

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

15 CV 779

FAIR HOUSING JUSTICE CENTER, INC.;
BARBARA TIRRELL BAUER; SUSAN
BURNS; LISA DARDEN; VANESSA
DAWSON; LAUREL DEVANEY; JOSELYN
MARTINEZ; KAARON BRISCOE MINEFEE;
CHARNETTA PETTIE; and INDIKA
SENANAYAKE,

Plaintiffs,

v.

M&T BANK CORPORATION,

Defendant.

COMPLAINT

Civ. _____

JUDGE FORREST

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2015 JUN 10 AM 10:07

Plaintiffs Fair Housing Justice Center, Inc. ("FHJC"), Barbara Tirrell Bauer, Susan Burns, Lisa Darden, Vanessa Dawson, Laurel Devaney, Joselyn Martinez, Kaaron Briscoe Minefee, Charnetta Pettie, and Indika Senanayake (collectively, "Plaintiffs"), by their attorneys Emery Celli Brinckerhoff & Abady LLP, for their Complaint against Defendant M&T Bank Corporation ("M&T Bank") allege as follows:

INTRODUCTION

1. Defendant M&T Bank, one of the top 20 largest banks in the United States, uses neighborhood racial demographics to limit the availability of one of its home mortgages, a loan product for first-time homebuyers with advantageous terms such as a lower down payment. The bank's loan officers in New York City hide the racial criteria from some prospective homebuyers, use the criteria to discourage others from using the product, racially steer prospective buyers, and offer different loan terms and conditions based on race or national origin.

2. During 2013 and 2014, the Fair Housing Justice Center (“FHJC”) sent African American, Hispanic, South Asian, and white testers to M&T Bank’s New York City loan office to inquire about obtaining a mortgage to purchase a single-family home or condominium apartment. All the testers were women who portrayed themselves as first-time homebuyers who were married and had no children. While most non-white testers were encouraged to consider applying for a mortgage through M&T Bank’s Get Started Program, which is limited to homes located in “majority minority” neighborhood (more than 50% minority population) or in low or moderate income areas, white testers were discouraged from applying for a Get Started mortgage. In one instance, a loan officer told a white tester “I highly doubt you’re gonna buy in an area where you’re a min...more minority than majority.”

3. In one test, Defendant’s loan officer advised a Hispanic tester with a higher annual income, more cash, and a better credit score than a white tester that she would qualify for a home price of \$100,000 less than the white tester and a loan amount of \$125,000 less than the white tester.

4. In another test, Defendant’s loan officer provided the white tester with detailed information about condominium and cooperative apartment prices she could afford, while telling the African American tester that she was not yet ready to purchase an apartment even though the African American tester stated that she had a higher annual income, more savings, and a higher credit score than the white tester had stated.

5. When suggesting neighborhoods in which the testers might consider buying homes, one of Defendant’s loan officers, for example, encouraged an African American tester to consider neighborhoods in Queens where the population is predominantly minority, while encouraging the white tester to consider areas of Queens with less than a 5% African

American population. Defendant's loan officer further cautioned the same white tester to avoid an area that is "all Russian," stating "you don't want that."

6. FHJC, along with nine testers who were discriminated against by Defendant, brings this civil rights action to halt Defendant's racially defined Get Started program, to reform Defendant's mortgage lending practices to ensure that future discrimination based on race or national origin does not occur, and to assure that Defendant's lending practices do not further residential segregation.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331, 1343; 28 U.S.C. § 2201; and 42 U.S.C. § 3613. This Court has supplemental jurisdiction over the New York City law claims pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendant M&T Bank is incorporated in the State of New York and maintains more than five bank branches in this District, operates an office with home mortgage loan officers in this District located at 350 Park Avenue, New York, NY, and otherwise conducts business in this District. In addition, venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rising to the claims occurred in this District.

THE PARTIES

9. FHJC is a non-profit New York City-based civil rights organization dedicated to ensuring that all people have equal access to housing opportunities in the New York

City region¹ by eliminating housing discrimination and creating open, accessible, and inclusive communities.

10. Among other activities, FHJC (a) provides information to the public and other nonprofit organizations in the New York City region about fair housing laws, (b) provides intake counseling to individuals and organizations with allegations of housing discrimination, (c) conducts testing and other investigations of allegations of housing discrimination, (d) makes legal referrals to cooperating attorneys, (e) assists with the preparation and filing of administrative housing discrimination complaints, and (f) provides post-referral litigation support services. FHJC provides these services free of charge and without regard to income.

11. FHJC also conducts testing investigations for government law enforcement agencies, provides technical assistance to nonprofit organizations, and engages in policy initiatives that further FHJC's mission, including the publication and dissemination of reports and educational materials.

12. FHJC employs "testers," individuals who pose as renters or homebuyers for the purpose of obtaining information about the conduct of landlords, real estate companies, banks, and others, to determine whether illegal housing discrimination is taking place.

13. FHJC expended staff time and other resources to investigate and respond to Defendant's discriminatory lending practices. This investigation diverted resources away from other FHJC activities.

14. In addition, Defendant's discriminatory lending practices have frustrated, and continue to frustrate, FHJC's mission to ensure that all people have equal access to housing opportunities in the New York City region by, among other things:

¹ FHJC serves all five boroughs of New York City and the New York counties of Nassau, Suffolk, Westchester, Dutchess, Orange, Putnam, and Rockland.

