

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES**

The Secretary, United States)
Department of Housing and Urban)
Development, on behalf of Complainant)
National Fair Housing Alliance,)
)
Charging Party,)
)
v.)
)
Bank of America, N.A., Mark Schepp, and)
Holly Heissenbuttle,)
)
Respondents.)

HUDALJ No.:
FHEO No.: 04-14-0311-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On February 12, 2014, Complainant National Fair Housing Alliance (“NFHA”) filed a complaint with the United States Department of Housing and Urban Development (“HUD”) alleging that Respondent Bank of America Corp., the holding company for Respondent Bank of America, N.A. violated sections 804(b) and 805 of the Fair Housing Act, 42 U.S.C. §§ 3601-19 (the “Act”), on the basis of national origin, by discriminating against Hispanic borrowers for home mortgage loans. The complaint was amended on July 7, 2014, to add Respondents Mark Schepp, Holly Heissenbuttle, and Bank of America N.A and to remove Bank of America Corp. as a respondent.¹

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1)-(2). The Secretary has delegated to the General Counsel (24 C.F.R. §§ 103.400 and 103.405), who has retained and re-delegated to the Regional Counsel, the Associate General Counsel for Fair Housing, and the Assistant General Counsel for Fair Housing Enforcement (76 Fed. Reg. 42,463, 42,465 (July 18, 2011)) the authority to issue such a Charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

¹ Subsequent amendments were made but bear no relevance to this charge.

The Office of Fair Housing and Equal Opportunity Region IV Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred because of national origin and has authorized and directed the issuance of this Charge. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based on the Department's investigation of the allegations contained in the aforementioned Complaint and Determination of Reasonable Cause, Respondents Bank of America N.A., Schepp and Heissenbottle are charged with discriminating because of national origin, in violation of 42 U.S.C. §§ 3604(b) and 3605 as follows:

A. LEGAL AUTHORITY

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the sale of a dwelling, or in the provision of services or facilities in connection therewith, because of national origin. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2); 100.65(a), (b)(4); 100.70(b).
2. It is unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of national origin. 42 U.S.C. § 3605(a); 24 C.F.R. §§ 100.110(b); 100.120(a), (b)(1)-(2); 100.130(a), (b)(1)-(2). Residential real estate-related transactions include the making or purchasing of loans for purchasing a dwelling or secured by residential real estate. 42 U.S.C. § 3605(b)(1); 24 C.F.R. § 100.115(a)(1).

B. PARTIES

3. Complainant National Fair Housing Alliance ("NFHA") is a national organization dedicated to eliminating discrimination in housing through leadership, education, outreach, membership services, public policy initiatives, advocacy, and enforcement.
4. Complainant is an "aggrieved person," as defined by subsection 802(i) of the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
5. Respondent Bank of America, NA ("BoA") is a nationally chartered bank with a branch at 540 Folly Road, Charleston, South Carolina ("Folly Road branch"). Respondent BoA provides nationwide retail banking services to customers, including home mortgage loans.
6. At all times relevant to this Charge, Respondent Mark Schepp, who is not Hispanic, was employed by Respondent BoA as a Mortgage Loan Officer ("MLO") for the Folly Road branch and other branches. Respondent Schepp's duties included proactively seeking new mortgage loan business, providing information about mortgage products to prospective borrowers, including mortgage and refinance loans, and pre-qualifying them. Respondent Schepp received referrals, including prospective borrowers' contact information, from branch

offices when they inquired about loan products. Respondent Schepp worked at the Folly Road branch on Tuesdays and Thursdays at no set hours.

7. At all times relevant to this Charge, Respondent Holly Heissenbuttle, who is not Hispanic, was employed by Respondent BoA as a Personal Banker at the Folly Road branch. As a Personal Banker, Respondent Heissenbuttle was tasked with, among other duties, referring prospective loan applicants to the local MLO, *i.e.*, Respondent Schepp.
8. At all times relevant, Respondents were engaged in residential real estate-related transactions as defined by subsection 805(b) of the Act. 42 U.S.C. § 3605(b).

C. FACTUAL ALLEGATIONS

9. At all times relevant, Respondent BoA used its “Home Loan Referrals” system for prospective mortgage loan applicants. Under this system, after a prospective borrower is identified at a branch office, a branch office employee refers the prospective loan applicant to a MLO.
10. At all times relevant, Respondent BoA’s written referral policies and procedures for prospective mortgage applicants provided, in relevant part, as follows:

Step #1 - Contact the MLO and introduce the customer to the MLO. If unable to reach the MLO, leave a detailed message and provide the customer’s information and the best time to contact; provide the MLO’s business card to the customer and set the expectation that the MLO will contact them; enter the customer’s contact information into the Banking Center to Retail Mortgage and Home Equity Referral Form.

