

Case #1 - Unfair

**Providian to Cease Unfair Practices, Pay Consumers Minimum of \$300 Million
Under Settlement with OCC and San Francisco District Attorney
2000**

WASHINGTON – The Office of the Comptroller of the Currency has entered into a settlement with Providian National Bank that directs the bank to cease a number of unfair and deceptive practices and to pay at least \$300 Million to consumers harmed by those practices. At the same time, the San Francisco District Attorney entered into a similar agreement with Providian’s parent, Providian Financial Corp.

In reaching the settlement, which culminates year-long investigations by the two agencies, the OCC concluded that the bank engaged in a pattern of misconduct in which it misled and deceived consumers in order to increase profits. The OCC believes hundreds of thousands of consumers were harmed by Providian’s activities, and that the bank profited as a result.

“When a bank engages in unfair or deceptive marketing practices, it damages its most precious asset – the trust and confidence of its customers,” said Comptroller of the Currency John D. Hawke, Jr. “That relationship of trust and confidence is central to the bank’s safe and sound operation. We will not tolerate abuses that breach that trust through unfair and deceptive practices.”

The OCC believes the bank failed to adequately disclose to consumers the significant limitations in a credit protection program it marketed. Consumers who purchased the product were told they would not have to make card payments for up to 18 months in the event of involuntary unemployment, hospitalization, accident, sickness or disability. Moreover, interest would not accrue, late fees would not be charged and the account would not be reported to credit bureaus.

However, the OCC believes the bank failed to adequately disclose that benefits would be limited to the number of months in which the consumers had paid credit protection fees, rather than the advertised 18 months, and that benefits for involuntary unemployment could not be used until three months of fees had been paid. In addition, the OCC believes the bank did not adequately disclose that it could deny benefits if the credit card was not current or if it was over the limit, and that unemployment benefits would not be available if the customer’s job was part-time, even if that was his or her only source of income.

In another program, consumers who agreed to transfer credit card balances to a Providian-issued card were promised lower rates than they had been receiving. However, the OCC believes the bank marketed in such a way that customers did not find out how much they would save until after they signed up with Providian and transferred balances.

In fact, some customers actually ended up with higher rates than before – up to 21.99 percent – and then found out they could not move balances out of the account without paying a 3 percent “balance transfer fee.” For those

customers who did receive a lower rate, the savings amounted to no more than three-tenths of a percentage point in one promotion and seven-tenths of a percentage point in another rollout.

The bank also advertised a “No Annual Membership Fee” credit card which it said would save consumers up to \$60 a year over cards that did charge an annual fee. However, the OCC believes the bank failed to adequately disclose that the card required the purchase of credit protection, for which it charged \$156 a year.

Under Providian’s “Real Check” program, the bank promised a check for \$100 or \$200 to individuals who transferred credit card balances to the bank. In one promotion, the bank represented. “We want to give you \$200! Why? It’s simple. We want your business now.”

However, the OCC believes Providian failed to disclose that customers would be required to transfer specific balances -- \$10,000 in one promotion – to receive the \$200. Employees were instructed to contradict customers who questioned why they weren’t told of the balance transfer requirement, a tactic that had the effect of confusing or intimidating customers.

Case #2 - Unfair
FTC vs. Capital City Mortgage Corporation
Refusing to Release Lien after Consumer Makes Final Payment on a Mortgage
2005

The FTC brought an enforcement action against a mortgage company based on allegations, described below, that repeatedly failed to release liens after consumers fully paid the amount due on their mortgages.

- **Substantial injury.** Consumer’s sustained economic injury when the mortgage servicer did not release the liens on their properties after the consumers had repaid the total amount due on the mortgages.
- **Not outweighed by benefits.** Countervailing benefits to competition or consumers did not result from the servicer’s alleged failure to appropriately service the mortgage loan and release the lien promptly.
- **Not reasonably avoidable.** Consumers had no way to know in advance of obtaining the loan that the mortgage servicer would not release the lien after full payment. Moreover, consumers generally cannot avoid the harm caused by an improper practice of a mortgage servicer because the servicer is chosen by the owner of the loan, not the borrower. Thus, consumers cannot choose their loan servicer and cannot change loan servicers when they are dissatisfied with the quality of the loan servicing.

Case #3 - Unfair
American Express Bank, FSB (Cease and Desist Order)
Order of Assessment of a Civil Money Penalty for \$250,000
Dishonoring Credit Card Convenience Checks without Notice
2009

The OTS and FDIC brought enforcement actions against a credit card issuer that sent convenience checks with stated credit limits and expiration dates to customers. For a significant percentage of consumers, the issuer reduced credit lines after the checks were presented, and then the issuer dishonored the consumers’ checks.

- **Substantial injury.** Customers paid returned-check fees and may have experienced a negative impact on credit history.

