

**NATIONAL COMMUNITY  
REINVESTMENT COALITION,** )  
727 15<sup>th</sup> Street, N.W. )  
Suite 900 )  
Washington, DC 20005 )

And

**Cembrye A. Ross** )  
 )

Complainants )

v. )

Complaint No. \_\_\_\_\_

**CAPITAL ONE BANK** )  
and )  
**CAPITAL ONE FINANCIAL** )  
**CORPORATION** )  
1680 Capital One Dr. )  
McLean, VA 22102 )

The Respondent )

\_\_\_\_\_ )

**COMPLAINT FOR DECLARATORY**

**AND INJUNCTIVE RELIEF AND DAMAGES**

**NATURE OF THE ACTION**

This complaint brought by the National Community Reinvestment Coalition (NCRC) arises out of the racial and source of income discrimination perpetrated in the mortgage & home loan servicing policies and practices by Capital One Bank and Capital One Financial Corporation (hereinafter referred to as “the Respondent”). NCRC seeks both injunctive and affirmative relief and damages for itself and Complainant Cembrye A. Ross and other similar situated homeowners injured by the Respondent’s unlawful

behavior. NCRC has concurrently filed this complaint with the United States Department of Housing & Urban Development (HUD) Office of Fair Housing & Equal Opportunity on August 31<sup>st</sup>, 2011 and respectfully requests that the District of Columbia Office of Human Rights Housing Unit jointly investigate this matter with HUD as a substantially equivalent local government agency as authorized by Section 810(f) and Section 817 of the Federal Fair Housing Act.

This action is brought after an inquiry to NCRC by the HUD Washington, D.C. field office, on or about July 18, 2011, concerning the Respondent's refusal to participate in a District of Columbia program to help unemployed residents prevent foreclosure. The program is administered by the District of Columbia Housing Finance Agency, and supervised and funded by the U.S. Department of the Treasury under the Hardest Hit Fund (HHF) program. HHF was created to help those dealing with unemployment, in areas such as the District of Columbia, not to lose their homes on the account of their current unemployment. The Respondent's refusal to participate in the Hardest Hit Fund, and the related Home Affordable Modification Program (HAMP), is a violation of the District of Columbia Human Rights Act of 1977, as amended, constituting discrimination on the basis of source of income and race. In addition, the Respondent's policies and practices violate protections of the federal Fair Housing Act of 1968, as amended, Title VII of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq) and the federal Equal Credit Opportunity Act or ECOA.

HHF was created to help those dealing with unemployment, in areas such as the District of Columbia, not to lose their homes on the account of the current

unemployment. Black/African American unemployment in the District of Columbia is roughly 16% compared to white unemployment of 8%.<sup>1</sup>

The HAMP is designed to help financially struggling homeowners avoid foreclosure by modifying loans to a level that is affordable for borrowers now and sustainable over the long term. The program provides clear and consistent loan modification guidelines that similarly situated lenders and servicers such as the Respondent have adopted and are actively participating in. Upon information and belief, Respondent is offering less advantageous “private label” or no alternatives to HHF or HAMP eligible consumers in the District of Columbia.

Borrower eligibility in both the HHF and HAMP programs are based on meeting specific criteria including, but limited to, that the borrower is delinquent on their mortgage or faces imminent risk of default; the property is occupied as borrower's primary residence and in the case of the HHF, the borrower is currently unemployed and actively seeking new employment. In HAMP, after determining a borrower's eligibility, a participating servicer will take a series of steps to adjust the monthly mortgage payment to 31% of a borrower's total pretax monthly income:

- First, reduce the interest rate to as low as 2%,
- Next, if necessary, extend the loan term to 40 years,
- Finally, if necessary, forbear (defer) a portion of the principal until the loan is paid off and waive interest on the deferred amount.

---

<sup>1</sup> <http://www.bls.gov/news.release/empsit.t02.htm>

Servicers may elect to forgive principal under HAMP on a stand-alone basis or before any modification step in order to achieve the target monthly mortgage payment.

HAMP includes incentives for borrowers, servicers and investors alike, as does the HHF.