Step #2 – If able to reach the MLO, brief the MLO on the customer’s needs, including the customer’s name and nature of interest (purchase, refinance or home equity).

Step #3 - Ensure your (the referring employee’s) ID is included to receive incentive credit for the referral.

Step #4 - Enter the customer’s contact information into the Referral Form.

11. At all times relevant, BoA policy specifically reminded employees that “consistency in conversations and other customer interactions will help ensure adherence to fair lending regulations.”
12. At all times relevant, BoA policy specified that when the MLO is available, bank employees are required to introduce the customer to the MLO and share the customer’s needs. If the MLO is unavailable, the bank employee is to obtain the customer’s consent to call the MLO

and schedule an appointment for the customer, write the appointment date and time on the MLO's business card, and provide the card to the customer. The MLO is required to contact the customer on the same day the MLO receives the referral.

13. Between February 2013 and January 2014, Complainant undertook an investigation of Respondent BoA's lending practices in Charleston, South Carolina. Complainant performed testing at the Folly Road branch using paired female testers, with one Hispanic and the other non-Hispanic. The testers were given similar financial profiles and told to enter the branch without an appointment to request information on home mortgage loan products for themselves and their male spouses. To the extent the financial profiles differed, the Hispanic testers were slightly more qualified.
14. The first paired test was conducted on February 11 and 13, 2013 at the Folly Road branch.
15. On Monday, February 11th, Hispanic tester 1 entered the Folly Road branch and was met by a bank employee. Hispanic tester 1 told the employee that she was looking to purchase a home and wanted to speak to someone about a mortgage, and the employee referred her to Respondent Heissenbottle. Respondent Heissenbottle told Hispanic tester 1 that she needed to speak to the mortgage specialist, Respondent Schepp. Respondent Heissenbottle offered to email a referral to Respondent Schepp asking him to call the tester. Hispanic tester 1 asked if Respondent Schepp was local, and Respondent Heissenbottle said that he travels between offices and could set up a meeting with the tester wherever was convenient. Respondent Heissenbottle then informed Hispanic tester 1 that her computer was not working so she could not email Respondent Schepp at the moment but would have another employee email him. She asked for Hispanic tester 1's name and phone number. She did not attempt to telephone Respondent Schepp, and Hispanic tester 1 did not observe Respondent Heissenbottle asking another branch employee to email Schepp. Respondent Heissenbottle gave Hispanic tester 1 Respondent Schepp's business card, and Hispanic tester 1 then left the branch. At no time did Respondent Schepp email or otherwise contact Hispanic tester 1.
16. On Wednesday, February 13th, non-Hispanic tester 1 entered the Folly Road branch. Non-Hispanic tester 1 was met by an employee named Jordana. Non-Hispanic tester 1 told Jordana that she was looking to purchase a home and was interested in information about a mortgage. Jordana told non-Hispanic tester 1 that she would need to speak to Respondent Schepp and that she could take the tester's information and send it to Respondent Schepp so that he could contact the tester. Non-Hispanic tester 1 asked if there was anyone currently in the office to whom she could speak. Jordana brought non-Hispanic tester 1 to Respondent Heissenbottle. Respondent Heissenbottle told non-Hispanic tester 1 that she had to speak with Respondent Schepp, who does not generally come into the office unless he has an appointment. Respondent Heissenbottle emailed non-Hispanic tester 1's information to Respondent Schepp and suggested that the tester wait at the branch to see if Respondent Schepp responded. When Respondent Schepp did not respond to her email, Respondent Heissenbottle stated that he might be with another client and offered to try calling his cell phone. She then phoned Respondent Schepp, who answered the phone and agreed to speak with non-Hispanic tester 1. She arranged for non-Hispanic tester 1 to use another office to talk with Respondent Schepp. Respondent Schepp asked non-Hispanic tester 1 a number of

questions, including about potential house price, down payment savings, income and debt; gave her information about mortgage products; and offered to email her additional information. He also offered to recommend a real estate agent. Once the call was completed, non-Hispanic tester 1 left the Folly Road branch.