- a. limiting the availability of a residential mortgage loan product for first-time homebuyers to home purchases in neighborhoods with a greater than 50% minority population;
- b. failing to provide access to information about the terms and conditions of home mortgage loan products in an equal manner without regard to the race and/or national origin of prospective borrowers and/or the racial composition of neighborhoods;
- c. steering prospective home mortgage applicants to certain neighborhoods and/or loan products based on race and/or national origin; and
- d. reinforcing residential racial segregation.

15. Lisa Darden, Kaaron Briscoe Minefee, and Charnetta Pettie are African American women who reside in the City of New York and during all relevant times were employed as testers by FHJC.

16. Joselyn Martinez is a Hispanic woman who resides in the City of New York and during all relevant times was employed as a tester by FHJC.

17. Indika Senanayake is a South Asian woman who resides in the City of New York and at all relevant times was employed as a tester by FHJC.

18. Barbara Tirrell Bauer, Susan Burns, Vanessa Dawson, and Laurel Devaney are white women who reside in the City of New York and during all relevant times were employed as testers by FHJC.

19. M&T Bank is the seventeenth largest commercial bank holding companies headquartered in the United States. M&T Bank is incorporated in the State of New York with its principal place of business in Buffalo, New York. It operates more than 700 branches in New

York, Maryland, Pennsylvania, Washington, D.C., Virginia, West Virginia, New Jersey, Florida, and Delaware.

20. M&T Bank was originally established in 1856 as Manufacturers and Traders Bank and operates, in part, through a subsidiary named Manufacturers and Traders Trust Company.

21. For home mortgages in New York City, M&T Bank has one office located at 350 Park Avenue in Manhattan, New York with several loan officers working from that location.

22. Currently, M&T Bank is regulated by the Federal Reserve Board of New York (“Federal Reserve Board”) and the New York State Banking Department (“Banking Department”). During at least the past at least twelve years, both the Federal Reserve Board and the Banking Department have examined M&T Bank to evaluate how it contributes to community reinvestment in the areas where it operates. Both found that M&T Bank offered mortgages to first-time homebuyers with advantageous terms if the home being purchased was located in an area where the median household income is low or moderate (“LMI area”) or where the buyers qualified as being low or moderate income. Through 2012, neither regulator found that M&T Bank offered any home mortgage products that were dependent on the racial composition of the neighborhood where the home being purchased was located.

FACTUAL BACKGROUND

The Get Started Program

23. M&T Bank offers a loan product for first-time homebuyers called the Get Started Mortgage program (“Get Started”), which according to the M&T Bank website features advantageous terms such as a low down payment and the ability to finance closing costs. Get

Started is available in select counties in eight states and the District of Columbia, according to M&T Bank's website. For New York City, Get Started mortgages are available in certain areas of the five boroughs as defined by M&T Bank.

24. M&T Bank began the Get Started program as a pilot in Buffalo, New York and rural areas near Rochester, New York in the late 1990s. After 2000, M&T Bank expanded the program to additional areas and by the late 2000s was issuing between 600 and 1,000 Get Started loans every two years.

25. By at the latest 2013, M&T Bank was utilizing racial criteria for the Get Started program and began to offer Get Started mortgages with advantageous terms in LMI areas or areas where the minority population is more than 50% regardless of the area's median household income. M&T Bank placed a cap of \$417,000 on the total amount of loan or mortgage a buyer could obtain under its Get Started program and did not restrict the program to buyers who are low or moderate income.

26. Consequently, as of 2013, M&T Bank began to offer home mortgages with advantageous terms based upon the racial composition of the neighborhood where the house being purchased was located. For example, M&T Bank's revised Get Started program is not available for homes located in areas with a 45% or 30% minority population, unless the neighborhood is also an LMI area. In contrast, Get Started mortgages are made available by M&T Bank in areas with a higher than 50% minority population or a "majority minority area" regardless of the area's median household income.

27. On its website, M&T Bank conceals the true nature of the Get Started program by not revealing its racial criteria. Currently, the M&T Bank website does not mention any racial criteria and instead states that certain restrictions apply to Get Started mortgages such

as “maximum income by household, 80% of median income unless property is located in a low/moderate income census tract, then no income limit applies.”

28. M&T Bank further obscures its Get Started program requirements by failing to disclose to prospective first-time homebuyers the specific geographic boundaries of the eligible home loan areas, by referring to them as majority minority or demographically changing areas, and by refusing to state the census tracts or zip codes within the program. Instead, M&T Bank loan officers tell prospective first-time homebuyers to contact M&T Bank once they identify specific home addresses and then the loan officer will look up the address on a list maintained by M&T Bank to determine whether the location of the house is in an area whose racial composition meets M&T Bank’s criteria. Although M&T Bank loan officers possess documentation regarding the criteria used by M&T Bank to determine eligibility for a Get Started loan, prospective first-time homebuyers are not permitted to see the written criteria and are not provided any written information about the geographic boundaries of the areas within the program.

29. In addition to the racial loan criteria established by M&T Bank for its Get Started Program and the hidden nature of the criteria, M&T Bank loan officers steer prospective first-time homebuyers based on the race of the buyer and/or the race of a neighborhood to or away from the Get Started program, as described more fully below.

