

Fair Housing for All: Academy Podcast Series

Episode 4: NFHTA Forum | Strategies for Investigating Discriminatory Residential Appraisals, September 15, 2021—J.P. Morgan Chase, N.A. et al. Conciliation Agreement

Speakers: Cashauna Hill, Executive Director, Louisiana Fair Housing Action Center; and Lon Meltesen, Regional Director – Region V, HUD FHEO

CASHAUNA HILL [0:00:09]: Hello, welcome to the “Fair Housing for All: Academy Podcast Series”. My name is Cashauna Hill, and I am the Executive Director of the Louisiana Fair Housing Action Center. Since 2015 I have led a team working to fulfill the organization’s mission to end discriminatory housing policies and practices through litigation and policy advocacy, as well as to provide fair housing trainings and foreclosure prevention counseling.

This is episode 4 of the September 16, 2021, National Fair Housing Training Academy Forum, titled Strategies for Investigating Discriminatory Residential Appraisals.

In this episode, you’ll be hearing from Lon Meltesen. Lon is the Regional Director for Region 5 (V) with HUD’s Office of Fair Housing and Equal Opportunity. His presentation, *J.P. Morgan Chase, N.A. et al. Conciliation Agreement- A Case Study of a Successful Conciliation in a Discriminatory Appraisals Case*, provides a detailed accounting of how this specific case was investigated and conciliated by HUD. During this time, Lon speaks about how members of the fair housing community can explore various relief measures, the role of the conciliator, and how to identify the key issues needing resolution in these types of cases amongst other related topics.

I want to note that this episode features information and examples that represent the experiences of the speaker.

LON MELTESEN [00:02:04]: Thank you, Cashauna. On behalf of the U.S. Department of Housing and Urban Development, I want to thank the National Fair Housing Training Academy for inviting me to participate in today's forum on this very important topic of

discriminatory appraisals. I'm the Regional Director for the Office of Fair Housing and Equal Opportunity in Region 5 which covers the Upper Midwest, Great Lakes states. [My region is the region that negotiated the settlement I'm going to talk about today involving Chase Bank.](#)

When HUD evaluates appraisal cases, we always keep in mind that the race of the homeowner or any other protected basis for that matter, and the racial composition of the neighborhood, must not influence the valuation of the home. The Fair Housing Act prohibits the consideration of race or any other protected category in being considered into the valuation of appraisal of the home.

Discrimination in home buying, mortgage lending, property valuations deprive qualified individuals of an equal opportunity to pursue home ownership as a path of family stability as well as financial security. HUD is committed to ensuring that all housing, whether rental or sale, is free from discrimination. In accordance with our statutory obligations, HUD investigates and conciliates housing discrimination cases. In the last year or so, as you've been hearing, we've been seeing a large influx in the number of cases filed that involve discriminatory appraisals.

So as with other novel issues, we tailor our approach for handling each new case, and there is no template that is universally used. And this is one of the most important takeaways I hope to leave you with today. When you're handling an appraisal case, it's important to learn as much as you can about the facts of that particular situation. As you're developing your strategy.

Today, I will focus on one example of such a resolution as has been achieved by the department and will go over the allegations of the complaint and terms of the negotiated conciliation agreement. Then I'll talk about the general conciliation strategies that my staff pursues when we try to resolve cases like this. And I'm hopeful that you'll find these techniques helpful and useful in your practice.

So let's talk a little bit about our Chase settlement. So in this case, it was filed by an African American homeowner who lived in a predominantly African American community in the city of Chicago, Illinois. So in her complaint, the complainant alleged that in May of 2020 she sought to refinance her home with Chase Bank. And so she filled out the refinancing forms. Chase began processing the forms. And as part of processing her refinancing, an appraisal was conducted. And when Chase got the appraisal back, they ended up denying her refinancing because of the low home valuation that was contained in the appraisal.

So when the complainant reviewed the appraisal, she noticed that there were several errors that were contained in the appraisal, and she felt that it significantly undervalued her home. So she contacted Chase and she asked Chase if they would either reconsider the valuation contained in the appraisal or whether they would conduct a second appraisal. Unfortunately, Chase declined either of those two options.

So the complainant ended up contacting a different lender and filled out another application for refinancing. But this time, she made it clear that she wasn't going to disclose her race. And so like in the Chase case, when the lender ordered an appraisal, the appraiser came out to the property, she made sure to remove all the pictures of her home, all the pictures of herself and her family, as well as any other personal property which could indicate her race. As Lisa kind of mentioned, she scrubbed or whitewashed her home.

