



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

**NOV 18 2008**

The Honorable Bill Nelson  
United States Senate  
225 E. Robinson Street  
Suite 410  
Orlando, FL 32801

Re: FTC Ref. No. 13996280

Dear Senator Nelson:

Thank you for your letter on behalf of your constituents, (b)(6) of Oak Forest, regarding their concern over the appraised value of their home 2 years ago.

As you know, the Federal Trade Commission has been directed by Congress to act in the interest of all consumers to prevent deceptive or unfair acts or practices, pursuant to the Federal Trade Commission Act, 15 U.S.C. §§ 41-58. In interpreting Section 5 of that statute, 15 U.S.C. § 45, the Commission has determined that a representation, omission, or practice is *deceptive* if (1) it is likely to mislead consumers acting reasonably under the circumstances; and (2) it is material; that is, likely to affect consumers' conduct or decisions with respect to the product at issue.<sup>1</sup> In a statute that became effective in August 1994, Congress amended Section 5 of the FTC Act to provide that an act or practice is *unfair* if the injury to consumers it causes or is likely to cause (1) is substantial; (2) is not outweighed by countervailing benefits to consumers or to competition; and (3) is not reasonably avoidable by consumers themselves.<sup>2</sup>

---

<sup>1</sup>*Stouffer Foods Corp.*, 118 F.T.C. 746 (1994); *Kraft, Inc.*, 114 F.T.C. 40, 120 (1991), *affirmed and enforced*, 970 F.2d 311 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 1254 (1993); *Removatron Int'l Corp.*, 111 F.T.C. 206, 308-09 (1988), *citing, e.g., Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431, 1436 (9th Cir.), *cert. denied*, 107 S. Ct. 109 (1986); *International Harvester Co.*, 104 F.T.C. 949, 1056 (1984); *Cliffdale Assocs.*, 103 F.T.C. 110, 164-65 (1984); *see generally Federal Trade Commission Policy Statement on Deception, appended to Cliffdale Assocs.*, 103 F.T.C. at 174-83.

<sup>2</sup>Section 5(n) of the FTC Act, 15 U.S.C. § 45(n), *added by The Federal Trade Commission Act Amendments of 1994, Pub. L. No. 103-312*. The Commission previously relied on similar criteria to define the scope of its authority to prohibit unfair acts or practices pursuant to Section 5(a) of the FTC Act. *See, e.g., Orkin Exterminating Co., Inc.*, 108 F.T.C. 263, 362 (1986); *International Harvester Co.*, 104 F.T.C. at 1061; *see generally Federal Trade Commission Policy Statement on Unfairness, appended to International Harvester Co.*, 104 F.T.C. at 1070-76.

In determining whether to take enforcement or other action in any particular situation, the Commission may consider a number of factors, including the type of violation alleged; the nature and amount of consumer injury at issue and the number of consumers affected; and the likelihood of preventing future unlawful conduct and securing redress or other relief. As a matter of policy, the Commission does not generally intervene in individual disputes. However, letters from your constituents provide valuable information that is frequently used to develop or support Commission enforcement initiatives. I should also note that more than 150 consumer and business education brochures and other materials are available online in the FTC Consumer Line and FTC Business Line sections of our Home Page, located at [HTTP://WWW.FTC.GOV.](http://www.ftc.gov) In addition, your constituents should feel free to contact our Consumer Response Center, if additional information is needed, at the following address and toll-free telephone number:

Consumer Response Center  
Room 240-H  
Federal Trade Commission  
Washington, D.C. 20580  
1 (877) FTC-HELP  
1 (877) 382-4357

The foregoing statutory provisions and law enforcement criteria provide a comprehensive framework for preventing the use of unfair or deceptive acts or practices, but the situation your constituents have described is more appropriately addressed at the state level. Although I sympathize with your concerns, the FTC is unable to take any action at this time. (b)(6) (b)(6) may want to contact the Attorney General of Florida to determine whether Florida state law can provide them with any remedy.

I appreciate your interest in this matter, and I hope that your constituents will find the above information helpful in addressing the problem at issue. Please let us know whenever we can be of service.

