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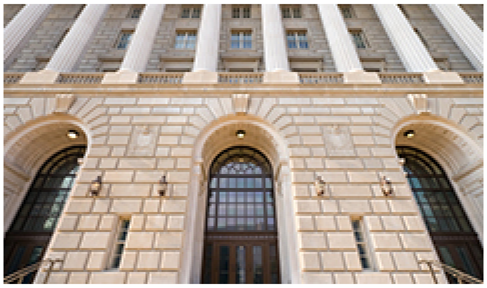

Federal district court sanctions CFPB for violations of discovery orders

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There was apparently a prize fight in Atlanta. Did you catch it?

A federal court in Georgia recently imposed sanctions on the Consumer Financial Protection Bureau (CFPB) after finding that the regulator engaged in a pattern of conduct that warranted substantial penalties. While the bureau is usually the accuser of wrongful conduct, it had some explaining to do in CFPB v. Universal Debt Solutions.

The case started out like any other—the bureau was seeking enforcement penalties related to alleged violations of debt collection laws. Once discovery was underway, however, it was the bureau that became the accused when the defendants alleged gamesmanship with witness testimony, refusal to substantiate enforcement allegations and disregard of the federal court's discovery orders.

Indeed, the tables had turned. More than two years of battle had apparently resulted in multiple efforts by the CFPB to frustrate the defendants' ability to engage in meaningful discovery. In awarding sanctions and addressing one of the allegations against the bureau, the court found that by improperly denying the existence of exculpatory evidence, the CFPB engaged in a "bad faith" attempt to frustrate the purpose of the accused parties' discovery rights.

Further, despite a prior warning to be forthright, a CFPB fact witness simply read from a prepared script, without actual knowledge of the allegations, and then refused to answer certain questions (withholding key information by asserting claims of privilege). The court ruled that these tactics demonstrated blatant disregard for its instructions.

One might ask: How might the CFPB be sanctioned for willful violations of discovery orders? After all, the bureau is an arm of the federal government. How would a court send a message that might actually have an impact?

The industry is certainly taking notice of the answer. The court dismissed four essential counts of the underlying enforcement action. As a result, one of the key defendants was dismissed entirely from the case. Thus, the ability of the CFPB to actually prosecute and win an enforcement action is contingent on its willingness to engage in a fair fight, pursuant to the established rules of civil procedure. Whether that defendant should have been punished was irrelevant. The fact that the bureau would not engage in a fair fight became the dispositive issue.

When it takes a case to court, the CFPB is subject to the same rules as everyone else. This case is a reminder that when engaging in a court battle with the CFPB, it will be fought on a level playing field. That fact is good cause for a sigh of relief.

The full court opinion can be found here.

