

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CLOSED
CIVIL
CASE

Case No. 03-60021-CIV-LENARD-SIMONTON

FEDERAL TRADE COMMISSION,

Plaintiff,

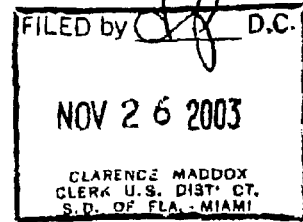
v.

30 MINUTE MORTGAGE INC.,
a Florida corporation,

GREGORY P. ROTH,
individually and as President of
30 Minute Mortgage Inc., and

PETER W. STOLZ,
individually and as National Sales
Director of 30 Minute Mortgage Inc.,

Defendants.



~~Proposed~~ **STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE RELIEF AS TO DEFENDANT
PETER W. STOLZ**

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed a Complaint for Injunctive and Other Equitable Relief pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) & 53(b); Section 108(c) of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1607(c); and Sections 505(a)(7) and 522(a) of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. §§ 6805(a)(7) & 6821(a). The Commission and Defendant Peter W. Stolz, by and through their respective attorneys, hereby stipulate to the entry of and request the Court to enter this Stipulated Final Judgment and Order for Permanent

6/1/04
[signature]

Injunction and Other Equitable Relief As to Defendant Peter W. Stolz (“Order”) to resolve all matters of dispute between them in this action. **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:**

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and the parties hereto.
2. Venue lies properly with this Court.
3. The activities of Defendants 30 Minute Mortgage Inc., Gregory P. Roth, and Peter W. Stolz are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Plaintiff’s Complaint states a claim upon which relief may be granted against Defendants 30 Minute Mortgage Inc., Gregory P. Roth, and Peter W. Stolz under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); TILA, 15 U.S.C. § 1601 et seq.; its implementing Regulation Z, 12 C.F.R. Part 226; Title V of the GLB Act, 15 U.S.C. §§ 6801-09, 6821-27; and the FTC’s Privacy of Consumer Financial Information Rule (“Privacy Rule”), 16 C.F.R. Part 313.
5. Defendant Peter W. Stolz has entered into this Order freely and without coercion. Defendant Peter W. Stolz further acknowledges that he has read and understands the provisions of this Order and is prepared to abide by them.
6. Upon entry, this Order supplants the Stipulated Order of Preliminary Injunction entered herein on March 14, 2003 insofar as it applies to Defendant Peter W. Stolz.
7. Defendant Peter W. Stolz waives all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendant Peter W. Stolz further waives and releases any claim he may have against the Commission, its employees, representatives, or agents.

8. Defendant Peter W. Stolz agrees that this Order does not entitle him to seek or to 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 Peter W. Stolz further waives any rights to attorneys' fees that may arise under said provision of law.

9. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

10. This Order does not constitute and shall not be interpreted to constitute a finding by the Court that the facts alleged in the Complaint, other than the jurisdictional facts, are true or that Defendant Peter W. Stolz has engaged in violations of any law or regulations. This Order does not constitute and shall not be interpreted to constitute an admission by Defendant Peter W. Stolz as to any of the facts alleged in the Complaint, other than the jurisdictional facts, or an admission by Defendant Peter W. Stolz that he has engaged in violations of any law or regulations.

11. This Order is in the best interests of all the parties to this action and is in the public interest.

DEFINITIONS

For purposes of this Order:

1. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

2. “Customer information of a financial institution” is synonymous in meaning and equal in scope to the usage of the term in Section 527(2) of the GLB Act, 15 U.S.C. § 6827(2).

3. “Defendant” means Peter W. Stolz and his officers, agents, servants, employees, subsidiaries, affiliates, successors, assigns, and all persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise.

4. “Document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

5. “Plaintiff” means the Federal Trade Commission.

6. “Privacy Rule” means the FTC’s Privacy of Consumer Financial Information Rule, 16 C.F.R. Part 313. For purposes of Section IV of this Order, the terms “consumer,” “financial institution,” “nonaffiliated third party,” and “nonpublic personal information” are defined as set forth in Section 313.3 of the Privacy Rule, 16 C.F.R. § 313.3.

7. “Regulation Z” means the regulation the Federal Reserve Board (“FRB”) promulgated to implement TILA, 12 C.F.R. Part 226. The term also includes the FRB Official Staff Commentary on Regulation Z, 12 C.F.R. Part 226, Supp. 1. The terms “annual percentage rate,” “consumer credit,” and “finance charge” are defined as set forth in Sections 226.2, 226.4, and 226.22 of Regulation Z, 12 C.F.R. §§ 226.2, 226.4, & 226.22.

