

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, On)	Lead Case No. 02-C-5893
Behalf of Itself and All Others Similarly)	(Consolidated)
Situated,)	
) <u>CLASS ACTION</u>
Plaintiff,)	
) Judge Ronald A. Guzman
vs.)	Magistrate Judge Nan R. Nolan
)
HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
_____)	

**THE CLASS' MOTION TO UNSEAL EXHIBIT NOS. 1-24 AND 28-32, FILED WITH
THE DECLARATION OF AZRA Z. MEHDI IN SUPPORT OF THE CLASS' MOTION
TO COMPEL ANDREW KAHR DOCUMENTS IMPROPERLY WITHHELD AS
PRIVILEGED OR DESTROYED BY THE HOUSEHOLD DEFENDANTS**

1. On January 9, 2007, the Class filed its Motion To Compel Andrew Kahr Documents Improperly Withheld As Privileged Or Destroyed By The Household Defendants with the supporting declaration of Ms. Mehdi and exhibits attached thereto.

2. Exs. 1-24 and 28-32 were filed under seal. However, none of these exhibits is entitled to “Confidential” treatment under the Protective Order.

3. On November 6, 2006, Class counsel sent a letter to counsel for Household Defendants stating that none of the documents related to Andrew Kahr were entitled to confidential treatment under the Protective Order and requesting that defendants de-designate all such documents. *See Exhibit A*, attached hereto.

4. Despite defendants’ repeated representations to this Court that defendants respond promptly to the Class’ requests to de-designate documents improperly designated as “Confidential,” the Class received no response for over a month. Finally, on December 5, 2006, Class counsel sent another letter to counsel for Household Defendants seeking a response to their November 6 request for de-designation. *See Exhibit B*, attached hereto.

5. Defendants finally responded over a month later on December 8, 2006, agreeing to de-designate a handful of documents, but refusing to do so for a majority of the documents. *See Exhibit C*, attached hereto.

6. Under ¶20 of the Protective Order, the Class now submits this dispute to the Court for resolution.

7. Defendants contend that Exs. 1-23 fall under the protection of Category 5 of the Protective Order. *See Exhibit C* at 2-3. The documents that fall under Category 5 are “guidebooks, manuals, policies, and/or training materials regarding underwriting procedures or criteria, loan pricing formulas, loan collection policies and procedures, employee training, and internal audit policies and procedures.” Protective Order at ¶3.

8. Exs. 1-24 are memos written by Andrew Kahr or e-mails discussing Mr. Kahr's ideas. Mr. Kahr was a consultant hired by CEO defendant William Aldinger during the Class period to develop opportunistic methods by which Household could increase loan growth at any cost, regardless of the cost of the customer. These memos and e-mails describe various strategies designed and implemented by Andrew Kahr that were the very same deceptive lending practices at the heart of Household's \$484 million settlement with the multi-state group of Attorneys General in October 2002 ("AG Settlement"). *See also* Exs. 28-30 (describing steps to calculate this rate and discussing how the effective rate was still in use at Household in 2001). For example, one of Mr. Kahr's initiatives was to by use the bi-weekly payment plan to reduce the "effective" APR. One of the terms of the AG Settlement was that Household could no longer make any representations regarding rate that included terms such as "effective" or "blended" when discussing interest rates. *See* Ex. 33. Thus, these documents should be unsealed.

9. Ex. 32, which is the original discussion framework for the multi-state group of AGs should also be unsealed. Ex. 33 incorporates the issues identified by the AGs in Ex. 32 and provides Household's responses. Nonetheless, Ex. 33 is a public document. Hence, there is no reason why Ex. 32 should be maintained under seal.

10. Another initiative by Mr. Kahr to reduce attrition was to trap the customer in heavy prepayment penalties. Indeed, in states where pre-payment penalties were prohibited by state law on fixed mortgages, Mr. Kahr came up with the idea of re-designing fixed rate mortgages as alternative mortgages to avoid the application of such penalties under the Alternative Mortgage Transaction Parity Act or AMPTA. Several of the exhibits describe these efforts and explanations that Mr. Kahr indicated that Household management should give to state regulators defending the use of AMPTA to impose prepayment penalties. Indeed, various state regulatory reports illustrate Household

management's use of the very same explanations to the state regulators that were citing them for violating that state's anti-prepayment penalty provisions.

11. Ex. 31 is a description of Household's Pay Right Rewards Program – a program that allowed Household to charge prepayment penalties in states that did not allow such penalties. Since this program was part of the sales pitch that Household gave its customers, there is no reason why this should be under seal.

12. Just like he did for Provident Financial Corporation, another sub-prime lender he founded, Mr. Kahr drafted detailed memos for Household senior management, including the defendant executives in this case, discussing ways of minimizing the rate and fees disclosures made by Household sales to customers. *See e.g.*, Exs. 2-3, 5-13, 15-17, 19, 21-24.

13. Defendants also contend that Ex. 24 falls under the protection of Category 4 of the Protective Order (Exhibit C at 2), which protects “customers lists and internal research and data regarding consumer borrowing and payment habits.” Protective Order, ¶3. Ex. 24 contains no customer lists or research. Rather, it is a memo from Mr. Kahr offering his services to help the Retail Services business unit of Household International, the only significant business unit he had not collaborated with in the three years he had consulted for Household, during which time he had provided new ideas to other business units at Household, including the Consumer Lending, Household Mortgage Services, Refund Lending and helped them get implemented. *See* Ex. 24. There are no customer lists or research to be found anywhere in this document. Accordingly, this document does not fall under the protection of the Protective Order.

14. Upon review of Exs. 1-24, it will become evident to this Court they these exhibits do not even remotely classify as a guidebook, manual, policy or training material regarding various underwriting or loan pricing or collection, or customer lists or research. Rather they are documents that evidence not only defendants' knowledge of Household's deceptive sales practices, but also

their participation in implementing the use of such practices at Household in order to maximize loan growth.

15. The Court may restrict access to a document only for “good cause shown.” See L.R. 26(b). To determine whether good cause exists ““a district court must balance the harm to the party seeking the protective order against the importance of disclosure to [the] public.”” *McGee v. City of Chicago*, Case No. 04 C 6352, 2005 U.S. Dist. LEXIS 30925, at *4 (N.D. Ill. June 23, 2005) (quoting *Doe v. White*, No. 00 C 0928, 2001 WL 649536, at *1 (N.D. Ill. June 8, 2001)). Defendants will be hard pressed to articulate any harm they would suffer since none of the exhibits fall under the protection of the Protective Order entered by this Court. See *Andrew Corp. v. Rossi*, 180 F.R.D. 338, 341 (N.D. Ill. 1998). The public interest weighs in favor of disclosure. See *Citizens First Nat’l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944-45 (7th Cir. 1999) (“the public at large pays for the courts and therefore has an interest in what goes on at all stages of a judicial proceeding”).

16. Accordingly, the Class respectfully submits that the Court should de-designate Exs. 1-24 and 28-32, and permit the Class’ Motion to Compel Andrew Kahr Documents Improperly Withheld as Privileged or Destroyed by the Household Defendants and the Declaration of Azra Mehdi in support thereof, to be filed as a public document.

DATED: January 9, 2007

Respectfully submitted,

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