IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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SYLVIA C. COHEN, On Behalf of Herself and All Other Persons Similarly Situated,

Plaintiff,

vs.

JP MORGAN CHASE & CO. and JP MORGAN CHASE BANK,

Defendants.

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C.A. No. 04-CV-4098 (CPS/RLM)

FIRST AMENDED CLASS ACTION COMPLAINT

NATURE OF ACTION

1. Plaintiff brings this class action against defendants JP Morgan Chase & Co. and JP Morgan Chase Bank (together, "Chase") for violation of the Real Estate Settlement Procedures Act of 1974, §§ 8(b), 12 U.S.C.A. §§ 2607(b) ("RESPA") and the New York General Business Law, § 349 ("N.Y. GBL §349"). This action is brought on behalf of a Class of persons who obtained or refinanced a residential mortgage through Chase and were forced to pay Chase at the real estate settlement and closing a "post closing" or "post closing review" fee of approximately $225-$275 (the "Class").

2. The "post closing" fee does not represent a valid settlement service and bears no reasonable relationship to any settlement services actually performed by Chase. Chase fails to provide adequate disclosures to consumers concerning this fee. Chase does not inform consumers how the amount of this fee is calculated, what services Chase purportedly will provide which entitle it to collect from consumers the post closing fee of approximately $225-$275 per mortgage, or

whether any settlement services actually are performed for the consumer in exchange for this fee. The post closing fee is nothing more than a means for Chase to generate unearned fees from consumers at the time of the real estate settlement and closing.

3. This suit is brought to a) enforce Chase's compliance with RESPA and N.Y. GBL § 349; b) compensate Plaintiff and the other members of the Class for the post closing fees unlawfully levied; and c) enjoin Chase from continuing its deceptive conduct.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 12 U.S.C. §2614 and 15 U.S.C. § 1640 (e), over claims for violation of RESPA. The property for which Plaintiff refinanced the residential mortgage through Chase is located in this District. In addition, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, in that this dispute involves predominant issues of federal law. This court has supplemental jurisdiction to hear Plaintiff's claim for violation of N.Y. GBL §349 claim pursuant to 28 U.S.C. §1367.

5. Venue is proper in this District inasmuch as Plaintiff resides in this District, the property for which the residential mortgage was refinanced through Chase is located in this District, and defendants conduct business here.

THE PARTIES

6. Plaintiff Sylvia C. Cohen resides in Brooklyn, New York. In September 2003, Plaintiff and her husband refinanced their mortgage through Chase for the residential property located at 1250 Ocean Parkway, Apartment 4P, Brooklyn, New York, 11230 (the "Property").

7. Defendant JP Morgan Chase & Co. was created on July 1, 2004, upon completion of the holding company merger between J.P. Morgan Chase & Co. and Bank One Corporation. JP Morgan Chase & Co. maintains corporate headquarters at 270 Park Avenue, New York, New York, 10017-2070. JP Morgan Chase & Co. provides investment banking, financial services for consumers and businesses, financial transaction processing, asset and wealth management and private equity services. JP Morgan Chase & Co. has assets of approximately $1.1 trillion under management and operates throughout the United States and in more than 50 countries worldwide. The U.S. consumer and commercial banking businesses currently operate under the Chase and Bank One brands. These businesses include retail banking, credit card, home and auto finance, small business, middle market and mid-corporate banking.

8. Defendant JP Morgan Chase Bank is located at 135 Pinelawn Road, Suite 230, North Melville, New York 11747. JP Morgan Chase Bank was the entity of parent company JP Morgan Chase & Co. that provided the residential mortgage refinancing to Plaintiff for the Property and whose name and address appears on Plaintiff's mortgage application and Good Faith Estimate of Federal Truth In Lending Disclosure Statement. Defendants JP Morgan Chase & Co. and JP Morgan Chase Bank are collectively referred to throughout this Complaint as "Chase".

CLASS ACTION ALLEGATIONS

9. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and all others similarly situated who

obtained or refinanced a residential mortgage through Chase and were charged by Chase at the real estate settlement and closing a "post closing" or "post closing review" fee (the "Class"). Excluded from the Class are the officers, directors and employees (and the immediate families thereof) of Chase, and any of Chase's subsidiaries or affiliates and any director, officer and employee (and the immediate families thereof) of any subsidiary or affiliate; any entity in which a defendant has a controlling interest; and the legal representatives, heirs, successors and assigns of any excluded person or entity. This class action seeks injunctive relief pursuant to Rule 23(b)(2) and actual damages.

10. Members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, Plaintiff believes there are thousands of members of the Class, dispersed throughout the United States. The number of Class members and their addresses can be ascertained from the books and records of Chase through discovery.