8. “Subtitle A of Title V of the GLB Act” means 15 U.S.C. §§ 6801-9, and “Subtitle

B of Title V of the GLB Act” means 15 U.S.C. §§ 6821-27.

9. “TILA” means the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j.

10. “Unsolicited Commercial E-mail” means an electronic mail message that consists of or contains a communication advertising, promoting, soliciting, offering, or offering to sell any product or service, and that is not requested by the addressee or recipient or sent pursuant to a pre-existing business or personal relationship between the sender and the addressee or recipient of the e-mail.

CONDUCT PROHIBITIONS

I. BOND REQUIREMENTS

IT IS THEREFORE ORDERED that Defendant Peter W. Stolz, whether acting directly or indirectly through any persons or entities under his control, is hereby permanently enjoined and restrained from engaging in the sending of Unsolicited Commercial E-mail, unless, prior to engaging in such activities, he first obtains a performance bond in the principal sum of \$1,000,000 (One Million Dollars) (“Bond”). The terms and conditions of the Bond are as follows:

- A. The Bond shall be conditioned upon compliance with Section 5(a) of the FTC Act and the provisions of this Order. The Bond shall be deemed continuous and remain in full force and effect as long as Defendant Peter W. Stolz is engaging in the sending of Unsolicited Commercial E-mail. Defendant Peter W. Stolz shall maintain the Bond for a period of three (3) years after he provides notice to the Commission that he has ceased engaging in the sending of Unsolicited Commercial E-mail. The Bond shall cite this Order as the subject matter of the

Bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Section 5 of the FTC Act or the provisions of this Order, or to any other violation of law;

- B. The Bond required pursuant to this Section shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each state in which Defendant Peter W. Stolz, or any entity directly or indirectly under such defendant's control, is doing business and that holds a Federal Certificate of Authority As Acceptable Surety on Federal Bond and Reinsuring. The Bond shall be in favor of both: (1) the Federal Trade Commission for the benefit of any consumer injured as a result of any activities that required obtaining the Bond; and (2) any consumer so injured;
- C. The Bond required pursuant to this Section is in addition to, and not in lieu of, any other bonds required by federal, state, or local law;
- D. At least ten (10) days before commencing any activity that requires obtaining the Bond, Defendant Peter W. Stolz shall provide notice to the Commission describing in reasonable detail said activities, and include in such notice a copy of the Bond obtained;
- E. Defendant Peter W. Stolz shall not disclose the existence of any performance bond required by this Section to any recipient of Unsolicited Commercial E-mail, without also disclosing clearly and prominently, at the same time "AS
REQUIRED BY ORDER OF THE U.S. DISTRICT COURT IN SETTLEMENT

OF CHARGES OF FALSE AND MISLEADING REPRESENTATIONS IN THE
USAGE OF UNSOLICITED COMMERCIAL E-MAIL.”

II. INJUNCTION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering or sale of goods or services in or affecting commerce that are advertised or sold using the Internet (including but not limited to e-mail or websites) or that relate directly or indirectly to residential mortgages, Defendant is hereby permanently restrained and enjoined from making any express or implied misrepresentation or omission of material fact that is false or misleading, in any manner, directly or indirectly, to any consumer or entity, including but not limited to misrepresenting, expressly or by implication:

- A. the mortgage terms or rates that are in fact available through them;
- B. that 30 Minute Mortgage Inc. is a mortgage lender;
- C. the security measures employed on any website; and
- D. any information material to a consumer's decision to provide personal financial information.

III. INJUNCTION AGAINST TILA AND REGULATION Z VIOLATIONS

IT IS FURTHER ORDERED that, in connection with any advertisement to promote directly or indirectly any extension of consumer credit, Defendant is hereby permanently restrained and enjoined from violating TILA and/or Regulation Z by:

- A. advertising credit terms other than those terms that actually are or will be arranged or offered by the creditor, in violation of Section 226.24(a) of Regulation Z, 12 C.F.R. § 226.24(a);

