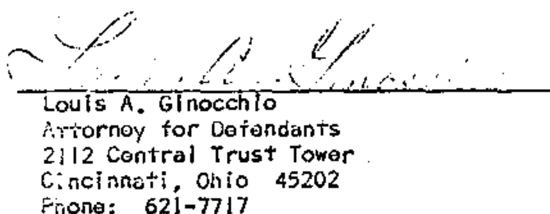
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT F. LAUFMAN, et al	:	
Plaintiffs	:	CIVIL ACTION NO. C I 74-153
vs.	:	
OAKLEY BUILDING AND LOAN COMPANY, et al	:	MOTION FOR SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS
Defendants	:	

Pursuant to F.R.C.P. 56, defendants move the Court to enter a summary judgment in their favor on the pleadings, depositions on file and the record as to all of the claims asserted against them, for the reasons that there is no genuine issue as to any material fact, that no cause of action is stated and that defendants are entitled to judgment in their favor as a matter of law.



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MEMORANDUM IN SUPPORT OF MOTION

Plaintiffs were originally four in number but are now two, plaintiffs Kihlstedts having, at their request, been dismissed with prejudice on March 6, 1975. The remaining plaintiffs, Robert F. Laufman and Kathleen ú. Laufman, are husband and wife, white and adults. The dismissed plaintiffs, Andrea Kihlstedt and Folke T. Kihlstedt, likewise husband and wife, white and adult, were the owners of a single family residence at 3941 Beechwood

Avenue, North Avondale, having no tenants (Robert F. Laufman deposition pages 26, lines 23-25; 87, lines 8-11; 100, lines 16-23) which residence was purchased by plaintiffs Laufman. Prior to acquiring title from the Kihlstodts plaintiffs Laufman unsuccessfully had sought a mortgage loan from defendant, Oakley Building & Loan Company, to finance the purchase.

The complaint was brought as an individual and also as a class action. This Court on November 4, 1974 entered judgment denying plaintiffs' motion to have the action proceed as a class action.

Answers (with the questions preceding the answers) to interrogatories propounded to defendants were filed in this Court by the defendants on October 22, 1974 and the depositions of plaintiffs Robert F. Laufman and Kathleen G. Laufman were filed in this court on the 2nd day of May, 1975.

What remains before the Court is the complaint of two white, married and adult persons against a building and loan association, its directors and officers. Plaintiffs Laufman seek damages and other relief from the defendants for the reason that plaintiffs were not granted the aforesaid mortgage loan, citing as legal authority for their cause of action the provisions of 42 U.S.C Sections 3601 et seq and 2000 (d) and 12 CFR Sections 528 and 531. The applicable provisions of the statutes relied upon are as follows:

> 42 U.S.C. Sec. 3605 "After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to descriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: Provided, That nothing contained in this section shall impair the scope of effectiveness of the exception contained in section 803 (b) (42 USCS Sec. 3603 (b))".

42 U.S.C. Section 2000 (d) "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

12 CFR 528.2 "No member institution shall deny a loan or other service rendered by the member institution for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or discriminate in the fixing of the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of such loan or other service because of the race, color, religion, or national origin of

(a) An applicant for any such loan or any other service rendered by the member institution;

(b) Any person associated with such applicant in connection with such loan or other service or the purposes of such loan or other service;

(c) The present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other service is to be made or given; or

(d) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling or dwellings in relation to which such loan or other service is to be made or given."

12 CFR 531.8 (4) "Age, income level, or racial composition of neighborhood. Refusal to lend in a particular area solely because of the age of the homes or the income level in a neighborhood may be discriminatory in effect since minority group persons are more likely to purchase used housing and to live in low-income neighborhoods. The racial composition of the neighborhood where the loan is to be made is always an improper underwriting consideration."