In 2010, the Administration launched HHF to help homeowners avoid foreclosure in the areas hardest hit by steep home price declines and unemployment. Through the program, participating housing finance agencies (HFAs) in 18 states and the District of Columbia are implementing a variety of different initiatives to help homeowners struggling with their mortgage payments. All participating HFAs are now operating programs widely and offering assistance to homeowners. Specifically in the District of Columbia, the District of Columbia Housing Finance Agency program was intended to reach a minimum of 1000 at risk homeowners. The DC HomeSaver program targets homeowners who have experienced involuntary job loss and subsequently facing foreclosure. Eligibility requirements to receive assistance under this program are similar to the HAMP program, as are Treasury's incentives and guarantees to servicers. First, the homeowner must reside in the home as their primary residence. Second, they must be named on the deed of trust. Third, they were current on their mortgages until the date of unemployment; and specific to HHF, that they are receiving or have received unemployment insurance (UI) payments in the past six months, and last, that they are not in foreclosure; and or active bankruptcy.

Along with countless metropolitan areas across the country, DC has experienced resident job loss at record rates— most recently, reaching 10.8% in July 2011.

The Respondent's refusal to participate in these programs and Respondent's other unlawful actions result a disparate impact on Blacks/African Americans when compared to whites or to consumers who are relying on the HHF program as their sole source of income.

### **PARTIES**

Complainant, NCRC, is a national non-profit corporation organized under the laws of the District of Columbia, with its principal place of business located at 727 15<sup>th</sup> Street, Suite 900, Washington, D.C. 20005. NCRC was formed in 1990 by national, regional, and local organizations to develop and harness the collective energies of community reinvestment organizations from across the country. NCRC members represent and protect traditionally underserved and vulnerable populations. Members include community development corporations, civil rights groups, community reinvestment advocates, local and state government agencies, and churches. NCRC has a mission and purpose of increasing fair and equal access to credit, capital, and banking services and products for all Americans, regardless of race, color, religion, national origin, gender, familial status, disability or age. The Respondent's racially discriminatory policies and practices have frustrated NCRC's mission of increasing the flow of private capital into underserved communities and have caused NCRC to expend its scarce resources on educational programs, investigations, and litigation to identify and combat such practices. NCRC's Housing Counseling Network has been selected as one of the District of Columbia agencies to administer counseling under the HHF program.

Complainant Cembrye A. Ross is a currently unemployed African-American professional who owns and occupies her own home in the District of Columbia. Ms. Ross

currently resides at [REDACTED], which is the property at issue. We believe Ms. Ross' circumstances not to be atypical of borrowers in the District of Columbia who have had a business relationship with the Respondent and are experiencing this specific hardship.

The Respondent is incorporated in McLean, VA with its principal place of business located at 1680 Capital One Dr. McLean, VA 22102. The Respondent originates residential mortgage loans throughout the United States and the District of Columbia. The Respondent is additionally a loan servicer with a loan portfolio that includes mortgages owed by District of Columbia homeowners. The Respondent has engaged in a pattern and practice of discrimination against unemployed District of Columbia residents, including African-American and Latino borrowers, through the policies and practices that deny District of Columbia residents the opportunity to seek relief through the District of Columbia Housing Finance Agency and the Treasury HHF program and the related HAMP. Specifically the Respondent's restrictive policies have a disproportionate, adverse, and disparate impact on African-American and Latino borrowers through Respondent's rejection of otherwise qualified borrowers from the program, and regardless of race, disqualify qualified HHF program participants based upon their source of income.

Further, the Respondent's discriminatory policy has the effect of discouraging program participation by District of Columbia residents regardless of their individual eligibility under District of Columbia HHF guidelines and in the Federal government's HAMP initiative. There is no legitimate business justification for the Respondent's discriminatory policies. HAMP & HHF applicants, who meet the program's criteria, are

being excluded from consideration based solely on the Respondent's refusal to participate. The Respondent's discriminatory lending policies have caused, and continue to cause, direct injury to African-Americans and Latinos, and residents of African-American and Latino neighborhoods across the District of Columbia, and violate the District's source of income protections. The Respondent's discriminatory policies have caused and continue to cause injury to NCRC, its constituents, Complainant Ross and other similarly situated District of Columbia residents.