FHJC Testing Investigation of M&T Bank

30. In late 2012, FHJC began a testing investigation of M&T Bank’s policies and practices regarding home mortgage products for first-time homebuyers in New York City. After sending an initial tester to obtain general information about M&T Bank’s programs and loan products, FHJC designed an investigation in which female testers portraying married

women who were first-time homebuyers would contact and then meet with an M&T Bank loan officer to obtain information about loan products available to them in light of their income, debts, savings, and credit score. All the testers met with an M&T Bank loan officer at M&T Bank's sole home loan office located on Park Avenue in Manhattan.

31. FHJC assigned each tester a set of household and financial characteristics. In each instance, FHJC assigned to the African American, Hispanic, and South Asian testers a higher annual household income, more cash savings, less debt, and a better credit score than their white counterparts. FHJC assigned each tester to ask the loan officer she met what price home and amount of loan the tester could afford based on these financial characteristics.

32. FHJC structured the testing investigation in this manner because it is not uncommon for first time home-buyers to contact a lender just prior to or at the beginning of their search for a home. Homebuyers obtain information from lenders in order to find out what price range of housing they can afford and what types of loan products are available, and to learn more about the process and costs associated with obtaining a home mortgage. Often, real estate agents recommend that first-time homebuyers contact lenders to obtain this information before beginning their search for a home.

33. Prior to conducting the tests described in this Complaint, Plaintiffs received training from FHJC about testing in general and lender testing in particular, which included instructions on conducting tests, preparing tester report forms, and using concealed recorders during tests.

Spring 2013

34. *Testing Summary:* As described in greater detail below, during a two-week period in the spring of 2013, FHJC sent Plaintiffs Charnetta Pettie, an African

American woman; Indika Senanayake, a South Asian woman; and Susan Burns, a white woman, to M&T Bank's Park Avenue loan office. Both Ms. Pettie and Ms. Senanayake were told about the Get Started program and its advantageous lower down payment terms, but Ms. Burns, was not. Only Ms. Pettie, the sole African American tester sent at the time, was told about the Get Started program's racial criteria. Furthermore, Ms. Pettie was encouraged to consider purchasing a home in predominantly African American neighborhoods in Manhattan and Queens, in contrast to Ms. Burns who was encouraged to look for homes in neighborhoods with less than a 5% African American population. Ms. Senanayake was quoted a lower home price and loan amount than Ms. Burns even though she had higher income, cash savings, and credit score.

35. On April 18, 2013, FHJC sent Plaintiff Charnetta Pettie, an African American woman, to meet with a loan officer named Dorothy Babson. Prior to that date, Ms. Pettie had made an appointment by telephone with Ms. Babson. FHJC instructed Ms. Pettie to inform Ms. Babson that she was a first-time homebuyer and was interested in learning what price home and loan amount she could afford in light of her income, debt, savings and credit score before she began to look for a house or condominium to purchase.

36. On April 30, 2013, FHJC sent Plaintiff Indika Senanayake, a South Asian woman, to the same M&T Bank office to meet with the same loan officer and to make the same inquiry as Ms. Pettie. On May 1, 2013, FHJC sent Plaintiff Susan Burns, a woman, to do the same.

37. FHJC assigned Ms. Pettie and Ms. Senanayake annual household incomes of \$93,000 and \$119,000, respectively, while assigning Ms. Burns a lower household income of \$90,000. Similarly, FHJC assigned Ms. Pettie and Ms. Senanayake cash savings in the amount

of \$105,000 and \$129,500, respectively, compared to Ms. Burns who FHJC assigned a lower cash savings of \$100,000. Both Ms. Pettie and Ms. Senanayake were assigned a credit score of 735 while Ms. Burns was assigned a lower credit score of 725.

38. M&T Bank's loan officer, Dorothy Babson, a woman, told both Ms. Pettie and Ms. Senanayake about M&T Bank's Get Started program, but did not tell Ms. Burns about the program. Ms. Babson told Ms. Senanayake that Defendant offered loans through its Get Started program in LMI areas and did not inform her of the additional option of purchasing a home in an area that is not an LMI area, but has a population that is more than 50% minority. Ms. Babson only told Ms. Pettie, the sole African American woman of these three testers, about the Get Started program's racial criteria.

39. Ms. Babson quoted a lower home price and loan amount to Ms. Senanayake, a South Asian woman, than she did to Ms. Burns, a white woman. Specifically, Ms. Babson told Ms. Senanayake that in light of her income and cash savings, Ms. Senanayake's maximum home price was \$400,000 and maximum loan amount was \$320,000. One day later, Ms. Babson told Ms. Burns that her maximum home price was \$450,000 and her maximum loan amount was \$405,000. The home price Ms. Babson quoted to Ms. Senanayake was \$50,000 less than the home price she quoted to Ms. Burns and the loan amount Ms. Babson quoted to Ms. Senanayake was \$85,000 less than the amount she quoted to Ms. Burns, even though Ms. Senanayake's income, cash savings, and credit score were higher than Ms. Burns'. In addition to not telling Ms. Burns about the Get Started program, Ms. Babson only provided Ms. Burns information about a conventional loan product that would require her to pay real estate mortgage insurance, known as PMI, and did not explain to Ms. Burns that with the same amount of down

payment, 10% of the purchase price, Ms. Burns would not have to pay PMI if she obtained a Get Started loan from M&T Bank.