Sincerely,



Donald S. Clark  
Secretary of the Commission



*Richard*

13996280

BILL NELSON  
FLORIDA

**United States Senate**  
WASHINGTON, DC 20510-0905



Date: 11/06/2008 Number of pages (including cover sheet): 6

To: Ms. Anna Davis Fax: (202) 326-3585

From: Dolly Kobernat Fax: (407) 872-7165

**Comments**

FEDERAL TRADE COMMISSION  
2008 NOV -7 PM 2:46  
CONG. CORRES. BRANCH



United States Senate  
WASHINGTON, DC 20510-0905

BILL NELSON  
FLORIDA

November 6, 2008

Ms. Anna Davis  
Congressional Liaison  
Federal Trade Commission  
600 Pennsylvania Avenue, Northwest  
Room 404  
Washington, District of Columbia 20580

Dear Ms. Davis:

Please find enclosed correspondence I received from one of my constituents. It involves an important matter under the jurisdiction of your agency.

Your review and response to the issues raised would be greatly appreciated. Please send your correspondence directly to my office and reference (b)(6) for our records. I look forward to a response at your earliest convenience and thank you in advance for your assistance with this matter.

Sincerely,

A handwritten signature in black ink that reads "Bill Nelson".

BN/dk

Enclosure



## Correspondence Tracking Sheet

Tracking # 1892130-DC

**Constituent**

(b)(6)

(b)(6)

Cook

Phone: (b)(6)

Email:

**Details**

Category: Casework Additional Information Supplied For an Existing Case - Follow-Up Information

Assigned To: Dolly Kobernat

Status: Closed

Received Via: Web

Date Received: 10/08/2008

Associated Process: (b)(6)  
Banking & Treasury - Webmail Responses  
68842-OR**Web Mail Message**

Web Mail Subject: (b)(6)

Contact type: issue Comments: Dear Senator Nelson, I wrote to you recently regarding a home we purchased in Fort Meyers, FL - 2 years ago which we believe was falsely appraised. Last week I faxed the release of information forms to your office which I understand allows you to pursue this matter in our defense. I am contacting you again because I feel we have uncovered even more evidence that illustrates something was fishy with regards to our home purchase: in looking up real estate in the same area, a few days ago, to try to get an idea of what that home is worth today, we we SHOCKED to find out that homes in the neighborhood are being priced from \$7000-35,000!!!!!! We paid \$142,000 just 2 years ago! This home appraised for \$148,000! Something is very wrong here. Property values have gone down, but not like this. We were deceived. If no one cares about us, the bank was deceived. This home never should have appraised or sold for anywhere near that amount. And now we are stuck. If we default, the bank is stuck and ultimately, we all pay. This is wrong. I so appreciate your help with this investigation. We feel very helpless right now and don't see any relief in sight. We are hard-working, contributing members of society (I am currently a stay-at-home mother of 4, former teacher, with a Masters' degree; my husband is a former business owner, who is working 3 jobs right now dealing with this home and another lawsuit regarding one other home in Florida, similarly purchased. We are not looking for a handout but seeking justice and some semblance of our former lives before we got involved in Florida real estate. I would be forever grateful if you could assist us in investigating this deal. Thank you kindly, (b)(6)

Subject: (b)(6)

**History**

## Notes/Comments:

10/14/2008 - 11:07 AM - Erika Frantz - Case was closed 10/7/08.

## Route History:

10/14/2008 - 11:07 AM - Erika Frantz - Printed Tracksheet

10/08/2008 09:05:28 PM - Created automatically by Patty Curran via InterTrac Web Gateway.



Casework Tracking Sheet

Tracking # 68842-OR

**Constituent:**

(b)(6)

Phone: (b)(6)

(b)(6)

Email: (b)(6)

Promoted From Correspondence

Cook

**Details:**

Case Type: Casework Assigned To: Dolly Kobernat

Category: Banking & Treasury - Webmail Responses

Date Rec'd: 10/03/2008

Status: Pending

Date Due:

Received Via: Web

Date Closed:

Subject: Casework - Webmail Responses - Acknowledgement w/Consent No Fill

Casework Description: (b)(6) seek assistance with possible mortgage fraud.