### **FACTUAL BACKGROUND**

On or about July 18, 2011, NCRC received an inquiry from the HUD Washington, D.C. field office, concerning Respondent's refusal to participate in the District of Columbia program to help unemployed residents to prevent foreclosure. This program is administered by the District of Columbia Housing Finance Agency, and supervised and funded by the U.S. Department of the Treasury under the HHF program. All of the District of Columbia approved borrowers have been members of protected classes, as of this date.

Complainant Ross asserts that on June 23, 2010, she contacted the Respondent via telephone requesting information on whether Respondent participated in the federal government sponsored HAMP. This program provides subsidies to homeowners who are having difficulty paying their monthly mortgage payments in an effort to maintain equity in communities. She was orally informed that the Respondent does not participate in HAMP. On June 24, 2011 Complainant Ross asked the Respondent via electronic communication (email) for written confirmation that Respondent does not participate in HAMP. In correspondence, dated June 28<sup>th</sup>, 2010, the Respondent replied by email to her

inquiry stating that they do not participate in HAMP and that they will send her a formal letter to verify this information. On information and belief, Complainant Ross did not receive a document illustrating this fact.

Nevertheless, Complainant Ross indicates she ultimately received a letter from Respondent and a HAMP loan modification packet on September 8<sup>th</sup> 2010, directly contradicting the Respondent's earlier statements that they did not participate in HAMP. NCRC's investigation of the matter reveals that this was an effort by the company to steer the complainant and similarly situated at risk consumers to less advantageous "private label" or "HAMP light" modification alternatives. Despite this, Complainant Ross responsibly and promptly sent in the modification application; however she then received a denial letter from the Respondent approximately two months later on November 24<sup>th</sup>, 2010. The "Statement of Credit Denial, Termination or Change" indicates her denial for a modification was on the basis that she failed to meet the Respondent's income and employment criteria. Complainant Ross' income is comprised of her unemployment benefits that last for a maximum term not to exceed 99 weeks. It should be noted that at the time of her application Ms. Ross had substantial unemployment benefits remaining, and in fact, based upon NCRC Housing Counseling Network review of her file, was in fact qualified for the HAMP program. It was not until September 2010 that Complainant Ross was made aware by the Respondent that she was eligible for HAMP offered through the company. However, at this time her unemployment benefits had come dangerously close to the threshold of the nine months of continued unemployment benefits required to qualify for HAMP or the Respondent's internal modification program. If not for the Respondent's misleading information about



their participation in HAMP in June 2010, Complainant Ross's application would have clearly been received comfortably within the nine months required to qualify for the program.

Ms. Ross subsequently filed a complaint dated March 12<sup>th</sup>, 2011 with the Office of the Comptroller of the Currency (OCC), which regulates Respondent. The Respondent replied on March 25<sup>th</sup>, 2011 to Ms. Ross' complaint with the OCC by sending Ms. Ross a letter refuting the existence of an email that clearly shows Respondent informed Ms. Ross that it did not participate in the government subsidy program of which she was referring (HAMP). In that same letter, Respondent sent Ms. Ross a HAMP loan modification package. The Respondent contradicted itself once again in a letter dated April 21<sup>st</sup>, 2011 to Complainant Ross where they deny participation in the "Mortgage Subsidy Program." Respondent's lack of accuracy of information directly contributed to Ms. Ross' current predicament where she is currently two months behind on her loan and at risk of imminent foreclosure. If not for the Respondent's misleading information about participation in HAMP in June 2010 then Ms. Ross would have not missed the unemployment benefits deadline required to qualify for the program.

On information and belief, Complainant Ross's loan is owned by Freddie Mac and serviced by Respondent. Freddie Mac issued guidance to servicers mandating Servicer participation in the HFA Program. The Freddie Mac guidance states clearly that:

*Effective immediately, for Freddie Mac-owned or guaranteed Mortgages, Servicers must respond to HFA requests and accept funds provided on behalf of the Borrower under the HFAs' mortgage assistance programs....Servicers must have procedures and specific points of contact in place to be able to respond to*

*the HFA (or its designated third-party provider) requests and notifications with respect to Borrowers receiving assistance under the HHF.* (NUMBER: 2010-25 Single-Family Seller/Servicer Guide (“Guide”) Bulletin SUBJECT: SERVICER REQUIREMENTS RELATED TO STATE HOUSING FINANCE AGENCIES’ MORTGAGE ASSISTANCE PROGRAMS)

Further, Freddie Mac has also issued similar guidelines to servicers regarding the HAMP program in multiple guidelines, including the recent Single Family Seller/Servicer Guide Bulletin 2011-11, which require similar due diligence for all Freddie Mac approved servicers and lenders.