40. During her meetings with Ms. Pettie and Ms. Burns, Ms. Babson discussed possible neighborhoods in Manhattan and Queens where each might look for housing within the maximum home price Ms. Babson calculated. With Ms. Pettie, Ms. Babson discussed Harlem in Manhattan, and Springfield Gardens, St. Albans, and Ozone Park in Queens. With Ms. Burns, Ms. Babson discussed Murray Hill in Manhattan and Middle Village, Maspeth, and parts of Rego Park in Queens.

41. The racial demographics of the neighborhoods suggested by Ms. Babson to Ms. Pettie and Ms. Burns are radically different. For example, Ms. Babson suggested that Ms. Pettie, an African American woman, consider purchasing a home in Harlem, which according to the New York City Census FactFinder, is more than 80% minority and only 16% white. In contrast, when speaking about Manhattan neighborhoods with Ms. Burns, a white woman, Ms. Babson suggested the area of Murray Hill. According to the New York City Census FactFinder, Murray Hill is 31% minority and 67% white. Less than 5% of the population in Murray Hill is African American.

42. Similarly, for Queens, Ms. Babson suggested predominantly African American or minority neighborhoods to Ms. Pettie and predominantly white areas to Ms. Burns. For example, Ms. Babson suggested St. Albans and Springfield Gardens to Ms. Pettie, both of which are predominantly minority neighborhoods. St. Albans is 89% African American and 1% white, according to the City of New York Census FactFinder. Springfield Gardens is 88% African American and only 2% white. Ms. Babson also suggested that Ms. Pettie consider

Ozone Park, a neighborhood where 56% of the population is African American, Asian, and Hispanic, combined.

43. In contrast, Ms. Babson suggested Middle Village and Maspeth to Ms. Burns, both of which are majority white neighborhoods with 74% and 59% white populations, respectively. According to the City of New York Census FactFinder, both of these areas are less than 1% African American.

44. While discussing Rego Park, Queens with Ms. Burns, a neighborhood that is approximately 50% white and only 3% African American, Ms. Babson stated that Ms. Burns should avoid purchasing a home in a certain section of Rego Park that is “all Russian....you don’t want that.”

45. All four of the Manhattan and Queens neighborhoods suggested by Ms. Babson to Charnetta Pettie, an African American woman, would have qualified for a Get Started mortgage from M&T Bank. Ms. Babson did not even tell Susan Burns, a white woman, about the Get Started program and did not suggest any of the Manhattan or Queens neighborhoods to Ms. Burns that she suggested to Ms. Pettie.

July and September 2013

46. *Testing Summary:* As described in greater detail below, Plaintiffs Barbara Tirrell Bauer, a white woman, and Joselyn Martinez, a Hispanic woman, met with the same M&T Bank loan officer in July and September of 2013. Even though she had a higher income, higher cash savings, and a better credit score than Ms. Tirrell Bauer, Ms. Martinez was quoted a lower home price and loan amount than those quoted to Ms. Tirrell Bauer. When Ms. Tirrell Bauer was told about the Get Started program’s racial criteria, the M&T Bank loan officer warned her that it would require her to buy a home in an area “more than 50% minority,” which

she (the loan officer) “highly doubt[ed]” Ms. Tirrell Bauer would want to do. Consistent with this warning, the loan officer only provided Ms. Tirrell Bauer with home price and loan amount details for a conventional loan that did not offer the advantageous terms of the Get Started program.

47. On July 19, 2013, FHJC sent Plaintiff Barbara Tirrell Bauer, a white woman, to M&T Bank’s office located at 350 Park Avenue, New York, NY. Prior to that date, Ms. Tirrell Bauer made an appointment by telephone with Dorothy Babson. FHJC instructed Ms. Tirrell Bauer to inform Ms. Babson that she was a first-time homebuyer and was interested in learning what price home and loan amount she could afford in light of her income, debt, savings and credit score before she began to look for a house or condominium to purchase.

48. On September 4, 2013, FHJC sent Plaintiff Joselyn Martinez, a Hispanic woman, to the same M&T Bank office to meet with the same loan officer and to make the same inquiry at Ms. Tirrell Bauer.

49. FHJC assigned Ms. Martinez an annual household income of \$104,000 and cash savings of \$120,000. FHJC assigned Ms. Tirrell Bauer a lower household income of \$102,000 and lower cash savings of \$115,000. Ms. Martinez was assigned a credit score of 735 and Ms. Tirrell Bauer was assigned a credit score of 725.

50. When they met on July 19, 2013, M&T Bank’s loan officer, Dorothy Babson told Ms. Tirrell Bauer about the Get Started mortgage program and its racial criteria, but stated that “[I] highly doubt that you’re gonna buy in an area where you’re a min.... more minority than majority” and then later reminded Ms. Tirrell Bauer that to use the Get Started mortgage program she would have to buy in an LMI area or in a majority minority area “if you get what I mean.” Following this statement, Ms. Babson no longer discussed the Get Started

program with Ms. Tirrell Bauer and recommended a home price and loan amount for a conventional loan only. The terms and conventional loan product that Ms. Babson recommended to Ms. Tirrell Bauer included a down payment of 15% of the home purchase price, which would obligate Ms. Tirrell Bauer to pay PMI (mortgage insurance). Ms. Babson did not tell Ms. Tirrell Bauer that if she obtained a Get Started mortgage with a 15% down payment, she would not have to pay PMI.