And so this time when the appraisal was done on the property and it came back, the appraisal came back significantly higher than the one that was conducted by Chase Bank. So this new lender approved her application and approved a refinancing under the terms that she was looking for. Then the complainant filed her complaint and alleged that Chase rejected her refinancing based upon the fact that Chase undervalued her property because her home was located in a predominantly African American community, in violation of Section 805 of the Fair Housing Act.

So now I want to talk a little bit about the timeline of the case that we had in our region. So this case was one of the first cases that started to come into our office in what I'll call a wave of these discriminatory appraisal cases. So my office accepted the complaint on October 14, 2020, and within five days we served notice of the complaint on the parties. Then the following day, the case was assigned to an investigator.

On February 19, 2021, we were able to execute a conciliation agreement with Chase Bank. This agreement was executed within 128 days of the filing of complaint.

So moving on the actual terms of the agreement. So first of all, the duration of agreement or term of the agreement is three years from the effective date of the agreement, which was February 19, 2021.

Now, what about the relief we were able to obtain? So in the settlement agreement, Chase agreed to pay the complainant monetary damages in the amount of \$50,000. But generally, when we're negotiating settlements, we're looking to obtain not only compensation for the complainant, but also meaningful and effective public interest relief. Public interest relief will take a variety of forms, depending on the circumstances of a given complaint and is generally geared toward remediation and relief for other individuals other than the complainant. These same principles apply for discriminatory appraisals cases.

So in this case, we also negotiated a number of public interest provisions to vindicate the public interest. So the first public interest provision we were able to negotiate was Chase's willingness to have mandatory training for its home lending advisers and client care specialists on both Chase's reconsideration of value process, including what a borrower might need to present with their request for reconsideration. And on fair lending and how to handle complaints about discrimination or undervaluation in the appraisal process.

In other key public interest relief that Chase agreed to during the course of our settlement was to review its ROV policies to ensure home buyers are appropriately informed of ability

to raise any concerns regarding the reliability or credibility of their appraisal as well as to raise Chase any bias or discrimination appraisal.

Additionally, Chase agreed to provide reminders to its home lending specialists and its client care specialists regarding best practices regarding the ROV process and how to escalate consumer complaints to Chase regarding either discrimination or bias in the appraisal process.

And so not only did Chase agree to mandatory train all its employees, but throughout the year they agreed to issue alerts to their staff to make sure that they were kept informed of the best practices they should be using when handling these requests for reconsideration of values and appraisals.

And finally, Chase agreed to add language to its Appraisal Transmittal Letter and their Adverse Action notice which provided specific instructions to borrowers regarding how to report suspected bias of the appraiser and other concerns that they might have regarding discrimination or the actual accuracy of the appraisal to Chase.

Moving on ahead. So how did we get the filing complaints to an executed settlement agreement within 128 days? We applied our general conciliation strategies and techniques that we use every day.

So I would like to take a moment now to highlight some of those strategies and techniques for you. I'd like to start with sharing key conciliation concepts with you. So, first, keep in mind that under the Fair Housing Act, HUD must engage in conciliation efforts at all housing complaints to the extent feasible. And the period for which conciliation must be attempted commences with the filing of the complaint and continues until either the issuance of a charge on behalf of the complainant or the dismissal of the complaint.

So I can't emphasize enough to you the importance of beginning the conciliation process early. One of the things we did in the Chase case is we made sure to put together a conciliation team from the very beginning. As soon as the complaint was filed, we were able to put the team together and to initiate conciliation right from the start.

Other things to keep in mind is for settlements that are negotiated by HUD staff, they are subject to approval by HUD and they must be made public, unless disclosure is determined not to further the purposes of the act.

Other things to keep in mind are, and I'll touch on this a little bit later, is that when you're transitioning from investigating, starting to initiate the conciliation aspect of the case, make sure to pause the investigation and suspend the fact-finding before you start the conciliation. And then finally, as I mentioned before, in terms of relief, think not only of compensation for the complainant but also in terms of relief that will vindicate the public interest.

So another key point I want to make is when you're conciliating, make sure to understand your role as a conciliator versus your role as an investigator. Because these are two very

distinct roles. You need to make every effort to separate those two functions. So as I previously mentioned, when you're transitioning from your investigator hat to your conciliator hat, make sure to take a break. Pause the investigation. And then clearly communicate to the parties that you're transitioning to conciliating. And explain to the parties the differences in rules and functions. And keep a separate and detailed conciliation record. And keep that record confidential. And don't commingle it with the investigative record.

