



JPMorgan Mortgage Rate Info Not Fraudulent, 9th Circ. Affirms

By Kurt Orzeck

Law360, Los Angeles (July 13, 2016, 6:55 PM ET) -- The Ninth Circuit on Tuesday refused to revive a proposed class action accusing [JPMorgan Chase Bank NA](#) of defrauding homeowners into paying higher interest rates on their mortgages, after a lower court found the bank's disclosures regarding the loans didn't violate any laws.

Affirming [a decision](#) by U.S. District Judge John A. Kronstadt following a bench trial, the appeals judges agreed that plaintiffs Barbara Schramm and Steven Weinstein [couldn't prove](#) the bank's practices violated the unlawful, fraudulent or unfair prongs of California's Unfair Competition Law.

The plaintiffs had claimed that Chase's loan disclosures were unlawful because the bank did not comply with Truth In Lending Act and [Federal Reserve System Board's Regulation Z](#) requirements.

On appeal, Schramm and Weinstein further argued that the bank's mortgage disclosures were illegal because they didn't comport with the Federal Reserve Board's staff interpretation of Regulation Z.

But the Ninth Circuit on Tuesday decided that "Schramm's reliance on the staff interpretation is more than just an additional citation. Rather, it is an entirely new theory of liability of which the district court was never put on notice."

Chase's [disclosures](#) failed to conform to the Federal Reserve Board's model form for two principal reasons, the plaintiffs said. First, the disclosures allegedly failed to inform consumers that "the index plus margin would be adjusted by the amount of any 'premium.'"

Second, the plaintiffs contended that the disclosure placed the statement "Your initial interest rate may be discounted and will not be tied to the index" under the heading "How Your Interest Rate Can Change" instead of, as in the model form, under the heading "How Your Interest Rate is Calculated."

But Judge Kronstadt in July 2014 said there is no requirement under Regulation Z that lenders state how the initial interest rate is calculated, and nothing in the regulation requires that they state whether the initial interest rate may be discounted or based on a premium.

Chase was required to disclose that the initial interest rate is not based on the same formula as subsequent interest rates, and the judge said it specifically stated in its disclosures that the rate is not tied to the index.

Judge Kronstadt also found the plaintiffs couldn't prove Chase's disclosures were fraudulent.

After the plaintiffs appealed to the Ninth Circuit, Chase argued that they couldn't contend that the bank didn't disclose that it was charging "a 'premium' initial interest rate" because that argument relied entirely on the Federal Reserve Board staff commentary of Regulation Z, which they allegedly failed to cite in the district court.

Schramm and Weinstein replied that the only new point on appeal was additional authority, in the form of the staff interpretation directing how to interpret the same regulation that the district court considered at trial.

The Ninth Circuit on Tuesday ruled that, even if the plaintiffs' argument was not waived, the Federal Reserve Board's staff interpretation "controls only when [Truth In Lending Act] or Regulation Z are ambiguous, which [the plaintiffs do] not argue is the case here."

A JPMorgan representative told Law360 on Wednesday that "we are pleased with the court's decision to bring this case to a close."

An attorney for the plaintiffs declined comment Wednesday.

Circuit Judges Thomas I. Vanaskie, Mary H. Murguia and Paul J. Watford sat on the panel for the Ninth Circuit.

The plaintiffs are represented by John Albert Girardi of [Girardi & Keese](#), Craig M. Collins of Blum Collins LLP, Anne M. Huarte of Huarte Law Office and John Stephen Peterson of Peterson Law Group Prof. Corp.

JPMorgan Chase is represented by Jonathan S. Massey, Leonard A. Gail and Marc A. Goldman of [Massey & Gail LLP](#).

The case is Barbara L. Schramm et al. v. JPMorgan Chase Bank NA et al., case number [14-56284](#), in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Juan Carlos Rodriguez and Sindhu Sundar. Editing by Bruce Goldman.

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