17. On Thursday, February 14th, Respondent Schepp made a follow-up phone call to non-Hispanic tester 1 and left her a voicemail message. He also emailed her information about a mortgage product based on the information non-Hispanic tester 1 had provided, including an estimated monthly payment and closing costs.
18. The second paired test was conducted on Monday, April 1, 2013 at the Folly Road branch.
19. Non-Hispanic tester 2 entered the branch at 11:47 a.m. on April 1st and was greeted by Respondent Heissenbuttle. Non-Hispanic tester 2 told Respondent Heissenbuttle that she was interested in a mortgage loan. Respondent Heissenbuttle told non-Hispanic tester 2 she would need to speak with Respondent Schepp, asked her name and contact information, and emailed Respondent Schepp the tester's information. Respondent Schepp quickly responded to the email, indicating he could speak with non-Hispanic tester 2. Respondent Heissenbuttle then arranged for non-Hispanic tester 2 to use another office to talk with Respondent Schepp. Respondent Schepp asked non-Hispanic tester 2 a number of questions, including about potential house price, down payment savings, income and debt; gave her information about mortgage products; and offered to email her additional information. Respondent Schepp provided extensive information about the mortgage application process and potential loan payments. Respondent Schepp also recommended two real estate agents to non-Hispanic tester 2. He promised to send non-Hispanic tester 2 information about specific loan products later that day. He also told her he was readily available to talk at any time if she wished to discuss any aspect of the mortgage process. After the call, non-Hispanic tester 2 left the branch office.
20. Hispanic tester 2 entered the Folly Road branch at 3:30 p.m. on April 1st. Hispanic tester 2 was met by an employee named Jordana. Hispanic tester 2 told Jordana she was inquiring about a mortgage. Jordana told Hispanic tester 2 she would need to speak to Respondent Schepp who is in the branch only on Thursdays. Jordana asked Hispanic tester 2 for her name and contact information. Jordana told Hispanic tester 2 that she emailed Respondent Schepp the tester's contact information. The tester did not observe the computer screen. Hispanic tester 2 asked Jordana if there was anyone else she could speak to in the office and Jordana said no. Jordana told Hispanic tester 2 that Respondent Schepp was always quick to respond to referrals and that Hispanic tester 2 might hear from Respondent Schepp by the end of the day or the next day. Jordana did not offer to call Respondent Schepp. She gave Hispanic tester 2 Respondent Schepp's card, and Hispanic tester 2 then left the branch. At no time did Respondent Schepp email or otherwise contact Hispanic tester 2.
21. At 7:12 p.m. on April 1st, Respondent Schepp emailed non-Hispanic tester 2, promising to send information about a loan the next morning. On April 2nd at 9:17 a.m., he followed up on his promise by emailing non-Hispanic tester 2 two mortgage products based on the information non-Hispanic tester 2 had provided, including an estimated monthly payment

and closing costs. He also provided the names of two realtors he recommended. On April 25th, he emailed non-Hispanic tester 2 again, stating he was “follow[ing] up with you on your home search.”

22. The third paired test occurred on Monday, January 6, 2014 at the Folly Road branch.
23. Non-Hispanic tester 3 entered the branch at 9:50 a.m. on January 6th and was greeted by an employee who referred her to Respondent Heissenbottle. Non-Hispanic tester 3 told Respondent Heissenbottle that she was looking for information about a home mortgage loan. Respondent Heissenbottle told non-Hispanic tester 3 that she should speak to Respondent Schepp, who was not then at the branch, and offered to contact him to see if he was available to speak with the tester. Respondent Heissenbottle sent Respondent Schepp an email stating that non-Hispanic tester 3 was “eager to start the process so call ASAP please.” After a few minutes, Respondent Heissenbottle told non-Hispanic tester 3 that Respondent Schepp was not responding and might be in a meeting. She then asked non-Hispanic tester 3 for her name and contact information and said she would email it to Respondent Schepp. Non-Hispanic tester 3 asked if she could wait, and Respondent Heissenbottle stated that Respondent Schepp must be in a meeting because he normally responded quickly. Respondent Heissenbottle gave non-Hispanic tester 3 Respondent Schepp’s business card and told her to call or email him, whereupon non-Hispanic tester 3 left the branch office.
24. Shortly thereafter, non-Hispanic tester 3 missed a phone call from BoA; the caller did not leave a message. Non-Hispanic tester 3 called the number and got Respondent Heissenbottle’s voicemail, but did not leave a message. She then called the number again and left a message on Respondent Heissenbottle’s voicemail. Respondent Heissenbottle returned the call and spoke with non-Hispanic tester 3, telling her that she had forwarded non-Hispanic tester 3’s information to Respondent Schepp and he would contact her later that day. Later that day, in the early afternoon, Respondent Schepp phoned non-Hispanic tester 3 and left a voicemail message with his phone number; he also sent her an email inviting her to contact him to discuss loan products. Non-Hispanic tester 3 returned his call and spoke with him about the application process and loan product options. Respondent Schepp discussed with non-Hispanic tester 3 her finances, including down payment savings, income and debt; gave her information about mortgage products; and offered to email her additional information later that day.
25. Hispanic tester 3 entered the branch at approximately 3:12 p.m. on January 6th. Hispanic tester 3 spoke to a bank employee named Lindsey, telling Lindsey that she wanted to speak with a loan officer. Lindsey told Hispanic tester 3 that Respondent Schepp would be in the branch on Tuesdays and Thursdays and asked Hispanic tester 3 if she could come back the next day. Hispanic tester 3 told Lindsey that she was off work and would like to speak to someone that day if possible. Lindsey telephoned Respondent Schepp and left a voice message telling Respondent Schepp that Hispanic tester 3 would like to speak to him about loans that day. Lindsey also said she would email Respondent Schepp Hispanic tester 3’s contact information and that he should call her back if he became available in the next few minutes. Lindsey emailed the information to Respondent Schepp, captioning the email

