

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Horizon)	DOCKET NO. 920123-EG
Bank of Florida for)	
Reimbursement Under the)	ORDER NO. PSC-92-0113-FOF-EG
Energy Conservation Loan)	
Test Program)	ISSUED: 3/27/92

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING REIMBURSEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On September 10, 1991, Horizon Bank of Florida (formerly known as Pensacola Loan and Savings Bank) made a claim to the Commission for reimbursement of a loan made to a borrower under the Energy Conservation Loan Test Program. The test program was established by Commission Order No. 16539 to promote loans by financial institutions to residential customers of electric and gas utilities for certain energy conservation home improvements. Under the program, which was terminated June 30, 1991, the Commission offered interest subsidies and guaranteed the payment of loans made by utilities and financial institutions that were approved to participate in a utility's test program.

The loan for which Horizon requests reimbursement was made on June 12, 1990, in the principal amount of \$1,360.00, to install a high efficiency central air conditioning unit. The borrowers made 10 of 36 payments before defaulting, leaving an unpaid principal balance of \$1,098.62 for which the bank obtained a judgment. Horizon submitted its request for reimbursement and supporting documents to the Commission. Upon review, our staff concluded that no credit report or other evidence of a credit investigation was made at the time of the loan approval, and that the applicant's credit had been well below acceptable banking standards. Staff

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denied reimbursement whereupon Horizon Bank requested Commission review by letter dated February 7, 1992.

Horizon contends that the Commission may not deny payment for failure of a lender to follow minimum acceptable credit standards in making an energy conservation loan, basing its assertion on the terms of Order No. 16539:

Once approved for participation in this program, a participating financial institution will be responsible for defining eligibility, establishing credit requirements, servicing, collecting, and any other administrative details necessary to loan funds under this program.

Order No. 16539, page 7. We agree with Horizon Bank's interpretation of this provision to mean that the financial institution, not the Public Service Commission, determines the customer's eligibility for credit. However, this provision does not mean that we will not determine whether the lender adhered to program requirements before we will approve a request for reimbursement when a borrower defaults.

The provision of the order cited by Horizon merely evidences our intent not to get involved with the day-to-day details of making and servicing loans. It does not mean that we intended to guarantee loans and pay claims without ensuring that program requirements were met and public funds were being prudently spent.

The order from which the above quote is taken goes on to state our expectation with regard to eligibility:

The Commission will not regulate or prescribe loan administration procedures for participating financial institutions and such financial institutions are expected to apply their normal qualification, servicing and collection procedures.

(Emphasis added.) Order No. 16539, page 8. It is clear that standards and procedures were meant to be established by the lenders and, once established, meant to be followed. Upholding minimum standards for eligibility in a guaranteed loan program is critical since lowering standards greatly increases risk of default.

Horizon also relies on two other provisions of Order No. 16539

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to support its contention that the Commission must pay this claim:

The Commission may suspend its guarantee/subsidy of loans made by a participating financial institution. The suspension shall be effective upon receipt by the utility and financial institution of the Commission's written notice of suspension, but shall not apply to any covered loans made prior to receipt of notice.

* * *

The Commission may also suspend the guarantee/subsidy of loans made by a financial institution if the dollar amount of claims paid by the Commission together with the dollar amount of claims being processed exceeds two percent (2%) of the total dollars lent by the financial institution

Order No. 16539, page 12. These provisions address a lender's program as a whole, and mean that the Commission will not suspend its guarantee -- retroactively -- to all loans already made by a lender. These provisions do not require us to pay a claim for a loan made in violation of program standards, or prohibit us from reviewing individual loans for compliance when a claim is made.

The Commission did not intend that its only remedy against a lender for failing to meet program requirements would be to suspend future loanmaking. If that were the meaning of the above provisions, there would have been no reason for the Commission to require lenders to maintain, and to produce copies with all claims, a loan file specifically including the credit application, the credit report or other investigation of the applicant's credit, and information on the financial institution's servicing and collection activities regarding the loan. These requirements are set forth in Order No. 16539 and Rule 25-17.011(4)(b), (5)(a), Florida Administrative Code.

We conclude that Horizon Bank failed to follow the requirements of the Energy Conservation Loan Test Program by making a loan to borrowers whose credit was substantially below its own minimum standards and by failing to obtain and keep a credit report. The bank has not produced a credit report or other evidence of an investigation of the applicant's credit that was made at the time of loan application or approval, as required by the terms of Order No. 16539 and Rule 25-17.011. The bank submitted two credit reports: one prepared five months before the loan was made, when the borrowers applied for a mortgage from

Horizon; and, one obtained after the borrowers defaulted and the claim was submitted to the Commission. It is clear from this later report that had a credit report been obtained when the energy loan was made, the borrowers poor financial condition would have been apparent.

Evaluating the borrowers' credit application and credit reports against Horizon's standards shows that the bank deviated substantially in making this loan. With regard to employment, the bank's standards require, at a minimum, employment of two years in the present job or same line of work. It appears that the husband was unemployed at the time the energy loan was made. The length of his previous employment was not documented in the loan file. The wife had been employed for 14 months as a nanny for Horizon's vice president at a gross monthly salary of \$620. No other employment history information is in the loan file submitted to the Commission.

We also conclude that the bank failed to follow its standards relating to credit ratings, number of credit inquiries, adverse collection actions against the borrowers, and to the acceptable ratio of debt to income. Indeed, it appears that the ratio of the borrowers' gross monthly debt payment, including the energy loan payment, to their gross monthly income at the time the energy loan was made was 168 percent.

Horizon Bank asserts that its decision to make the energy loan was based the fact that it had made two other loans to the borrowers within the previous nine months. One of those loans was secured by a mortgage that, presumably, the bank could foreclose on if the borrowers defaulted. Moreover, at the time the mortgage was approved, the bank stated that the husband was employed and it appears the borrowers' debt ratio would have been close to the standards. At the time the energy loan was made, however, circumstances had changed and the borrowers' monthly debt payments were more than three times their gross income.

For these reasons, we find that Horizon Bank failed to follow the requirements of the Energy Conservation Loan Test Program as set forth in Commission Order Nos. 16539 and 19347 and Rule 25-17.011, Florida Administrative Code. When a lender fails to follow the requirements of the program, and does not adhere to the procedures developed to minimize the risk of default, we are not required to pay the lender's claim when the borrower defaults.

Based on the foregoing, it is, therefore


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ORDERED by the Florida Public Service Commission that Horizon Bank's request for reimbursement under the Energy Conservation Loan Test Program is denied.

ORDERED that this Order shall become final unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that this docket be closed if no petition for formal proceeding or notice of appeal is timely filed herein.

By ORDER of the Florida Public Service Commission, this 27th
day of MARCH, 1992.


STEVE TRIBBLE, Director
Division of Records and Reporting

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