

United States District Court, Northern District of Illinois

| | | | |
|---|--|---|-----------|
| Name of Assigned Judge or Magistrate Judge | Ronald A. Guzman | Sitting Judge if Other than Assigned Judge | |
| CASE NUMBER | 02 C 5893 | DATE | 3/17/2009 |
| CASE TITLE | Lawrence E. Jaffe Pension Plan vs. Household International, Inc. | | |

DOCKET ENTRY TEXT

For the reasons set forth in this Order, defendants' motion to exclude testimony of plaintiffs' expert Catherine Gighlieri is denied.

Docketing to mail notices.

| | | |
|--|-------------------------------|-------|
| | Courtroom Deputy Initials: | LC/LM |
|--|-------------------------------|-------|

Defendants contend that plaintiffs' proffered expert Catherine Ghiglieri is not qualified to give expert testimony on Household's lending or account management practices because her regulatory experience is with banks not finance companies. Though they do not identify them, defendants say the differences between the regulations that apply to finance companies and those that apply to banks are so substantial that Ghiglieri's banking experience is just not relevant.

The Court disagrees. The same, or similar, laws and regulations govern the consumer lending done by both kinds of institutions, including the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, Regulation Z, 12 C.F.R. § 226, the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.*, the Home Owner's Equity Protection Act, 15 U.S.C. § 1639 and their state-law equivalents. Therefore, Ghiglieri's experience as a federal and state bank regulator qualifies her as an expert in this case.

Defendants also argue that Ghiglieri's testimony should be barred because her opinions are not the product of a valid methodology. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592-93 (1993). Because she relied on existing documents and testimony, rather than information she generated on her own, defendants say her opinions are unreliable.

Ghiglieri testified that the method she used in this case, reviewing documents from and about Household, is the same one she used to conduct bank examinations. (Baker Decl. Supp. Pls.' Mem. Opp'n Defs.' Mot. Exclude Expert Testimony Catherine Ghiglieri, Ex. I, Ghiglieri Dep. at 84.) Defendants argue that, to render valid opinions, Ghiglieri should also have interviewed Household's employees and customers. (Mem. Law Supp. Defs.' *Daubert* Mot. Exclude Expert Testimony of Catherine Ghiglieri at 18-20.) However, that argument is contradicted by their own expert, John Bley, who said that examiners are not required to perform employee or customer interviews:

The examination process is composed of field examiners who visit licensees in order to evaluate compliance with applicable laws and rules. These examinations are performed by reviewing loan files (a form of content regulation review), and reviewing complaints[,] which may involve interviewing the institution's personnel, and on occasion, consumers, to assess how loan transactions are being handled (a form of manner regulation review).

(*See* Mem. Law Supp. Pls.' Mot. Exclude Certain Testimony Defs.' Expert John Bley, Ex. A, Bley Report at 8.) Given Bley's testimony that field examinations of finance companies are often based only on the materials reviewed by Ghiglieri, defendants' objection to her methodology is overruled.

Alternatively, defendants argue that Ghiglieri's testimony is unreliable because it is premised on her notion of "predatory lending," a term that has no commonly-accepted definition. As Ghiglieri admits, there is not a single definition of "predatory lending." Nonetheless, as she states in her report, federal and state regulators, academics, journalists and members of the banking and finance industry – including employees of Household – repeatedly used the term during the class period. Further, all of these groups – including employees of Household – described certain practices like equity stripping, loan flipping, insurance packing, and misrepresenting the terms of or costs and fees associated with loans as "predatory." That consensus gives Ghiglieri a sufficient basis to opine on predatory lending.

Even if predatory lending has meaning, defendants argue that Ghiglieri's testimony still should be barred because her opinions are extrapolations from insufficient evidence and she fails to address the evidence that contradicts them. If that is true, defendants have fertile ground for cross-examination, but it is not a basis for excluding Ghiglieri's testimony.

Defendants' last argument, that Ghiglieri's testimony will not help the jury determine any of the issues in this case, is equally unpersuasive. If the jury credits it, Ghiglieri's testimony bears on the truth or falsity of Household's statements that it did not engage in predatory lending practices.