For Hate® was originally launched in January, 2001 and included the participation of 145 elementary, middle and high schools, each of the 50 branches of the Free Library of Philadelphia, thousands of individuals who signed the campaign's anti-prejudice pledge, and 150 retail stores.

In Phase Two of No Place For Hate®, communities adopt a proclamation affirming their commitment to tolerance and diversity, and agree to undertake three education, law enforcement and/or community-based programming activities during the one-year term of the campaign. A municipality can select from a menu of over 30 activities, ranging from educational programs such as A WORLD OF DIFFERENCE® training to a lecture series, from parades to film festivals, or even create their own activity, as long as it is community-wide and promotes the value of respect. Upon completion of the activities, the community will be certified as No Place For Hate®. At this point, one dozen communities have already committed to being involved in the program and are at various levels of participation, ranging from forming their committee, to issuing a proclamation, to choosing their activities.

Communities can also enlist the resources of the No Place For Hate® Coalition, comprised of over 25 organizations representing a wide range of religious, educational, law enforcement, ethnic and community groups concerned with the well-being of our communities. These organizations are prepared to act as a resource and provide services, as appropriate, to community groups participating in the No Place For Hate® campaign.

"Hatred and prejudice often become so ingrained we often don't even recognize their insidiousness," stated Barry Morrison of the ADL. "We recognize how difficult it is for communities and the individuals in the community to tackle the issues directly and we applaud their perseverance. I hope these charter communities will be models for others in the region."

No Place For Hate® is in partnership with Philadelphia Newspapers, Inc., WPVI-TV and the Free Library of Philadelphia and in collaboration with the Pennsylvania League of Cities and Municipalities and the Philadelphia Commission on Human Relations. For further information, call 215-568-2223.

No Place For Hate® Coalition Members

American Jewish Committee
American Jewish Congress
Asian American Civil Liberty
League
Association of Islamic
Charitable Projects
Attorney General of PA
Board of Rabbis of Greater
Philadelphia
Bucks County Human
Relations Council
Bucks County Peace Center
Center for Lesbian and Gay
Civil Rights
Congreso de Latinos Unidos
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Organizaciones Hispanas
Fair Housing Council of
Montgomery County
Fair Housing Council of
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Corporation
Greater Philadelphia High
School Partnership
Greater Philadelphia Urban
Affairs Coalition
Guardian Civic League
Hispanic Bar Association of
Philadelphia
InterAct Theatre Company
Japanese American Citizens
League
Jewish Community Relations
Council of Greater Phila.
Leadership Inc.
Metropolitan Christian
Council of Philadelphia
Multicultural Resource Center
National Organization of
Black Law Enforcement
Executives
Nueva Esperanza
Operation Understanding
Partners Program
Pennsylvania Human
Relations Commission
Pennsylvania Lesbian and
Gay Task Force
Philadelphia Chinatown
Development Corp.
Philadelphia Commission on
Human Relations
Philadelphia Martin Luther
King, Jr. Association for
Non-Violence
Philadelphia Safe & Sound
Temple University Center for
Intergenerational Learning
Turkish American Friendship
Society of America
United Way of Southeastern
Pennsylvania
Urban League of Philadelphia
Women's Law Project
Woodrock

Realtors Have No Fiduciary Duty to Disclose Ethnic Diversity of a Neighborhood

On December 21, 2001 an Ohio court of appeals affirmed a lower court decision that a real estate agent has no fiduciary duty to disclose the ethnic diversity of a neighborhood to a client. The case involved the Hannahs, an African American family and Sibcy Cline Realtors and agent Mary Kay Carroll. The Hannahs were relocating from Virginia to Cincinnati, Ohio. Besides the characteristics they wanted in the house, the Hannahs also specified that they desired their new home to be located in an excellent school district and in an ethnically diverse neighborhood. The Hannahs did not want to live in an area where they would feel uncomfortable walking into a supermarket or have their children be the only African American children in their class. Real estate agent Carroll stated that she could not give them information on the ethnicity of a neighborhood, but sent them a relocation packet that included a Cincinnati Magazine's school guide that contained diversity statistics regarding schools, and suggested to the Hannahs that they call Housing Opportunities Made Equal (HOME, a fair housing organization located in Cincinnati). Carroll also suggested the Hannahs talk directly with the schools themselves.

The Hannahs made an offer and purchased a home in Milford. After moving in, they experienced no overtly racial incidents, however, they began to feel uncomfortable when some of their neighbors ignored them. Their family was the only African American family in their subdivision. Although the Hannahs' were told by school personnel that the school was ethnically diverse, one of their sons was the only African American child in the fourth grade, and all three of her sons were called derogatory names, were taunted and were hit both at school and on the bus on a regular basis.

After approximately one year, the Hannahs put their home up for sale, sold it for a profit, and moved to another township. Milford had an African American population of 1.5% whereas their new neighborhood, where they were very satisfied, had an African American population of 4.2%.

The Hannahs then brought suit against agent Carroll and Sibcy Cline Realtors. One of the claims in the Hannahs suit was based on a contract claim in the disclosure agreement. This stated that Carroll and Sibcy Cline owed to the Hannahs the duties of loyalty, obedience, confidentiality, accounting and reasonable skill and care in performing their duties, as well as the duty to disclose to the Hannahs all material information obtained from the seller or from any other source.

The court stated that the evidence before the trial court was that a real estate agent was normally instructed not to discuss the racial composition or diversity of an area. In addition, the court said that it had reviewed numerous decisions from both the federal and state courts concerning the Fair Housing Act, as well as a real estate agent's possible fiduciary duty to disclose information about a neighborhood's racial composition. The court stated that it could not find any example of an agent or broker having a fiduciary duty to disclose such information. In fact, it stated, that in order to avoid claims of unlawful steering in violation of the Fair Housing Act, it would not be in the best interests of an agent or broker to do so.