- **Not outweighed by benefits.** The card issuer later reduced credit limits based on credit reviews. Based on the particular facts involved in the case, the harm to consumers from the dishonored convenience checks outweighed any benefit of using new credit reviews.
- **Not reasonably avoidable.** Consumers reasonably relied on their existing credit limits and expiration dates on the checks when deciding to use them for a payment. Consumers had received no notice that the checks they used were being dishonored until they learned from the payees. Thus, consumers could not reasonably have avoided the injury.

Case #4 - Unfair

Wachovia Bank, National Association

Processing Payments for Companies Engaged in Fraudulent Activities

2008

The OCC brought an enforcement action in a case involving a bank that maintained deposit account relations with telemarketers and payment processors, based on the following allegations. The telemarketers regularly deposited large numbers of remotely created checks drawn against consumers' accounts. A large percentage of the checks were not authorized by consumers. The bank failed to establish appropriate policies and procedures to prevent, detect, or remedy such activities.

- **Substantial injury.** Consumers lost money from fraudulent checks created remotely and drawn against their accounts.
- **Not outweighed by benefits.** The cost to the bank of establishing a minimum level of due diligence, monitoring, and response procedures sufficient to remedy the problem would have been far less than the amount of injury to consumers that resulted from the bank's avoiding those costs.
- **Not reasonably avoidable.** Consumers could not avoid the harm because the harm resulted principally from transactions to which the consumers had not consented.

Case #5 - Deceptive

In the matters of Mazda Motors of America, Inc., et al

Inadequate Disclosure of Material Lease Terms in Television Advertising

1997

The FTC brought actions against vehicles leasing companies alleging that their television advertisements represented that consumers could lease vehicles for "\$0 down" when advertising a monthly lease payment. However, the FTC alleged that the "blue" of "unreasonable fine print" that flashed on the screen at the end of the advertisement disclosed costs of at least \$1,000. The settlements prohibited the vehicle leasing companies from misrepresenting the amount consumers must pay when signing the lease.

In addition, the FTC required that if the companies make any representation about the amounts due at lease signing, or that there is "no down payment," the companies must make an equally prominent (reasonable and audible) disclosure of the total amount of all fees due when consumers sign the lease.

- **Representation or omission likely to mislead.** The television advertisements featured prominent statements of "no money down" or "\$0 down" at lease signing. The advertisement also contained, at the bottom of the screen, a "blue" of small print in which disclosures of various costs required by Regulation M (the Consumer

Leasing Act) were made. The FTC alleged that the disclosures were inadequate because they were not clear, prominent, or audible to consumers.

- **Reasonable consumer perspective.** A reasonable consumer would believe that he did not have to put any money down and that all he owed was the regular monthly payment.
- **Material representation.** The stated “no money down” or “\$0 down” plus the low monthly lease payment were material representations to consumers. The fact that the additional, material costs were disclosed at signing of the lease did not cure the deceptive failure to disclose in the television advertising, the FTC claimed.

**Case #6 - Deceptive
FTC vs. Chase Financial Funding, Inc.
Stipulated Preliminary Injunction
Misrepresentation about Loan Terms
2004**

In 2004, the FTC sued a mortgage broker advertising mortgage refinance loans at “3.5% fixed payment 30-year loan” or “3.5% fixed payment for 30 years,” implying that the offer was for a 30-year loan with a 3.5% fixed interest rate. Instead, the FTC claimed that the broker offered adjustable rate mortgages (ARMs) with an option to pay various amounts, including a minimum monthly payment that represented only a portion of the required interest. As a result, unpaid interest was added to the principal of the loan, resulting in negative amortization.

- **Practice likely to mislead.** The FTC claimed that the advertisements were misleading because they compared payments on a mortgage that fully amortized to payments on a non-amortizing loan with payments that increased after the first year. In addition, the FTC claimed that after application, the broker provided Truth-in-Lending Act (TILA) disclosures that misstated the annual percentage rate (APR) and that failed to state that the loan was a variable rate loan.
- **Reasonable consumer perspective.** It was reasonable for consumers to believe that they would obtain fixed-rate mortgages, based on the representations.
- **Material representation.** The representations were material because consumers relied on them when making the decision to refinance their fully amortizing 30-year fixed loans. As a result, the consumers ended up with adjustable rate mortgages that would negatively amortize if they made payments at the stated 3.5% payment rate.

Note: In 2008, amendments to the Truth-in-Lending Act’s Regulation Z were adopted to prohibit certain advertising practices, such as misleading advertising of fixed rates and payments, for credit secured by a dwelling. Similar practices could be identified as deceptive in other product lines.