- B. stating a rate of finance charge without disclosing the accurate “annual percentage rate,” and, if the annual percentage rate may be increased after consummation, that fact, in violation of Sections 144(c) and 107 of TILA, 15 U.S.C. §§ 1664(c) & 1606, and Sections 226.24(b) and 226.22 of Regulation Z, 12 C.F.R. §§ 226.24(b) & 226.22;
- C. advertising a payment rate in a transaction where the consumer’s payments are based upon a lower interest rate than the rate at which interest is accruing, without also making all other disclosures required by Section 226.24(b)-4 of the FRB Official Staff Commentary on Regulation Z, 12 C.F.R. § 226.24(b)-4, Supp. 1 (including the rate at which the interest is in fact accruing and the annual percentage rate);
- D. stating the period of repayment, but failing to disclose: (1) the terms of repayment and (2) the annual percentage rate, using that term, and, if the rate may be increased after consummation, that fact, in violation of Section 144(d) of TILA, 15 U.S.C. § 1664(d), and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c); or
- E. failing to comply in any other respect with TILA and/or Regulation Z.

IV. INJUNCTION AGAINST VIOLATIONS OF SUBTITLE A OF TITLE V OF THE GLB ACT

IT IS FURTHER ORDERED that Defendant is hereby permanently restrained and enjoined from violating, or assisting others in violating, any part of Subtitle A of Title V of the GLB Act or the Privacy Rule, including but not limited to:

- A. failing to provide privacy and opt out notices at the time and in the manner

required by Sections 502 and 503 of the GLB Act, 15 U.S.C. §§ 6802-03, and Sections 313.4 to 313.9 of the Privacy Rule, 16 C.F.R. §§ 313.4-9;

- B. disclosing to any nonaffiliated third party any nonpublic personal information about a consumer in a manner that violates Section 502 of the GLB Act, 15 U.S.C. § 6802, or Section 313.10 of the Privacy Rule, 16 C.F.R. § 313.10; or
- C. reusing or redisclosing nonpublic personal information received from a nonaffiliated financial institution in a manner that is prohibited by Section 502(c) of the GLB Act, 15 U.S.C. § 6802(c), or Section 313.11 of the Privacy Rule, 16 C.F.R. § 313.11.

V. INJUNCTION AGAINST VIOLATIONS OF SUBTITLE B OF TITLE V OF THE GLB ACT

IT IS FURTHER ORDERED that Defendant is hereby permanently restrained and enjoined from violating, or assisting others in violating, any part of Subtitle B of Title V of the GLB Act, including but not limited to obtaining or attempting to obtain “customer information of a financial institution” (including but not limited to monthly mortgage payment amounts and account/asset types and balances) by making false, fictitious, or fraudulent statements or representations to consumers or financial institutions.

VI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

- A. within fifteen (15) days of receipt of written notice from a representative of the Commission, Defendant Peter W. Stolz shall submit written reports in addition to those required by Section VII, 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* the Commission shall return any materials removed from any business location pursuant to this Subsection within ten (10) business days of removing such materials for inventory and copying, and that Defendant Peter W. Stolz, 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 Order 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 prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
 2. posing as consumers and suppliers to: Defendant Peter W. Stolz, Defendant Peter W. Stolz's employees, or any other entity managed or controlled in whole or in part by Defendant Peter W. Stolz, without the necessity of identification or prior notice;

Provided that nothing in this Order 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)) or violations of TILA, Regulation Z, Subtitle A or B of Title V of the GLB Act, or the

Privacy Rule.

- C. Defendant Peter W. Stolz 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 Order. The person interviewed may have counsel present.

VII. COMPLIANCE REPORTING BY DEFENDANT

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

- A. for a period of five (5) years from the date of entry of this Order,
1. Defendant Peter W. Stolz shall notify the Commission of the following:
 - a. any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. any changes in his employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business;
 - c. any changes in his name or use of any aliases or fictitious names;and
 2. Defendant Peter W. Stolz shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under

this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; 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 he learns less than thirty (30) days prior to the date such action is to take place, he 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 Order, Defendant Peter W. Stolz 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 Order. This report shall include, but not be limited to:
1. any changes required to be reported pursuant to Subsection A above;
 2. a copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Section IX; and
 3. a copy of any performance bond obtained by Defendant pursuant to Section I.
- C. For the purposes of this Order, Defendant Peter W. Stolz shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director, Division of Financial Practices
Federal Trade Commission