Another thing that we did in our efforts to conciliate the Chase case was when we put together our conciliation team, we made sure that included not only the investigator who was assigned to the case but also a manager who was very experienced in conciliation who wasn't involved in the actual investigation in the case at all.

Moving on. I want to say as a reminder, make sure to keep conciliations confidential. Nothing said or done in the conciliation should be used as part of the investigation. And conciliation information cannot be made public without the consent of the parties.

Now, there is one caveat to that. That's if the information provided is discovered outside of the conciliation process, then it can be permissible to use that. Let me give you an example of that. So, for example, let's say you're conciliating a case and during your conciliation discussions, a party provides you with a document. So normally that document would need to be considered confidential and not made part of the investigation. But later on, if you are not acting in your role as an investigator and you submit a data request to the parties, and this party responds to that request and as part of that response provides that document, then now that document is being tendered as part of the investigation and it can be considered as in the investigation.

Moving on to the next important concept I want to make sure that everyone understands is the importance of identifying the issues and position of the parties. This is an important point that often times makes or breaks complex conciliation. It's very important to flesh out all of the issues - issue by issue - with the parties when you're conducting your conciliation discussions.

Moving parties from merely articulating a stated position to understanding for themselves what their interests are that actually underlie those positions is what allows a conciliation to gain the trust and respect of the parties and it allows the parties to move slowly toward discovering how their interests can be achieved with terms that might look a little different than what their initially stated positions were.

So let me give you an example. So let's say, for example, that an organization states that it has a policy in place and can't amend that policy because that's always been the policy and it's needed to maintain the organization in compliance. The conciliator needs to ask the organization, well, why has a policy been around for so long? What purpose does it serve? When was the last time that it was reexamined? And what is the specific regulation that the organization views the policy satisfied? Then review that organization. Ask the organization

to review whether there are other ways to satisfy the organization in such a way that would allow the organization to amend the designed policy.

So a conciliator will be successful when she or she begins to truly be curious about why a party wants something done in a certain way. And rises to the challenge of having the parties understand whether the beliefs that underlie the position actually align with what they're doing in practice.

So moving to the last point that I want to make here today is I want to stress to you the importance of structuring the conciliation. How you structure your conciliation is going to make a difference. A common mistake that conciliators make is that they sometimes begin without a strong framework. And when that happens, the conciliation tends to become a mere shuffling of offers back and forth between the parties. So it's important to establish a clear process in your line because the way you need to approach the conciliation is from the standpoint that you are the manager of the process. And as such, you need to be confident in the process and make sure that that process is followed.

So there are four general stages to conciliation. So Stage 1 is setting the stage. And in this stage, it's when you want to establish the ground rules for the conciliation and build the rapport with the parties.

In Stage II, you want to identify the issues and understand the parties. So your primary task in this stage is going to be to listen to the parties. Hear their stories. And then help them help guide them to clarifying what the issues are between them. Don't cross-examine the parties. Don't be confrontational. Ask open ended questions. And help the parties understand why it is in their best interest to reach a mutual resolution.

Stage III is problem solving. During this stage, you want to assist the parties in developing a solution in a neutral and unbiased manner. If there are multiple issues, sometimes it can help to start with the easier and less complex issues first. And once you're able to solve that, then move on to the more difficult ones.

And the final stage is writing the agreement. What that means is you put the solution in writing. And you want to make sure that the agreement accurately reflects what was agreed upon by the parties.

So moving on. I would like to conclude that during the Chase settlement, many of these strategies were implemented and resulted in the successful conciliation. I hope that this agreement is helpful as a starting point for you when you're thinking about how to handle your appraisal case.

However, it's important to remember that this isn't a template but rather an example of how it's important to tailor each resolution to the specific matter by using general strategies that you customize for the parties and the situation that you're dealing with. And another thing is to remember that during conciliation, it's essential that the conciliator remains flexible. As new information is learned and as conditions change.

So with that, I appreciate the opportunity to share this information you. I hope that you found it helpful. That concludes my presentation. So at this point, I will turn things back over to Cashauna.

MS. HILL [00:22:11]: Thank you for listening to this episode of the “Fair Housing for All: Academy Podcast Series”, Strategies for Investigating Discriminatory Residential Appraisals. We encourage you to review the NFHTA webpage for additional podcasts about fair housing issues.