Plaintiffs brought this action and alleged they were doing so under the provisions of 42 U.S.C. Sections 3601 et seq and 2000 (d) and 12 CFR Sections 528 and 531, but their allegations fail to state a cause of action within the provisions of the controlling statutes, i.e. 42 U.S.C. Sec. 3605 and 42 U.S.C. Sec. 2000 (d) nor even under the provisions of 12 CFR Sections 528 and 531, which, we submit, add a new legal entity to the individuals to which the statutes afford protection.

Neither plaintiffs complaint nor their deposed testimony allege that they were discriminated against because of their race, color, religion or

national origin or of the race, color, religion or national origin of anyone in statutorially conferred privity with them. Plaintiffs do complain, however, that the defendants refused them a mortgage loan because of the racial composition of the neighborhood in which they were seeking to purchase a home, to-wit: North Avondale. The rights accorded under 42 U.S.C. Sec. 3605 and 42 U.S.C. 2000 (d) are personal rights which afford protection against, and a remedy for, discrimination against a person because of his race, color, religion or national origin or of the race, color, religion or national origin of those persons whom the statutes define as being in privity with him. No such allegations or claims are made by plaintiffs. Consequently, plaintiffs' claim that the mortgage loan was denied them because of the racial composition of the neighborhood of the home they were in the process of purchasing, does not state a cause of action.

The provisions of 12 CFR Sections 528.2 and 531.8(4)go so far beyond the legislative mandate of 42 U.S.C. Section 3605, by purporting to confer upon neighborhoods some heretofore unknown personal legal status that entitles them to protection from discrimination, that they contradict not only the intent but the very provisions of 42 U.S.C. Section 3605 which limit the protection it affords to personal rights of individuals and does not include neighborhoods. The "interpretation" by these regulations of 42 U.S.C. Section 3605 has no basis thereto and is an attempt to legislate new law. Interpretative regulations are not legally binding on Courts of law and when, as here, they presume to usurp the legislative function, they are of no effect.

Plaintiffs seek to have this Court adopt their interpretation of 42 U.S.C. Section 3605 and legislate and engraft that interpretation upon that statute. No court since the enactment of Section 3605 has seen fit to adopt such an interpretation.

In O'NEILL v. UNITED STATES, 281 F Supp. 359 (N.D. Ohio 1968) aff'd. 410 F2d 888 (6th Cir., 1969) our Circuit Court of Appeals holds that,

to the extent they are "inconsistent with the statute and constitute an attempt to legislate,""interpretive regulations are entitled to no weight and are invalid".

CONTINENTAL OIL COMPANY v. BURNS, 317 F. Supp 194 at 200 (D.C. Delaware, 1970) holds:

> "While it is true that an administrative interpretation is usually held valid 'unless it is plainly erroneous or inconsistent with the regulation', and that 'wide latitude is given the agency in the interpretation of * * * regulations', . . . an interpretative rule is not binding upon courts. In American President Lines, Ltd. v. Federal Maritime Commission, 114 U.S. App. D.C. 418, 316 F2d 419 (D.C.Cir., 1963) then Circuit Judge Burger dealt with an interpretation of Section 146 of the Shipping Act. He stated,
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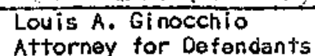
> "Whatever practical or psychological effect this rule may have on the conduct of petitioners, - and we do not doubt that it may have some pragmatic consequences - its legal effect is essentially that of an opinion of the legal staff. Neither the affected parties nor the courts are bound by it unless they elect to adopt it as a correct interpretation of the statute. 316 F2d at 422" (Underscoring ours)

Louis A. Ginocchio
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that on this 2nd day of May, 1975, he served the foregoing Motion for Summary Judgment in Favor of Defendants and Memorandum in Support Thereof by ordinary United States mail addressed to the offices of counsel for plaintiffs, to-wit: Martin E. Sloane, Esq., 1425 H. Street, N.W., Ste. 410, Washington, D.C. 20005, and Donald F. Colegrove, Esq., 1831 Carew Tower, Cincinnati, Ohio 45202.



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