

FRIDAY

MONDAY

TUESDAY

WEDNESDAY

TODAY

Questions and Comments

Previous

Next

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NEWS

RULINGS

VERDICTS

Thursday, August 2, 2012

## New consumer agency targets lawyer in first suit

By Don J. DeBenedictis

Lawyers who represent clients in the financial services industry have been anxiously anticipating the controversial new federal Consumer Financial Protection Bureau's first move into the courts.

After learning last week that the bureau's first lawsuit targeted a Los Angeles lawyer accused of using deceptive practices in a mortgage-rescue scheme, the reaction was mixed. But most agree the case is worth the bureau's time.

"I don't think I would have predicted what they did here, but in some respects it makes a lot of sense," said Alan S. Kaplinsky, head of Ballard Spahr LLP's consumer financial services group in Philadelphia.

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**"I'm somewhat of a critic of the CFPB, but this is a case that gets some kudos." -  
Joseph T. Lynyak III**

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Kaplinsky said the complaint against Chance Edward Gordon and his law firm showed the consumer bureau going after "low-hanging fruit" in its first enforcement action.

Another firm monitoring the bureau is BuckleySandler LLP. Washington, D.C.-based Chairman Andrew L. Sandler said that suing accused loan-modification fraudsters "is the highest and best value the bureau can bring to consumer protection."

Sandler said that most activities hurting consumers have taken place "outside the banking space," but that "to date, there has been inadequate enforcement activity focused on these issues."

In its suit, originally filed under seal last month, the bureau accused Gordon and a nonlawyer associate of running a scheme that "preys on financially distressed homeowners nationwide" by promising mortgage reductions in exchange for advance fees of up to \$4,500. Instead, Gordon and the other defendants provided "little, if any, meaningful assistance," according to the complaint. *Consumer Financial Protection Bureau v. Gordon*, 2:12-cv-6147 (C.D. Cal., filed July 17, 2012).

In a memo supporting its application for a temporary restraining order, CFPB attorneys say the State Bar is investigating Gordon and has received more than 65 complaints about him. The Federal Trade Commission has 151 complaints, the pleading states.

Gordon's attorney, Gary A. Kurtz, said his client had been operating "entirely within the law" and that the charges are "wholly inappropriate." Kurtz last week filed oppositions to the bureau's suit.

With the case under seal, the bureau obtained a temporary restraining order against Gordon and his law firm, froze their assets and installed a receiver. The seal

### Intellectual Property

#### Apple seeking sanctions against Samsung, Quinn in patent case

Apple Inc. said Wednesday it will seek sanctions against Samsung Electronics Co. Ltd. attorney John B. Quinn, partner at Quinn Emanuel Urquhart & Sullivan LLP, for authorizing the release of a statement about excluded evidence.

### U.S. Supreme Court

#### Lawyer's debt collection mill overstepped by mailing letters to employers

A debt collection mill run by a Hollywood lawyer overstepped by mailing dunning letters to hundreds of debtors' employers, a divided 9th U.S. Circuit Court of Appeals panel held Wednesday in reviving a potential class action by the debtors.

### Government

#### Plaintiffs' attorneys group concerned about jury fee changes

The Consumer Attorneys of California earlier this year supported changes to a fee associated with jury trials, but the is now worried the adjustments could unintentionally allow the fee be charged multiple times.

### Litigation

#### HP wins first round in contract dispute with Oracle

Hewlett-Packard Co. notched a win on Wednesday in a legal spat with Oracle Co. when a Santa Clara County Superior Court judge ruled that Oracle unlawfully ceased production of a program for HP servers last year.

### Law Practice

#### Judge considers NY or CA law on Thelen clawback claims

A federal judge is considering whether California or New York law applies to clawback claims filed by the Thelen LLP estate. Thelen crafted its partnership agreement in California, but its bankruptcy is taking place in New York.

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was lifted July 23.

Kent Markus, the bureau's assistant director for enforcement said in a statement that those actions "[allow] us to prevent further harm to consumers and lawfully gather additional evidence and data as the case moves forward."

But two California lawyers following the CFPB described the under-seal moves as aggressive.

Michael Mallow, who heads a new task force on the bureau at Loeb & Loeb LLP, said the moves indicate the CFPB will not be as transparent as defense attorneys had hoped. "This is a significant development for those of us trying to predict how the CFPB is doing business," Mallow said.

Jonathan D. Jaffe at K&L Gates LLP in San Francisco said the case "shows how aggressive they will be, and that's pretty aggressive."

Jaffe said that in one respect, the suit against an accused mortgage-rescue lawyer is surprising because the State Bar or other agencies could have gone after Gordon. On the other hand, he said, Gordon's alleged activities "are within the CFPB's self-reported sweet spot" of wrongs against consumers.

Several lawyers said targeting an alleged loan-modification scheme also makes good political sense for the controversial agency.

"I'm somewhat of a critic of the CFPB, but this is a case that gets some kudos," said Joseph T. Lynyak III of Pillsbury Winthrop Shaw Pittman LLP in Los Angeles. "This is an area that everyone can agree ... is a good thing for the CFPB to be taking on."

David Min, a former U.S. Senate staffer newly on the UCI School of Law faculty, pointed out that the bureau faced "a lot of ideological controversy about whether it should even exist."

"They're going to proceed cautiously" at first, Min said, both legally and politically.

While the Gordon action is the bureau's first lawsuit, it is not its only public enforcement action. Also last month, it announced a \$165 million settlement with Capital One Bank for deceptive credit-card marketing.

The two actions "are striking bookends to mark the first anniversary" of the new agency, said Donna L. Wilson, a partner in BuckleySandler's Los Angeles office.

### Privacy rights group asks for review in juror Facebook case

An influential privacy rights group has filed an amicus letter with the state Supreme Court urging it to grant review in a case involving a juror who made posts to Facebook during the course of a trial.

### Government

#### New consumer agency targets lawyer in first suit

Lawyers say the new federal Consumer Financial Protection Bureau's first lawsuit -- targeting a Los Angeles lawyer -- makes political sense for the controversial agency.

#### Transformative year for California's civil rights enforcement

Senate Bill 1038 represents a good faith compromise after months of debate. By **Phyllis Cheng** of the Department of Fair Employment and Housing

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### Litigation

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### Judicial Profile

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July 19, 2011

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