Ms. Ross is currently receiving unemployment benefits as her source of income to pay bills, including her monthly mortgage payment. As the holder of a Freddie Mac loan the Respondent should be required to obey the guidance set forth and should have not denied Ms. Ross’ application based on her source of income and unemployment status. Based on our counseling session with Ms. Ross, we believe that she would have been eligible at a minimum for the HHF due to her current employment status and the additional information she has provided. The fact that Ms. Ross was denied HAMP is exacerbated by the fact that the Respondent refuses to participate in HHF and adhere to the Freddie Mac guidelines, which would have enabled Complainant Ross to make her monthly mortgage payments.

### **INJURY CAUSED BY THE RESPONDENT**

Through numerous workshops, conferences, systemic testing, reports, education and outreach, and “best practice” compliance initiatives, NCRC has provided education, training, and technical assistance to its members, community organizations, and

advocates at the local, regional, and national level to promote fair lending and access to capital in low-income and minority communities across the country. The unlawful discriminatory actions of the Respondent have injured NCRC by: (a) interfering with those efforts and programs of NCRC intended to promote fair lending; (b) requiring NCRC to commit scarce resources, including substantial staff time, to investigate complaints and review the Respondent's lending practices, engage in an educational campaign, thus diverting those resources from other testing, education, counseling, and capacity-building services, and (c) frustrating NCRC's mission and purpose of increasing fair and equal access to credit, capital, and banking services and products for all Americans, regardless of race. The discriminatory actions of the Respondent have required, and will require NCRC in the future, to spend additional resources to counteract the Respondent's discriminatory conduct.

As a result of the Respondent's discriminatory conduct, individuals in the communities served by the NCRC have been discouraged from applying for HHF. As a result of the Respondent's discriminatory conduct, communities served by NCRC and its member organizations have been denied the benefits intended by the program. In response, NCRC has made substantial efforts and expended considerable resources to investigate the existence and effects of the Respondent's policies and to ensure equal opportunities for potential participants.

NCRC has been, and continues to be, adversely affected by the acts, policy, and practice of the Respondent and/or its respective agents.

Unless enjoined, the Respondent will continue to engage in the unlawful acts and practices described above.

The Respondent's unlawful actions described above were implemented with callous and reckless disregard for the rights of NCRC, its constituent members, and the individuals and communities it serves.

**REQUEST FOR RELIEF**

WHEREFORE, NCRC requests that the D.C. Human Rights Commission and the United States Department of Housing & Urban Development Office of Fair Housing & Equal Opportunity grant the following relief:

- (1) Enter a preliminary injunction to put aside any foreclosure proceedings by the Respondent until a further examination of Ms. Ross' case is concluded.
- (2) Enter a preliminary injunction enjoining the Respondent, its directors, officers, agents, and employees from continuing to implement, and enforce the illegal, discriminatory conduct described herein pending the entry of a final judgment in this matter.
- (3) Enter a permanent injunction enjoining the Respondent, its directors, officers, agents, and employees from continuing to publish, implement, and enforce the illegal, discriminatory conduct described herein and directing the Respondent, its directors, officers, agents, and employees to take all affirmative steps necessary to participate in HHF and HAMP, as mandated by the District of Columbia, the federal Fair Housing Act and Freddie Mac guidance and otherwise remedy the effect of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
- (4) Award compensatory damages to each Complainant in an amount to be determined, that would fully compensate NCRC for the frustration of mission and

diversion of resources that has been caused by the conduct of the Respondent herein and other Complainants for the consequences of Respondent's failure to comply;

- (5) Award Complainants' reasonable attorney's fees and costs; and
- (6) Order such other relief deemed just and equitable.