51. Finally, Ms. Babson, told Ms. Martinez that the maximum home price Ms. Martinez could afford to purchase was \$450,000, or \$100,000 less than the \$550,000 amount quoted to Ms. Tirrell Bauer. Ms. Babson told Ms. Martinez that the maximum loan she could afford was \$405,000, which was \$125,000 less than the maximum quoted to Ms. Tirrell Bauer. Ms. Babson quoted a lower home price and loan amount to Ms. Martinez even though Ms. Martinez had a higher household income, greater cash savings, and a higher credit score than Ms. Tirrell Bauer.

September 2013

52. *Testing Summary:* As described in greater detail below, less than a month after Plaintiff Martinez went to M&T Bank, Plaintiffs Vanessa Dawson, a white woman, and Lisa Darden, an African American woman, met with the same loan officer. While both Plaintiffs were told about the Get Started program's racial criteria, Ms. Dawson was encouraged to consider an area within Harlem where French people are moving and Ms. Darden was not. Despite stating that she had more cash saved for a down payment and closing costs, Ms. Darden was told that she was not yet ready to purchase a condominium or coop apartment because she had not saved enough while Ms. Dawson was provided home price and loan amount details to purchase immediately.

53. On September 19, 2013, FHJC sent Plaintiff Vanessa Dawson, a white woman, to M&T Bank's office located at 350 Park Avenue, New York, NY to meet with a loan officer. Prior to that date, Ms. Dawson made an appointment by telephone with Ms. Babson. FHJC instructed Ms. Dawson to inform Ms. Babson that she was a first-time homebuyer and was interested in learning what price home and loan amount she could afford in light of her income, debt, savings, and credit score before she began to look for a house or condominium to purchase.

54. On September 26, 2013, FHJC sent Plaintiff Lisa Darden, an African American woman, to the same M&T Bank office to meet with the same loan officer and to make the same inquiry as Ms. Dawson.

55. FHJC assigned Ms. Darden an annual household income of \$130,000 and cash savings of \$38,000. FHJC assigned Ms. Dawson a lower annual household income of \$124,000 and lower cash savings of \$29,000. Ms. Darden was assigned a credit score of 742 and Ms. Dawson was assigned a credit score for herself of 720 and for her husband, a credit score of 722.

56. Ms. Babson told both Ms. Dawson and Ms. Darden about M&T Bank's Get Started program, including the fact that it offered mortgages in LMI areas and in areas with more than a 50% minority population that are not LMI areas. When discussing the Get Started program with Ms. Dawson, a white woman, Ms. Babson pointed out to Ms. Dawson that French people are moving to a part of Harlem that Ms. Dawson might want to consider under the Get Started program. Ms. Babson did not tell Ms. Dawson about new condominium apartments being built in Harlem with multi-year property tax abatements. Ms. Babson was apparently aware of this housing option and its economic benefits at the time because she discussed it with Ms. Darden, an African American woman who told Ms. Babson that she lived in Harlem.

57. During their meeting on September 26, 2013, Ms. Babson told Ms. Darden, an African American woman, that it was premature for her to buy an apartment and that Ms. Darden should save more or obtain a gift before purchasing an apartment. Ms. Babson calculated a maximum home price and loan amount for Ms. Darden if in the future she doubled her cash savings.

58. In contrast, the week before, Ms. Babson told Ms. Dawson, a white woman with a lower annual income, lower cash savings, and lower credit score than Ms. Darden, that she could afford to buy a condominium apartment with a maximum price of \$210,000 or a cooperative apartment with a maximum price of \$350,000.

59. Ms. Babson did not provide Ms. Darden with any home price or loan amount that Ms. Darden could afford as of September 2013 even though that is what Ms. Darden asked Ms. Babson to provide.

60. Additionally, during their respective meetings, Ms. Babson encouraged Ms. Darden, an African American woman, to consider a Federal Housing Administration insured home loan, referred to as an FHA loan, with a 3.5% down payment. Ms. Babson told Ms. Dawson, a white woman, that Ms. Dawson should not consider an FHA loan at all because the closing costs and fees were so high.

April 2014

61. *Testing Summary:* As described in greater detail below, Plaintiffs Laurel Devaney, a white woman, and Kaaron Briscoe Minefee, an African American woman, went to M&T Bank's Park Avenue loan office within one week of each other in April 2014 and met with the same loan officer. While both testers were told about the Get Started program, the loan officer cautioned Ms. Devaney that the program involved buying a home in LMI areas or areas

with changing demographics. Consistent with her cautionary note to Ms. Devaney, the M&T Bank loan officer told her that the only mortgage she could obtain was a conventional loan.

62. On April 14, 2014, FHJC sent Plaintiff Laurel Devaney, a white woman, to M&T Bank's office located at 350 Park Avenue, New York, NY to meet with a loan officer. Prior to that date, Ms. Devaney had made an appointment by telephone with Annie Krasner, one of Defendant's white loan officers. FHJC instructed Ms. Devaney to inform Ms. Krasner that she was a first-time homebuyer and was interested in learning what price home and loan amount she could afford in light of her income, debt, savings, and credit before she began to look for a house or condominium to purchase.