**Web Mail Message:**

Details:

Dear Senator Nelson,

My name is (b)(6) I am writing to you with regards to a home that we have in Fort Meyers which acquired from a company related to Russ Whitney. We believe it was falsely appraised. The home is located at (b)(6) Action needs to be taken by somebody with the power to make a difference. What happened to us is criminal and corrupt. Please investigate.

What we have is an interest-only loan on a home that my husband (b)(6) paid \$142,000 in April, 2006, during his attendance at one of Russ Whitney's Wealth Intelligence Academy sessions (that we paid \$26,000 for and still have yet to pay off). At that time, the home appraised for \$148,000. Through our research of the appraisal and others in the area, this home, at that time, should have appraised and therefore, sold for around \$115,000 - now, obviously, it is worth much, much less - maybe \$50,000-\$70,000!

We think we can prove that this appraisal was fraudulent. Among other things, we have found statements from the heads of the appraising company warning their appraisers in January of 2006 to use caution in their appraisals as the market is peaking and a correction is coming and that their customers (the banks) can get hurt by over-appraising. (This was over 2 and a half years ago! Frightening, given what's going on today.) It never should have appraised that high.

To get our property to appraise for more than the sale price (the appraiser was informed that Howie would not complete the sale unless it appraised for at least \$5000 over sales price) the appraiser allowed for \$26,000 in appliances!!!! You must be familiar with the location of this property to understand there was not \$26,000 worth of appliances in there!

Coincidentally, after the one year of guaranteed rent of \$1200 per month was up, there has not been a consistent renter (with the exception of 4 different people for, I think, a total of 6 months) and none of them ever rented for close to the \$1200 that we were assured it would rent for when we bought it - we have paperwork on that too.

It has been vacant for over one year and a half and has now been broken into multiple times. Because it had been vacant for so long, insurance will not cover the damage.

So basically we are paying \$1151 every month with no end in sight.

Mortgage fraud, appraisal fraud... I have written so many agencies and received no responses. I don't know if foreclosure is an option. I don't want to walk away. Basically, we want to do the right thing, but there doesn't seem to be options in place for people who want to do the right thing.

What is going on all around this country is plainly criminal, yet nothing seems to be getting done. Meanwhile, my husband is working 3 jobs, 3 JOBS, around the clock so that we can make ends meet. We have lost much of the equity in our home (which we had NEVER touched prior to this point), after being "taught" how to do this by Russ Whitney. We have FOUR beautiful, sad children under 7 who rarely see their father and often see their parents arguing over this horrible situation. Meanwhile, the financial crooks who are really responsible go unpunished and are made richer with the savings of people like us. It's disgraceful and shameful.

I have many more details with regards to this house. I don't know exactly what you would need. Personally, I think the entire set-up from "Donald Trump's Learning Annex" sponsored by PBS!!! (a trusted network) to every "class" offered there including Russ Whitney and all of his accomplices preyed upon middle-class people like ourselves and should be held at least partially accountable by the state and/or federal government in some way. Is this deregulation? This was a scam! It has ruined and continues to ruin lives of contributing, productive members of society. Watching the government bail-out big companies whose execs walk away with millions, while it ignores activity like this, makes me sick. It must be investigated and rectified.

We are doing everything to stay afloat and are in desperate need of good advice as to what to do to solve this problem.

We can't afford another attorney at this time, as we are currently involved in another similar, extremely costly lawsuit stemming from the same time period involving Russ Whitney. Because this is a "different group" it can't be included in our class-action suit against Russ Whitney. I know one of the guys that my husband talks about was named Jack Lee. We have also met a property manager who left her position because she was afraid she would lose her license doing what they were doing.

I don't know how else to proceed, or really what our options are. I accept that we should shoulder some responsibility for being in this situation, but I also know that we were deceived into making some of these decisions and, had the playing field been fair, we never would have entered into this deal in the first place. For that, there should be some penalty.

Any advice you can offer would be appreciated.

Thank you, in advance.

(b)(6)

Agency:

Housing