Other Cases to Research

Unfair Cases:

1. Clear Lake National Bank of San Antonio – November 2003
 - a. \$100,000
 - b. Small tax lien loans (Subprime)
 - c. 22% - 123% fees and costs
 - d. Most services not performed
2. Fairbanks Capital – November 2003

- a. \$400,000
 - b. Mortgage loan servicer
 - c. Not posting payments & charging late fees
3. Ocwen Federal Bank – April 2004
 - a. Mortgage loan servicer
 - b. Prematurely force placing hazard insurance
 - c. Charging for forbearance
 - d. Not issuing pay-off quotes
 4. Bear Stearns – September 2008
 - a. \$28 million
 - b. Misrepresented amounts customers owed
 - c. Charged unauthorized fees
 5. Supervisory Insights (Winter 2008)
 - a. Bounced check because credit line was reduced after the check was written but before it was presented.
 6. Countrywide – June 2010
 - a. \$108 million
 - b. Charged unauthorized/marked up fees to defaulting borrowers
 - c. Misrepresented amounts owed

Deceptive Cases:

Credit Card Cases:

1. FNB in Brookings, SD – January 2003
 - a. \$6 million restitution
 - b. High application fees, security deposits, other fees
 - c. No or minimal available credit line after fees or “account holds”
 - d. No annual fee but monthly fees
2. FNB of Marin – December 2001
 - a. Credit cards – Small lines
 - b. Inadequate disclosure in marketing
 - c. Required deposit charged against line
 - d. Initial fees charged against line
 - e. In many cases, no available line
3. CompuCredit – June 2008
 - a. \$217 million total in restitution and fines
 - b. Credit Card solicitations inadequately disclosed significant upfront fees
 - c. Full line not available for 90 days and then often reduced
4. Advanta – July 2009

- a. \$35 million in restitution
 - b. Advertised cash back reward as 6% but it was only for purchases in the \$40 - \$50,000 range
 - c. Raised APRs with insufficient notice and no ability to opt out
5. FDIC Supervisory Insights (Winter 2008)
 - a. Cash back reward limits not specified.
 - b. 0% promotional rate did not specify expiration date.
 - c. "Free" credit report did not state it was for declines only.
 6. First Financial Bank USA (SD) – December 2009
 - a. Fined \$140,000 plus restitution
 - b. Assessing additional over-the-limit fees on the first day of each billing cycle
 7. First Consumers National Bank – August 2003
 - a. \$1.65 million
 - b. Charged annual fees despite plans to liquidate credit card portfolio

Mortgage Cases:

1. First Alliance Mortgage – October 2000
 - a. Consumers did not save as marketing claimed
 - b. Did not explain teaser rate duration
 - c. "No closing costs" turned in 10 – 25% fees
2. The Associates – March 2001
 - a. Refinanced home loans
 - b. Sales pitch scripted to falsely state that there were no fees
 - c. Hidden balloon payment
 - d. Packed fees
 - e. Unfair collection practices
3. Household International – October 2002
 - a. \$484 million
 - b. Misrepresenting interest rates in conjunction with points
 - c. Tangible Net Benefits Test
4. Laredo National Bank – November 2005
 - a. \$14 million settlement
 - b. Outlines OCC expectations
 - i. Advertisement Guidelines
 - ii. Compliance Program
5. Guidance on Nontraditional Mortgage Products - September 2006
 - a. Interest Only Products and Option ARMs
 - b. Riskier with Piggy Back Seconds and Low Doc Programs
 - c. Avoid Payment Shock and Negative Amortization Surprises

- d. Full Disclosure, especially upfront
 - e. Controls, Monitoring and Training
6. Ameriquest – January 2006
- a. \$325 million settlement
 - b. New Disclosure required for applicants
 - c. Independent monitor for applicants, incentives for prepayment penalties and fabricating income

Deceptive Deposit Cases:

1. Gift Cards – Kmart
 - a. “Equivalent to Cash” and “Never Expire”
 - b. \$2/month surcharge for non-use
 - c. Must reimburse all fees
2. OD Protection - FDIC Supervisory Insights (Winter 2006 and Winter 2008)
 - a. Do not include OD line amount in ATM available balance.
 - b. Do not advertise a product as “free” if there could be OD charges.
3. OD Protection – Woodforest – April 2010
 - a. Fined \$12.4 million
 - b. Must limit the OD fee and set an aggregate limit
4. OD Protection – OTS Guidance on Overdrafts – April 2010
 - a. Marketing: Explain alternatives to the overdraft program and do not use the term “free” if overdraft charges are possible.
 - b. Disclosures: Explain all overdraft fees clearly and the bank’s transaction clearing policy.
 - c. Promptly notify customers of any overdrafts.
 - d. Allow customers to opt in to any overdraft programs.
 - e. Place a daily cap on overdraft fees.

Duty to Protect Your Customers and Your Customer’s Customer

1. MoneyGram – July 2008
 - a. \$1.1 million settlement
 - b. Must include a warning to customers on all person to person transfers to prevent fraud-induced transfers (e.g. lotteries and other scams)