63. Approximately a week later, on April 22, 2014, FHJC sent Plaintiff Kaaron Briscoe Minefee, an African American woman, to the same M&T Bank office to meet with the same loan officer and to make the same inquiry as Ms. Devaney.

64. FHJC assigned Ms. Briscoe Minefee an annual household income of \$158,000 and cash savings of \$99,500. FHJC assigned Ms. Devaney a lower annual household income of \$152,000 and lower cash savings of \$97,000. Ms. Briscoe Minefee was assigned a credit score of 735 for herself and for her husband, compared to Ms. Devaney who was assigned a credit score of 725 for herself and 730 for her husband.

65. M&T Bank's loan officer, Annie Krasner, initially told both Ms. Devaney and Ms. Briscoe Minefee about M&T Bank's Get Started Program for first-time homebuyers. Ms. Krasner did not reveal the program's racial criteria to Ms. Briscoe Minefee, claiming that the program was limited to LMI areas. In contrast, Ms. Krasner cautioned Ms. Devaney, a white woman, that the program included both LMI areas and areas where "the demographics are changing." Ms. Krasner told Ms. Devaney that "parts of Harlem" and "other areas are deemed to

be in this area” by the bank. Ms. Krasner went on to tell Ms. Devaney that Park Slope was already too “trendy” and “valuable” for the Get Started program to work. Finally, Ms. Krasner said to Ms. Devaney, “what I’m summing this up to is the only loan you can get is a regular” conventional M&T Bank loan (*emphasis added*). Consistent with this statement, Ms. Krasner then provided Ms. Devaney with a house price and loan amount for a conventional loan with a 20% down payment and did not provide a house price or loan amount for a Get Started mortgage.

66. When meeting with Ms. Briscoe Minefee, an African American woman, Ms. Krasner not only encouraged her to consider a Get Started mortgage, but provided specific maximum home prices and loan amounts for conventional and a Get Started mortgages stating that both loan products were best for Ms. Briscoe Minefee. When Ms. Briscoe Minefee asked Ms. Krasner if she had any brochures or printed information about the Get Started program requirements, Ms. Krasner told Ms. Briscoe Minefee that she could not share the “guidelines” with her.

INJURY TO PLAINTIFFS

67. As a result of the illegal and discriminatory actions described above, Defendant has directly and substantially injured Plaintiff FHJC by fostering residential racial segregation that frustrates its mission to create open and inclusive communities.

68. FHJC also has been injured by diverting its scarce resources toward identifying and counteracting Defendant’s unlawful policies and practices. Those resources could have been used to provide services, and conduct educational activities, research, and policy advocacy instead of countering Defendant’s discriminatory policies and practices.

69. Defendant's discriminatory policies and practices perpetuate residential segregation based on race and national origin in New York City and other areas where it provides Get Started mortgages to first time homebuyers.

70. FHJC, through its tester employees, was provided inaccurate, different or no information by Defendant about the terms and conditions for home mortgage loan products offered by Defendant for first-time homebuyers based on race or national origin in violation of fair housing laws.

71. Until these violations are remedied, Defendant's illegal and discriminatory actions will continue to injure FHJC.

72. By reason of the foregoing, the individual Plaintiffs have each suffered a loss of civil rights and other damages, including emotional distress, humiliation, and embarrassment.

FIRST CAUSE OF ACTION
Fair Housing Act – § 3605(a)

73. Plaintiffs repeat and reallege the foregoing paragraphs of their Complaint as though fully set forth herein.

74. The home mortgages offered by Defendant, including those through its Get Started program, are "residential real estate-related transactions" as defined by Section 3605(b)(1) of the Fair Housing Act, 42 U.S.C. § 3605(b)(1).

75. Defendant's conduct, as described above, constitutes discrimination in making available residential real estate-related transactions and in the terms and conditions of such transactions on the basis of race or national origin in violation of the Fair Housing Act, 42 U.S.C. § 3605(a). Section 3605(a) includes "failing or refusing to provide to any person . . . information regarding the availability of loans or other financial assistance, application

requirements, . . . or providing information which is inaccurate or different from that provided others” because of race or national origin. 28 C.F.R. Part 100.120(b).

76. Defendant’s conduct, as described above, was intentional, willful, and made in disregard for the rights of others.

77. Plaintiffs are “aggrieved persons” as defined by the Fair Housing Act because they have been injured by Defendant’s discriminatory housing practices. 42 U.S.C. § 3602(i).

78. Pursuant to 42 U.S.C. § 3613(c), Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys’ fees and costs.

SECOND CAUSE OF ACTION
Fair Housing Act – § 3604(a)

79. Plaintiffs repeat and reallege the foregoing paragraphs of their Complaint as though fully set forth herein.

80. Defendant’s conduct, as described above, constitutes otherwise making a dwelling unavailable because race or national origin in violation of the Fair Housing Act, 42 U.S.C. § 3604(a).

81. Defendant’s conduct as described above was intentional, willful, and made in disregard for the rights of others.

82. Plaintiffs are “aggrieved persons” as defined by the Fair Housing Act because they have been injured by Defendant’s discriminatory housing practices. 42 U.S.C. § 3602(i).

