Oliveri – Civil Procedure Exam Essays Fall 2016

ESSAYS – 2:15

NOTE: This fact pattern is common for the next THREE essay questions. If you need additional facts in order to answer a question that are not in the fact pattern, state what those facts are.

FACTS

Paulette Price (PP) is a 29-year old African American woman. She is preparing to purchase her first home. The house she wants costs $200,000 and is located in a part of town that is primarily black and Hispanic. Patricia needs to obtain a mortgage loan. She tries to compare rates and terms offered by various lenders, but finds the process confusing and time-consuming. She sees an ad for Diamond Mortgage Brokers, claiming that they are "Experts at working with first-time buyers!" Their business address is in the neighborhood where the house she is looking at is located. She contacts DMB and arranges to meet with David Diamond (DD), DMB's President and CEO.

DMB is not a bank and does not lend any money. Instead, it is an independent brokerage service – it works with mortgage lenders to put together loan packages for its customers. The idea behind such services is that they are able to do the time-consuming research it takes to compare all of the loan products offered by various lenders. Also, they may have relationships with particular lenders that allow them to get better deals than a customer would just acting on her own. Independent brokerage services are typically paid a commission– often called a "loan origination fee." This fee is often rolled into the loan itself, and so increases the total loan amount. It is usually calculated as a percentage of the original loan amount. The average fee is around 1% of the original loan amount.

During their meeting David assures Patricia that he "works for her" and will "do everything" to get her "the absolute lowest interest rate possible." Patricia's credit score is excellent, so she assumes that she will get close to the lowest Prime Rate that banks typically charge their most creditworthy customers. David also promises that she will receive all of the "standard terms and conditions" that go into a mortgage. When she asks what those are, he tells her that "there are too many provisions, and they are too complicated" to get into right then. Instead, he says that he will draw up the paperwork and give her a chance to look over everything at the closing. Patricia has never been to a real estate closing before, but she assumes there will be plenty of time to ask questions and make changes.

When Patricia arrives for the closing, there are lots of other people in the room – the sellers, the real estate agents, someone from the title company that processes the deeds, a notary public, David, and two men in suits who say they are "from the bank". David hands her a huge stack of papers and tells her to "take a minute" to glance over them so they can get started. Patricia is intimidated and confused. There are all sorts of convoluted terms and phrases. She tries to ask for clarification, but David tells her "everything's in order – now let's get those papers signed so you can get the keys to your new house!" Before she knows it, people are passing her papers to sign, the notary is stamping them, and the whole process is over.

When Patricia finally gets time to pore over the documents, she discovers that she did not get a prime interest rate. The rate she was given was is 2 percentage points higher than prime, which will add tens of thousands of dollars to the lifetime cost of the loan. Also, the loan documents contain $8,000

dollars in "origination fees" (4% of the original loan amount) that are now rolled into her total loan amount and subject to the inflated interest rate. The "bank" that holds the mortgage is not a traditional bank at all, but a loan company called Thrift Lenders (T).

Patricia Googles Thrift Lenders and discovers that they are a well-known subprime mortgage company. She also discovers on-line message boards and review sites where numerous people have posted complaints about David Diamond, Diamond Mortgage Brokers, and Thrift Lenders. In particular, many of the posts allege that DMB engages in "predatory tactics" – including charging subprime rates for borrowers who could have qualified for prime loans, inflated origination fees, and high pressure closings – and that it disproportionately targets African American homebuyers. Others claim that DMB originates virtually all of its mortgages with Thrift, which means that it likely isn't doing any market research, comparison shopping, or negotiating for competitive terms. Instead, this is probably a cozy relationship between the broker and the lender, which benefits both of them to the detriment of the consumers.

ESSAY #1 – 60 minutes

Patricia files a Complaint against Diamond Mortgage Brokers and David Diamond in U.S. District Court. Her Complaint alleging predatory lending in violation of the federal Fair Housing Act.

Predatory lending in an of itself does not constitute a violation of the Fair Housing Act. To establish a violation of the Fair Housing Act based on a predatory loan theory, a plaintiff must prove that defendants deliberately targeted African Americans for their predatory loans.

An excerpted copy of the Plaintiff's Complaint is attached. Assume that there are no problems with jurisdiction, venue, process, or service of process.

QUESTION: You are a lawyer for the defendants. How will you challenge this Complaint? Make sure to set forth your arguments in detail.

ESSAY #2 – 30 minutes

In discovery, Patricia propounds a document request upon DMB, asking it to produce:

"All documents related in any way to any loan brokered by DMB in the last 10 years."

The cost to DMB of providing all of these materials would be exorbitant. Their files are not kept by date but by last name of the borrower. There are documents such as emails that aren't stored in the paper files but rather will be stored electronically on the server. The files themselves are not well organized and some old ones might have been shredded to make room in the storage area.

QUESTION: You are the defendants' lawyer. What will you do in response to this request? Make sure to set forth any arguments you would make to the court in support of your position.

ESSAY #3 – 30 minutes

At the close of discovery, the defendants move for summary judgment. The loan terms and events leading up to Patricia's signing the documents are not in dispute. The primary issue in dispute is whether Defendants intentionally targeted Plaintiff for the loan because of her race.

Patricia can show, based on DMB's own files, that virtually 100% of DMB's clients are African American. This is in stark contrast to the racial demographics of the larger metropolitan area (which is only 15% black). DMB's business office is located in the only predominantly minority neighborhood in the metro area.

Patricia offers a credit/banking expert who testifies that most of the loans that the defendants have brokered, including Patricia's, can be described as "predatory" (with subprime rates, inflated fees, and high-pressure tactics). This expert also testifies that, historically, minority communities have been targeted by unscrupulous lenders because of their perceived lack of financial sophistication and resources.

David strenuously denies intentionally targeting Patricia (or any other minority customer) because of race. There is no “smoking gun” document that shows DMB deliberately targeted African Americans. David puts forth his own credit/banking expert who testifies that African American borrowers are somewhat more likely to use mortgage brokers and stand-alone mortgage lenders than traditional banks. This is in part because for many years traditional banks refused to give loans to African-American applicants.

QUESTION: You are the Judge. Will you grant the motion? Explain your reasoning.

EXCERPTS FROM PLAINTIFF'S COMPLAINT

[[Assume that proper allegations with respect to the parties, court's jurisdiction, and venue and have been made]]

FACTS

7. On May 10, 2016, Plaintiff entered into an agreement with Defendants, that Defendants would broker a home mortgage loan for Plaintiff.

8. Plaintiff's credit score was excellent, which should have entitled her to a mortgage loan at a rate close to the prime level.

9. Defendants obtained a home mortgage loan for Plaintiff though Thrift Lenders. However, they did not give Plaintiff a chance to review her loan documents prior to the closing on the house she was purchasing on April 2, 2016. As a result, she agreed to the terms without being fully aware of them.

10. The loan that the Defendants brokered for Plaintiff was predatory, in the sense that it had characteristics inconsistent with sound credit practices, including an unreasonably high subprime interest rate and origination fees that were four times the industry standard.

11. Defendants intentionally targeted Plaintiff for this predatory treatment because she is an African-American woman.

VIOLATION OF THE FAIR HOUSING ACT

12. Defendant's conduct constitutes discrimination in the provision of housing-related financial services, based on race, in violation of the Fair Housing Act, 42 U.S.C. § 3506.

PRAYER FOR RELIEF

Wherefore, the Plaintiff respectfully requests that this Court order

a) compensatory damages,
b) punitive damages, and
c) the rescission and invalidation of Plaintiff's mortgage loan.