“purchase referral,” and asked him to telephone Hispanic tester 3. She also gave Hispanic tester 3 Respondent Schepp’s card, and the tester then left the branch.

26. Later that afternoon, Hispanic tester 3 received a phone call from Respondent Schepp. He spoke with her about the application process and loan product options. Respondent Schepp asked her about her finances, including down payment savings, income, employment, and debt; gave her information about mortgage products; and offered to email her more information that evening.
27. Later that evening, Respondent Schepp emailed Hispanic tester 3 information about two loan products: 1) a \$250,000 thirty-year, fixed-rate FHA loan with a 5% down payment and no points, for which BoA would pay all closing costs; and 2) a \$200,000 thirty-year, fixed-rate conventional loan with a 5% down payment, with no offer to pay any of the closing costs on this loan. The worksheet on the conventional loan estimated taxes of \$110.00 and hazard insurance of \$150.00 per month, with closing costs of \$4,273.36 and a monthly payment of \$1,409.46.
28. That same evening, Respondent Schepp emailed non-Hispanic tester 3 information about one loan product: a \$200,000 thirty-year, fixed-rate conventional loan with a 5% down payment, for which BoA would pay almost \$2,000 of the closing costs. The email also stated that this loan product would require no points be paid. The worksheet estimated taxes of \$100.00 and hazard insurance of \$125.00 per month, with closing costs of \$3,673.90 and a monthly payment of \$1,374.46.
29. In calculating the worksheet estimates for both Hispanic tester 3 and non-Hispanic tester 3, Respondent Schepp used the same address in James Island, S.C.
30. On the morning of January 7th, Hispanic tester 3 emailed Respondent Schepp, thanking him for his January 6th email. He did not respond.
31. On the morning of January 8th, non-Hispanic tester 3 emailed Respondent Schepp thanking him for his January 6th email. He responded via email within five minutes, telling non-Hispanic tester 3 to please let him know if she had any questions whatsoever.
32. Respondents’ unlawful housing practices have caused Complainant actual damages, including frustration of its mission and diversion of its resources to investigate Respondents’ discriminatory conduct.

D. LEGAL ALLEGATIONS

33. As detailed above, Respondents discriminated in the provision of services in connection with the sale of a dwelling, because of national origin, in violation of 42 U.S.C. § 3604(b).
34. As detailed above, Respondents discriminated in making available residential real estate-related transactions, or in the terms or conditions of such transactions, because of national origin, in violation of 42 U.S.C. § 3605.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to section 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of sections 804(b) and 805 of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate sections 804(b) and 805 of the Act, 42 U.S.C. §§ 3604(b) and 3605, and their implementing regulations;

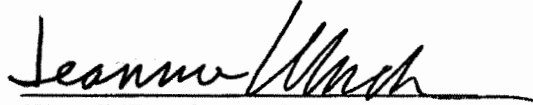
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them from discriminating because of national origin in violation of the Act;

3. Awards such damages as will fully compensate Complainant for any and all injuries caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3);

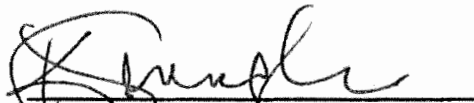
4. Assesses a \$16,000 civil penalty against each Respondent for each discriminatory housing practice pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and

5. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2016, the foregoing **Important Notice, Charge of Discrimination, and Determination of Reasonable Cause in HUD**, *on behalf of National Fair Housing Alliance v. Bank of America, N.A., Mark Schepp, and Holly Heissenbuttle*, FHEO Case No. 04-14-0311-8, were served via email and UPS Next Day Air-Signature Requested on the following:

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