600 Pennsylvania Ave., NW, Mailstop NJ-3158

Washington, DC 20580

Re: FTC v. 30 Minute Mortgage Inc., Civil Action No. 03-60021-CIV

- D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendant Peter W. Stolz.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, in connection with any business that engages in the advertising, promotion, offering or sale of goods or services in or affecting commerce that are advertised or sold using the Internet (including but not limited to e-mail or websites) or that relate directly or indirectly to residential mortgages where Defendant Peter W. Stolz is the majority owner of the business or directly or indirectly manages or controls the business, Defendant is hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services

purchased, to the extent such information is obtained in the ordinary course of business;

- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

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 Order, Defendant Peter W. Stolz shall deliver a copy of this Order to the employees (with responsibilities with respect to the subject matter of this Order), principals, officers, directors, and managers under Defendant Peter W. Stolz's control for any business that (a) employs or contracts for personal services from Defendant Peter W. Stolz and (b) engages in (1) the marketing, advertising, promotion, or offering of residential mortgages or services related to residential mortgages or (2) the marketing, advertising, promotion, or sending of Unsolicited Commercial E-mail. Defendant Peter W. Stolz shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship. Defendant Peter W. Stolz shall maintain signed and dated acknowledgments of the receipt of copies of this Order, as required by this Section, until eight (8) years after the date of entry of this Order.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that Defendant Peter W. Stolz, within five (5) business days of receipt of this Order as entered by the Court, shall submit to the Commission a truthful

sworn statement acknowledging receipt of this Order.

XI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

XII. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that Defendant Peter W. Stolz, in connection with any business engaged in (1) the marketing, advertising, promotion, or offering of residential mortgages or services related to residential mortgages or (2) the marketing, advertising, promotion, or sending of Unsolicited Commercial E-mail, where Defendant Peter W. Stolz is the majority owner of the business or directly or indirectly manages or controls the business, is hereby permanently restrained and enjoined from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions (“salespersons”) comply with Sections I, II, III, IV, and V of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following: (1) listening to the oral representations made by salespersons; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each salesperson is involved;
- B. Failing promptly to investigate fully any consumer complaint received by any business to which this Section applies; and

- C. Failing to take corrective action with respect to any salesperson whom Defendant Peter W. Stolz determines is not complying with this Order, which may include training, disciplining, and/or terminating such salesperson.

XIII. PROHIBITIONS INVOLVING CONSUMER LISTS

IT IS FURTHER ORDERED that Defendant is hereby restrained and enjoined from:

- A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who submitted such information to 30 Minute Mortgage Inc. at any time prior to entry of this Order, in connection with the advertising, promotion, telemarketing, offering for sale, or sale of any product or service in or affecting commerce; and
- B. Benefiting from or using the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying or financial information of any person who submitted such information to Defendant, Defendant Gregory P. Roth, or 30 Minute Mortgage Inc. as a result of, derived from, or otherwise related to the activities alleged in the Commission's complaint.

Provided however, that Defendant may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

XIV. FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.


XV. ENTRY OF THIS JUDGMENT

IT IS FURTHER ORDERED that, as there is no just reason for delay of entry of this judgment, pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this Order immediately.

STIPULATED AND AGREED TO AS FOLLOWS:

FOR THE PLAINTIFF:

DATED: November 18, 2003



Amanda Quester, Esq., SBN A5500729

T. Kevin Marr, Esq., SBN A5500730

Federal Trade Commission

Division of Financial Practices

600 Pennsylvania Ave., NW

Mailstop NJ-3158

Washington, DC 20580

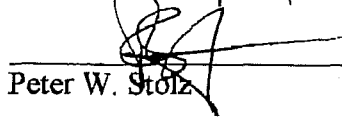
(202) 326-2719 (phone)

(202) 326-3768 (fax)

Attorneys for Plaintiff

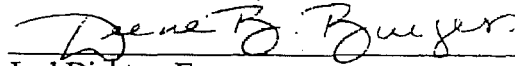
FOR DEFENDANT PETER W. STOLZ

DATED: 9/26/03



Peter W. Stolz

DATED: 9/26/03



Joel Dichter, Esq.

Deena Burgess, Esq.

Klein, Zelman, Rothermel & Dichter, L.L.P.

485 Madison Avenue

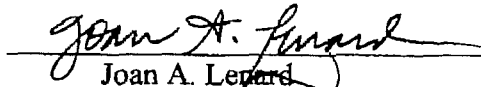
New York, NY 10022

(212) 935-6020 (phone)

(212) 753-8101 (fax)

Attorneys for Defendant Peter W. Stolz

SO ORDERED, this 26 day of November, 2003, at 11:40am
in Miami, Florida



Joan A. Legard

United States District Judge