The court also stated that with no clear understanding of what constitutes a satisfactorily diverse neighborhood for a particular client, a real estate agent would be placed in the untenable position of using his or her subjective idea of diversity. An agent acting on his or her idea of ethnic diversity could be accused of steering, or of preserving and encouraging patterns of racial segregation in available housing.

The court concluded that Carroll and Sibcy Cline did not breach the contract, because the record failed to demonstrate that they had obtained the statistical information from any source or that they should have had the information. The fiduciary duty imposed by statute on an agent or broker does not by its terms require an agent to do more than advise a client that it would be in his or her best interest to obtain expert advice for material matters when necessary or appropriate. *[Joel Hannah, et. al. v. Sibcy Cline Realtors, et. al.]*

Complex May Not Require Disabled Tenants to Insure Ramps

A New Jersey apartment complex violated the Fair Housing Act by requiring disabled tenants to purchase liability insurance as a condition for the installation of access ramps to their apartments, a HUD administrative law judge ruled in November.

Paul Abrahamsen, Susannah Braiman, and Carol Iorio lived in the Twinbrook Village Apartments in Ocean, New Jersey. Each of them is disabled and cannot walk without assistance. Abrahamsen and Braiman use wheelchairs. Iorio uses a cane, a walker, a wheelchair, and an electric scooter.

The entrances to the apartments in which Abrahamsen, Braiman, and Iorio lived each had a single step of 5- to 6-inches leading to the entrance. In addition there were five-inch curbs and no curb cuts on the path to the complex's handicapped parking places.

In 1997, Braiman began asking the Twinbrook management to install a ramp so she could enter her apartment in a wheelchair. In 1999, Abrahamsen and Iorio asked permission to install ramps to their apartments, and Braiman made another request. Without the ramps, Abrahamsen was unable to leave his apartment unless he was taken out on a stretcher. Braiman was unable to take her four-year-old son to preschool or outside to play.

In June 1999, the Monmouth County Department of Human Services requested permission to install ramps at no cost to Twinbrook. Twinbrook Manager Dan Daly told Monmouth that Twinbrook would grant permission for the construction, but that it would not be responsible for any liability for injuries resulting from the construction or the presence of the ramps. Twinbrook conditioned approval of the ramps on Braiman, Abrahamsen, and Iorio obtaining liability insurance to cover injuries associated with the ramps.

Twinbrook also offered to move the three tenants to different apartments, but the new apartments were not wheelchair-accessible.

Braiman, Iorio, and Abrahamsen filed disability discrimination complaints with HUD and the New Jersey Civil Rights Division. Following investigations by HUD and state investigators, HUD filed a discrimination charge in December 2000. In March 2001, Twinbrook authorized the installation of the ramps, and they were built the following month.

The HUD office of Administrative Law Judges conducted a hearing on the tenants' discrimination complaints. In November, Administrative Law Judge Constance T. O'Bryant issued an initial decision in which she held that Twinbrook, its owner, and Twinbrook managers Dan Daly and Elan S. Schwarz had violated the Fair Housing Act by refusing to make reasonable accommodations for the three tenants' disabilities and by discriminating against them on the basis of handicap. Judge O'Bryant found that Twinbrook's requirement that the tenants buy liability insurance as a condition for its approval of the ramps and an additional requirement that they modify the proposed design of the ramps were unreasonable and constituted a refusal to permit the construction of the ramps. She rejected Twinbrook's argument that it had made a reasonable accommodation for the tenants' disabilities by offering to move them to different apartments. She also found that the requirement that tenants who require wheelchair access buy liability insurance was facially discriminatory and was not justified by business necessity.

Judge O'Bryant ordered the respondents to pay Braiman \$75,000 for the pain, suffering, and humiliation she suffered as a result of being confined to her apartment for twenty months. Judge O'Bryant also awarded Abrahamsen \$40,000 and Iorio \$20,000. She ordered Twinbrook to pay a \$15,000 civil penalty.

HUD v. Twinbrook Village Apartments, No. 02-00-0256-8 (HUD Office of Admin. Law Judges 11-9-01)



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Delaware County Fair Housing Task Force

The Delaware County Fair Housing Task Force has been meeting since last fall to work on identifying the impediments to fair housing choice in Delaware County. This is part of the consolidated planning process mandated by HUD for all Community Development Block Grant entitlement jurisdictions. HUD requires that the Consolidated Plan include a certification that the county is affirmatively furthering fair housing. FHCS has been working with the Office of Housing & Community Development to conduct the Analysis of Impediments (AI) to fair housing choice, and develop an action plan to overcome the effects of impediments identified through that analysis. The AI involves an assessment of how laws, regulations, policies, and procedures effect the location, availability, and accessibility of housing and how conditions, both private and public, affect fair housing choice.

As part of that process the Delaware County Fair Housing Task Force was formed in order to gather input and comments from all those involved in the housing industry, both public and private. The purpose of this Task Force has been to gather information about impediments to fair housing choice in Delaware County; develop an action plan to address the impediments identified; and disseminate information that will help you deal with and remove impediments to fair housing. The next meeting of this Task Force is scheduled for **Friday May 31, 2002 at 9 am**. It will be held at Smedley Park Environmental Center in Springfield. Please try to attend this very important meeting, as we will be putting the final touches on the AI. For more information or directions please contact FHCS at (610) 604-4411.