11. Common questions or law and fact exist as to all members of the Class and predominate over any questions affecting solely any individual members of the Class.

12. Among the questions of fact common to the Class are:

a) whether Chase violated the RESPA;

b) whether Chase violated N.Y. GBL § 349; and

c) whether Plaintiff and the other Class members have been damaged as a result.

13. Plaintiff is a member of the Class.

14. Plaintiff's claims are typical of the claims of the Class and Plaintiff has the same interests as the other Class members.

15. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained able counsel with extensive experience in consumer fraud and complex class action litigation. The interests of Plaintiff are coincident with, and not antagonistic to, the interests of the other Class members.

16. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

17. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual Class members, which would establish incompatible standards of conduct for defendants.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Class individually to redress the wrongs done to them. The Class is readily definable, and prosecution of this action as a class action will eliminate the possibility of repetitious litigation. Plaintiff will encounter no difficulty in managing this action as a class action.

SUBSTANTIVE ALLEGATIONS

19. Chase generates substantial income from charging consumers fees for the

origination and servicing of residential mortgages. According to its 2003 Annual Report, Chase received $892 million in mortgage fees and related income, including fees for mortgage origination and servicing activities. In its Letter to Shareholders dated March 15, 2004, Chase reported that its Chase Home Finance division "had a record year in 2003", and "took advantage of the mortgage boom, resulting in an increase in revenues of 38% over 2002."

20. In connection with her mortgage application with Chase, Plaintiff was required to and did make pre-payment of certain fees to Chase, including a payment to Chase of $ 425 on or about February 28, 2003, for the non-refundable mortgage application and appraisal fees. At the time Plaintiff made this payment to Chase, Chase had not disclosed to Plaintiff that she also would be required to pay Chase a post-closing fee of approximately $225 at the closing.

21. Consumers who obtain or refinance a residential mortgage through Chase are forced to pay Chase a post closing fee at the time of the real estate settlement and closing. This fee is approximately $225 to $275 per residential mortgage. The post closing fee purportedly is for settlement services to be rendered by Chase following the real estate settlement and closing. Although Chase requires consumers to pay this fee in order to complete the real estate settlement and closing, Chase has done nothing to earn this settlement fee.

22. The post closing fee appears in the Good Faith Estimate of Settlement Charges which Chase provides to its borrowers prior to the real estate settlement and closing. However, because the post closing fee does not represent actual and itemized settlement services performed by Chase at the time of the closing, it is not a legitimate settlement charge. Chase has no right to collect this unearned fee as a settlement charge at the closing.

23. On September 23, 2003, Plaintiff attended the real estate settlement and

closing in connection with the mortgage refinancing for the Property. A $225 "post-closing" fee payable to Chase appeared on Plaintiff's closing statement. Plaintiff paid to Chase and Chase accepted from Plaintiff the $225 post closing fee on September 23, 2003.

24. Any reasonable person in Plaintiff's position would have done the same at the closing by paying Chase all required fees, including the $225 post closing fee, rather than risk not closing on the residential loan/refinancing and also forfeit non-refundable fees already paid to Chase of approximately $425. No settlement services were provided to Plaintiff by Chase in exchange for her payment of the post closing fee.

25. By collecting the unearned post closing fee from consumers as a settlement charge at the time of the real estate settlement and closing, Chase is in violation of Section 8 the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601, *et. seq.*, which prohibits the accepting of any part of a fee for unearned services and services not actually performed.

26. REPSA was enacted to reduce the costs consumers pay to settle their real estate transactions. The statute states, in part:

> (a) The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country.

27. One of the abusive practices that Congress sought to eliminate through the enactment of RESPA was the payment and receipt of unearned fees. S. Rep. No. 93-866 (1974), reprinted in 1974 U.S.C.C.A.N. 6546, 6551. Section 8(b) of RESPA provides that no person shall accept a part of a fee other than for services actually performed. The post closing fee is

exactly the type of unearned fee which RESPA prohibits Chase from collecting from consumers.

28. Chase fails to disclose to consumers what, if any, services it purports to perform post closing that would entitle it to collect the post closing fee.

29. Upon information and belief, Chase provides no settlement services to the consumer following the closing which entitle Chase to collect approximately $225-$275 per residential mortgage at the closing. The post-closing fee is nothing more than Chase collecting unearned fees from consumers.

30. Monetary relief is not sufficient because, upon information and belief, Chase continues to engage in its deceptive acts and practices and disclosure violations.

COUNT I
VIOLATIONS OF THE RESPA

31. The allegations contained in each paragraph set forth above in this Complaint are realleged and incorporated by reference as if fully set forth herein

32. At the real estate settlement and closing, Chase requires its mortgagees to pay Chase a post closing fee of approximately $225-$275. This charge appears on the Good Faith Estimate of Settlement Charges prepared by Chase.

