

## **The Consumer Financial Protection Bureau, Week in Review: February 4-8, 2013**

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The past week seemed relatively quiet in comparison to the nonstop flurry of activity that 2013 has brought so far. Nonetheless, significant fallout from the *Noel Canning v. NLRB* decision continues, a new partnership with Newark was announced, and a decision for the 113th Congress that could impact the CFPB was made.

### **February 4, 2013**

#### **EXTRAORDINARY REQUEST DENIED**

On February 4, 2013, the first emergency filing related to the D.C. Circuit Court's decision in *Noel Canning v. NLRB*, (Canning decision) seeking a partial stay of a section 10(j) National Labor Relations Act injunction, was filed with the U.S. Supreme Court (Supreme Court), and within hours denied by Justice Ginsberg.

The basis of the request was the January 25th Canning decision by the D.C. Circuit, which in essence held that the President's recess appointments to the National Labor Relations Board (NLRB) were unconstitutional, and thus, arguably making the injunction the NLRB won late last year concerning HealthBridge invalid and unenforceable.<sup>1</sup> The case is *HealthBridge Management LLC, et. al., v. Jonathan B. Kreisberg, Regional Director of Region 34 of the National Labor Relations Board*, Case No. 12A769.<sup>2</sup> HealthBridge is represented by former Solicitor General Paul Clement.

Had HealthBridge's request been granted, it would have likely been heard before the Canning decision, which is expected to be appealed to the Supreme Court.

### **February 6, 2013**

#### **DENIED AGAIN**

Shortly after the denial by Justice Ginsberg of HealthBridge's request for extraordinary relief, the former U.S. Solicitor General, Paul Clement, filed a second application for stay -- as permitted under court rules -- directed at Justice Antonin Scalia. On February 6, 2013, Justice Scalia denied the second bid for stay.<sup>3</sup> Like Justice Ginsberg, Justice Scalia did not refer the application to the full

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court for consideration.

The reasoning for the Justices' decisions to deny the extraordinary request at this point is anyone's guess. But it is plausible the Supreme Court is trying to avoid a chaotic situation in the wake of the Canning decision. Moreover, it is anticipated that the government will seek a stay of the underlying D.C. Circuit decision should it choose to appeal the matter to the Supreme Court.

How the Supreme Court proceeds in the days ahead can have a significant impact on the present and past actions of the CFPB. It is anticipated that numerous actions similar to HealthBridge exist. The Supreme Court response this week, however, was a clear message concerning how it intends to proceed under the current state of affairs.

**February 7, 2013**

## **CFPB AND NEWARK JOIN FORCES TO RESPOND TO CONSUMER QUESTIONS AND COMPLAINTS**

The CFPB announced that it was teaming up with the city of Newark, New Jersey, so that Newark's local residents that contacted its 4311 - non-emergency phone line with questions or complaints about a consumer financial product or service could be transferred directly to the CFPB's Consumer Response team.

In the announcement Director Cordray was quoted as saying, "The CFPB's job is to help consumers navigate the often confusing financial marketplace and to hold financial institutions accountable... Through this coordination, we will be able to reach and to help consumers who may not have found us otherwise."<sup>4</sup>

The Consumer Response team is responsible for receiving complaints and ensuring timely responses by the subject companies, *e.g.*, response within 15 days and closure within 60 days. The CFPB's Consumer Response team has already received to date 130,000 complaints. The complaints cover credit cards, mortgages, bank products and services, consumer loans, student loans and credit reporting.

This is the second time the CFPB has announced an agreement with a city. The first was in December 2012, regarding the city of Chicago.

## **'MORTGAGE SCAM' SETTLEMENT**

Actions against "mortgage scams" that "target consumers in financial distress," continue.<sup>5</sup> We reported over the last several weeks on the CFPB's recent litigation against actors in the debt relief industry, in particular those who allegedly engaged in mortgage assistance relief services, as well as the FTC's recent activity in shutting down a debt collection operation. This past week was no different. This time it was the FTC announcing its settlement order against California based Consumer Advocates Group Experts, LLC and its owner, Ryan Zimmerman, and two other related companies as part of the agency's "continuing crackdown on scams."<sup>6</sup> The settlement imposed a \$3.5 million dollar judgment, which purportedly reflects the "full amount of consumer injury," for the 2 years prior to the shut down.

The FTC's complaint alleged that the defendants violated the FTC Act and the Mortgage Assistance

Relief Services Rule. Specifically, it was alleged that the defendants engaged in deceptive conduct in telling consumers they could “renegotiate mortgages, making payments substantially more affordable; that they could use the ‘forensic audits’ to negotiate with lenders; and that if they failed to do these things, they would provide a refund.” It was also alleged that the defendants collected fees before providing any loan modification services.<sup>7</sup>

This action by the FTC is significant to CFPB watchers as the CFPB has similar authority to enforce the MARS Rule and has authority -- that may now be in question because of the Canning decision -- to bring an action for unfair, deceptive, or abusive acts or practices.

## THE 113TH CONGRESS AND THE FINANCIAL INSTITUTIONS AND CONSUMER PROTECTION SUBCOMMITTEE

Senator Tim Johnson, (D-SD), Chairman of the Senate Banking, Housing and Urban Affairs Committee announced the Banking Subcommittee Chairs for the 113th Congress. Of note, Senator Sherrod Brown (D-OH) will chair the Committee’s Financial Institution and Consumer Protection subcommittee for the 113th Congress.<sup>8</sup>

It is anticipated that the full committee will finalize the subcommittees via a vote the week of February 11, 2013.

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1 *Justice Ginsberg Snubs Appeal Over NLRB Recess Appointees*, Law360, by Sundar, S., 2/4/13; and *Company wants U.S. SC to consider constitutionality of recess appointments*, Legal Newline, by Karmasek, J., 2/5/13.

2 See, <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12a769.htm>.

3 See <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12a769.htm>; and see *Scalia Scraps Second Appeal Over NLRB Recess Appointees*, Law360, by Christophi, H. February 6, 2013.

4 See Press Release, Consumer Financial Protection Bureau Teams Up with Newark to Help Local Consumers with Questions and Complaints, dated 2/7/13; <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-teams-up-with-newark-to-help-local-consumers-with-questions-or-complaints/>.

5 Press Release, FTC, *Defendants in Alleged “Forensic Audit” Mortgage Scan Settle FTC Charges*, 2/7/13.

6 *Id.*

7 *Id.*

8 See Press

Release, [http://www.banking.senate.gov/public/index.cfm?FuseAction=Newsroom.PressReleases&ContentRecord\\_id=b6ca79eb-a57e-82c0-3beb-331f4a5f6be7&Region\\_id=&Issue\\_id=](http://www.banking.senate.gov/public/index.cfm?FuseAction=Newsroom.PressReleases&ContentRecord_id=b6ca79eb-a57e-82c0-3beb-331f4a5f6be7&Region_id=&Issue_id=).

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