83. Pursuant to 42 U.S.C. § 3613(c), Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys’ fees and costs.

THIRD CAUSE OF ACTION
Fair Housing Act – § 3604(c)

84. Plaintiffs repeat and reallege the foregoing paragraphs of their Complaint as though fully set forth herein.

85. Defendant's conduct, as described above, constitutes the making of a statement with respect to the sale of a dwelling that indicates a preference, limitation, or discrimination based on race or national origin or the intent to make such preference, limitation or discrimination in violation of the Fair Housing Act, 42 U.S.C. § 3604(c).

86. Defendant's conduct as described above was intentional, willful, and made in disregard for the rights of others.

87. Plaintiffs are "aggrieved persons" as defined by the Fair Housing Act because they have been injured by Defendant's discriminatory housing practices. 42 U.S.C. § 3602(i).

88. Pursuant to 42 U.S.C. § 3613(c), Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION
New York State Human Rights Law – § 296-a(1)

89. Plaintiffs repeat and reallege the foregoing paragraphs of their Complaint as though fully set forth herein.

90. The home mortgages offered by Defendant, including those through its Get Started program, are "credit" as defined by Section 292(20) of the New York State Human Rights Law.

91. Defendant M&T Bank is a “creditor” as that term is defined by Section 292(22) of the New York State Human Rights Law.

92. Defendant’s conduct as described above constitutes an unlawful discriminatory practice to discriminate in the granting, withholding, extending or renewing or in the fixing of the rates, terms or conditions of any form of credit on the basis of race or national origin in violation of Section 296-a(b) of the New York State Human Rights Law.

93. Defendant’s conduct as described above was intentional, willful, and made in disregard for the rights of others.

94. Plaintiffs have suffered damages as a result of Defendants’ conduct described above.

95. Pursuant to § 297(9) and (10) of the New York State Human Rights Law, Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys’ fees and costs.

FIFTH CAUSE OF ACTION
New York City Human Rights Law – § 8-107(5)(d)(1)

96. Plaintiffs repeat and reallege the foregoing paragraphs of their Complaint as though fully set forth herein.

97. Defendant M&T Bank is a “bank” as defined by Section 8-107(5)(d) of the New York City Human Rights Law.

98. Defendants’ conduct as described above constitutes discrimination because of race or national origin in the withholding or extending or fixing of rates, terms or conditions of any financial assistance for the purchase of any housing accommodation in violation of Section 8-107(5)(d)(1) of the New York City Human Rights Law.

99. Defendant's conduct as described above was intentional, willful, and made in disregard for the rights of others. Plaintiffs have suffered damages as a result of Defendant's conduct described above.

100. Pursuant to § 8-502(a) and (f) of the New York City Human Rights Law, Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

101. Plaintiffs have caused a copy of this Complaint to be served upon the New York City Commission on Human Rights and the New York City Corporation Counsel, pursuant to § 8-502(c) of the New York City Human Rights Law.

SIXTH CAUSE OF ACTION
New York City Human Rights Law – § 8-107(5)(d)(2)

102. Plaintiffs repeat and reallege the foregoing paragraphs of their Complaint as though fully set forth herein.

103. Defendant M&T Bank is a "bank" as defined by Section 8-107(5)(d) of the New York City Human Rights Law.

104. Defendants' conduct as described above constitutes the use of a form of application for a loan, mortgage, or other form of financial assistance, or the making of any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race or national origin in violation of Section 8-107(5)(d)(2) of the New York City Human Rights Law.

105. Defendant's conduct as described above was intentional, willful, and made in disregard for the rights of others.

106. Plaintiffs have suffered damages as a result of Defendant's conduct described above.

107. Pursuant to § 8-502(a) and (f) of the New York City Human Rights Law, Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

108. Plaintiffs have caused a copy of this Complaint to be served upon the New York City Commission on Human Rights and the New York City Corporation Counsel, pursuant to § 8-502(c) of the New York City Human Rights Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment against Defendant as follows:

- (a) Declaring that Defendants' discriminatory practices violate the Fair Housing Act, the New York State Human Rights Law, and the New York City Human Rights Law;
- (b) Enjoining Defendant; its employees, agents and successors in interest; and all other persons in active concert or participation with it from:
 - (i) discriminating in making available residential real estate-related transactions and in the terms and conditions of such transactions on the basis of the race or national origin of prospective borrowers, applicants, or the residents of the area in which a dwelling is located;
 - (ii) failing or refusing to provide information regarding the availability of loans or other financial assistance and application requirements because of the race or national origin of prospective borrowers, applicants, or the residents of the area in which a dwelling is located;

- (iii) providing information regarding residential real estate-related transactions which is inaccurate or different from that provided others because of the race or national origin of prospective borrowers, applicants, or the residents of the area in which a dwelling is located;
- (iv) making any statement with respect to the sale of a dwelling that indicates a preference, limitation, or discrimination based on race or national origin of the prospective borrower, applicant, or the residents of the area in which a dwelling is located, or the intent to make such preference, limitation or discrimination;
- (v) discriminating in the granting, withholding, extending or renewing or in the fixing of the rates, terms or conditions of any form of residential real-estate related transaction, loan, or financial assistance to purchase a housing accommodation;
- (vi) using any form of application for a loan, mortgage, or other form of financial assistance, or to make any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race or national origin;
- (vii) coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of any right granted or protected by the Fair Housing Act; and