33. RESPA prohibits persons from accepting fees for settlement services without actually performing any services. Real Estate Procedures Act of 1974, §§ 8(b), 12 U.S.C.A. §§ 2607(b).

34. The “post-closing” fee purportedly is for future services allegedly to be rendered by Chase following the closing and settlement of the residential loan. It is not a fee for actual and itemized settlement services rendered by Chase at the time of the closing. The post

closing fee has not been earned by Chase.

35. Chase has violated RESPA by 1) charging consumers approximately $225 to $275 as a post closing fee for the purported rendering of a real estate settlement service; 2) accepting from consumers at the real estate settlement and closing the post closing fee of approximately $225 to $275 for services which have not actually been performed by Chase; and 3) collecting the post closing fee at the real estate settlement without performing any services for consumers which would entitle Chase to collect this fee. As a result, Plaintiff and the other members of the Class have suffered damages.

COUNT II
VIOLATIONS OF SECTION 349 OF NEW YORK GENERAL BUSINESS LAW: DECEPTIVE ACTS AND PRACTICES

36. The allegations contained in each paragraph set forth above in this Complaint are realleged and incorporated by reference as if fully set forth herein.

37. Chase has failed to disclose material facts concerning the post closing fee which it charges consumers. Chase has failed to disclose what services it purports to perform following the closing which would entitle it to collect from consumers the post closing fee of approximately $225-$275 per residential loan. Plaintiff believes there is no reasonable relationship between the amount charged in advance and any services actually performed by Chase, and that no settlement services are actually performed by Chase in exchange for the post closing fee. Chase has deceived and continues to deceive Plaintiff and the other members of the Class.

38. Chase also requires consumers to pay a non-refundable mortgage application and appraisal fee of approximately $425 (almost double the amount of the post

closing fee), prior to disclosing to consumers that they also will be required to pay a post closing fee at the settlement. Chase exerts undue bargaining power over consumers: consumer can either pay all fees required by Chase at the closing or risk not closing on the residential loan/refinance and also forfeit the non-refundable mortgage application and appraisal fees.

39. The actions and failure to act of Chase, including (1) the false and misleading express and/or implied representations and omissions of material fact regarding the "post closing" fee charged by Chase at the settlement and closing of the residential loan and in advance of services purportedly to be performed; (2) the failure to provide settlement services in exchange for the post closing fee; and (3) the exertion of undue bargaining power over the consumer by requiring payment of non-refundable mortgage application and appraisal fees prior to disclosing that a post closing fee also will be charged, constitute acts, uses, or employment by Chase and its agents of deception, fraud, unconscionable commercial practices, false pretenses, false promises, misrepresentations, or the knowing concealment, suppression, or omission of material facts with the intent that others rely upon such concealment, suppression, or omission, in connection with the sale or advertisement of merchandise, and with the subsequent performance, of Chase in violation of § 349 of New York's General Business Law, making deceptive acts and practices illegal.

40. The unfair and deceptive trade acts and practices of Chase have directly, foreseeably, and proximately caused damages and injury to Plaintiff and the other members of the Class.

41. Plaintiff and the other members of the Class have no adequate remedy at law.

WHEREFORE, Plaintiff, on her own behalf and on behalf of the Class, prays for judgment, as follows:

a) Declaring this action to be a proper class action and certifying Plaintiff as a representative of the Class under Rule 23 of the Federal Rules of Civil Procedure;

b) Ordering Chase to cease and desist from its deceptive acts and practices, consumer fraud and unconscionable commercial practices, including: (i) its charging consumers a "post closing" fee of approximately $225 to $275 and collecting this fee from consumers at the real estate settlement and closing without performing any settlement services which would entitle Chase to collect this fee; (ii) its failure to provide adequate disclosures of the "post closing" fee and failing to disclose what settlement services, if any, it purportedly renders to the consumer in exchange for this fee; and (iii) its exertion of undue bargaining power over the consumer by requiring payment of non-refundable mortgage application and appraisal fees of approximately $425, prior to disclosing that the consumer also will be required to make payment of a post closing fee.

c) Awarding Plaintiff and the Class (i) all actual damages under RESPA and/or the lesser of $500,000 or 1% of the net worth of Chase; and (ii) actual damages under N.Y. GBL § 349.

d) Awarding Plaintiff costs and disbursements incurred in connection with this action, including reasonable attorneys' and experts' fees, and other expenses incurred in prosecuting this action; and

e) Granting pre-judgment interest and such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: October 12, 2007
New York, New York

GISKAN, SOLOTAROFF & ANDERSON, LLP

__________/s/_______________

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