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.

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

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, CPFB 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 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.

Related articles

Lawyer sued by new consumer agency July 31, 2012
The new federal Consumer Financial Protection Bureau has shut down the offices of Los Angeles lawyer Chance Edward Gordon.

LA-based firm expanding due to Dodd-Frank work July 19, 2012
Los Angeles-based Palmer, Lombardi & Donohue LLP has been hiring lawyers to handle all of the extra work needed to comply with the Dodd-Frank law.

New bills on foreclosure abuses will face opposition February 23, 2012
As California homeowners await details of a $25 billion multistate settlement with lenders over past foreclosure abuses, focus is already shifting to forward-looking legislation.

Ex Ohio AG tapped for Consumer Financial Protection Bureau July 19, 2011
President Barack Obama announced Monday the nomination of former Ohio Attorney General Richard Cordray to head up the Consumer Financial Protection Bureau.

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

Education
IDEA law imposes an affirmative duty on school districts
A 9th Circuit ruling clarifies that school districts must work with parents of special needs children. By **Brian W. Franklin** of Archer Norris PC

International
Sending employees to China
What employers need to know. By **Allan Marson** and **Li Dai** of Ishimaru & Associates LLP

Letter to the Editor
Rebutting Kingsley on class arbitration waivers
In response to a recent article calling for a legislative fix for *Concepcion*. By **Ronald W. Novotny** of Atkinson, Andelson, Loya, Ruud & Romo

Criminal
Common misconceptions on insanity defense
There appears to be a misconception that the more sophistication that is used in the commission of crime, the less likely that the person is insane. By **Lou Shapiro**

Litigation
Samsung's conduct spurs adverse jury instruction
An ineffective litigation hold resulted in a major setback for Samsung; learn the law behind the ruling. By **Brittany W. Yang** and **Matthew A. Cebrian** of Murphy Pearson Bradley & Feeney PC

Judicial Profile