- (viii) aiding, abetting, inciting, compelling, or coercing the doing of any of the acts forbidden by the New York State Human Rights Law and the New York City Human Rights Law;
- (c) Enjoining Defendant; its employees, agents, and successors in interest; and all other persons in active concert or participation with it to:
 - (i) make all necessary modifications to the terms and conditions of the residential real-estate related loans or other financial assistance it offers to first-time homebuyers, including the Get Started program, to comply with fair lending laws;
 - (ii) train all employees involved in the making of residential real-estate related loans or other financial assistance on fair lending laws;
 - (iii) implement criteria, loan products, conditions, and/or incentives for mortgages for first time homebuyers that counteract the harm caused by Defendant's past discriminatory policies and practices;
 - (iv) allow monitoring of its residential lending process;
 - (vi) revise its written fair lending policy to be distributed to all employees, and agents; and
 - (vii) establish a system for testing employees and agents for unlawful discriminatory practices;
- (d) Awarding such damages to Plaintiff FHJC as will fully compensate for the diversion of resources and frustration of mission caused by Defendant's unlawful discriminatory practices;

- (e) Awarding such damages to the individual Plaintiffs as will fully compensate for any loss of civil rights, as well as for the humiliation, embarrassment, and emotional distress suffered due to unlawful Defendant's discriminatory conduct;
- (f) Awarding punitive damages to Plaintiffs;
- (g) Awarding Plaintiffs reasonable attorneys' fees, costs, and expenses incurred in prosecuting this action; and
- (h) Granting Plaintiffs such other further relief as may be just and proper.

Dated: February 3, 2015
New York, New York

EMERY CELLI BRINCKERHOFF & ABADY LLP

By: 

Diane L. Houk
R. Orion Danjuma
600 Fifth Avenue, 10th Floor
New York, New York 10020
Telephone: (212) 763-5000
Facsimile: (212) 763-5001

Attorneys for Plaintiffs

JUDGE FORREST CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

15 CV 779

PLAINTIFFS

DEFENDANTS

FAIR HOUSING JUSTICE CENTER, INC., et al.

M&T BANK CORPORATION

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue, 10th Floor, New York, NY 10020
(212) 763-5000

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

FEB 03 2015

42 U.S.C. §3613 ; Defendant discriminate in home mortgages based on race or national origin.

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? Yes Judge Previously Assigned

If yes, was this case Vol. Invol. Dismissed. No Yes If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No Yes

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 151 MEDICARE ACT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- 160 STOCKHOLDERS SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

PERSONAL INJURY

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MED MALPRACTICE

ACTIONS UNDER STATUTES

- 440 OTHER CIVIL RIGHTS (Non-Prisoner)
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
- 446 AMERICANS WITH DISABILITIES -OTHER
- 448 EDUCATION

PERSONAL INJURY

- 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY
- 365 PERSONAL INJURY PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING

- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

PRISONER PETITIONS

- 463 ALIEN DETAINEE
- 510 MOTIONS TO VACATE SENTENCE 28 USC 2255
- 530 HABEAS CORPUS
- 535 DEATH PENALTY
- 540 MANDAMUS & OTHER

PRISONER CIVIL RIGHTS

- 550 CIVIL RIGHTS
- 555 PRISON CONDITION
- 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

FORFEITURE/PENALTY

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY MEDICAL LEAVE ACT (FMLA)
- 790 OTHER LABOR LITIGATION
- 791 EMPL RET INC SECURITY ACT

IMMIGRATION

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

BANKRUPTCY

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

PROPERTY RIGHTS

- 820 COPYRIGHTS
- 830 PATENT
- 840 TRADEMARK

SOCIAL SECURITY

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS-THIRD PARTY 26 USC 7609

OTHER STATUTES

- 375 FALSE CLAIMS
- 400 STATE REAPPORTIONMENT
- 410 ANTI TRUST
- 430 BANKS & BANKING
- 450 COMMERCE
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 850 SECURITIES/ COMMODITIES/ EXCHANGE
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 896 ARBITRATION
- 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: YES NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- 1 Original Proceeding
- 2 Removed from State Court
 - a. all parties represented
 - b. At least one party is pro se.
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

- 1 U.S. PLAINTIFF
- 2 U.S. DEFENDANT
- 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [] DEF []	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF [] DEF []	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF [] DEF []
CITIZEN OF ANOTHER STATE	[] []	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] []	FOREIGN NATION	[] []

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Fair Housing Justice Center, Inc., 5 Hanover Square, 17th Floor, New York, NY 10004 (NY County)
 Barbara Tirrell Bauer, Susan Burns, Lisa Darden, Vanessa Dawson, Laurel Devaney, Joselyn Martinez,
 Kaaron Briscoe Minefee, Charnetta Pettie, and Indika Senanayake,
 c/o Emery Celli Brinckerhoff & Abady LLP
 600 Fifth Avenue, 10th Floor, New York, NY 10020 (NY County)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

M&T Bank Corporation
 Attn: General Counsel
 One M&T Plaza, 12th Floor
 Buffalo, New York 14203
 (Erie County)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS MANHATTAN
 (DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 2/3/2015 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

RECEIPT #

Deane L. Honk

[] NO
 YES (DATE ADMITTED Mo. 11 Yr. 2009)
 Attorney Bar Code # DH - 5202

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ *MAG JUDGE COFF* is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)