

# Lender Still on the Hook Despite CFPB Consent Order

By: Jann Swanson | Fri, Oct 31 2014, 11:07 AM

A recent motion filed by a mortgage company to dismiss portions of a class action suit against it shows, according to an attorney familiar with the matter, that a consent order settling charges brought by the Consumer Financial Protection Agency (CFPB) "**does not** necessarily bring finality to the issues it covers." At least not in the absence of releases from affected consumers.

Barbara S. Mishkin, writing in the *Ballard & Spahr CFPB Monitor* says that earlier this week Castle & Cooke Mortgage, LLC filed a **motion to dismiss** three counts in a class action complaint filed against it in federal court last July. The named plaintiff, a consumer, had received redress under a consent order from CFPB against Castle & Cooke finalized in November 2013. The order had settled charges that the mortgage company had violated the Regulation Z loan originator compensation rule by establishing a quarterly bonus system giving loan officers greater bonuses for originating loans at higher interest rates. CFPB maintained that the bonus system was not reflected in the company's compensation agreements and while payroll records reflected the bonuses there was nothing indicating what portion of a bonus was attributable to which loan

Castle & Cooke **did not admit** to any of the Bureau's allegations but did consent to a judgment of equitable monetary redress of \$9.23 million against the company and two of its officers and to a civil money penalty in the amount of \$4.0 million. Mishkin said at the time Ballard & Spahr had commented that the size of the judgment "was likely intended by the CFPB to send a strong message to the mortgage industry that violations of the LO Compensation Rule will be addressed in a serious manner."

The consent order stated that the redress provided under the judgment "**shall not limit consumers' rights** in anyway" and this was noted by the named plaintiff in his suit on behalf of a nationwide class defined to include "all individual consumers who on or after April 1, 2011 obtained a mortgage loan from the company in which the company paid a bonus or other compensation based on the loan terms other than the amount of credit extended or paid a referral fee or split a charge other than for services actually performed."

According to Mishkin's article, the complaint alleges that the company's violations entitle the named plaintiff and class members to actual and statutory damages, alleging the bonus payments were unlawful **referral fees** or fee splits under RESPA entitling the plaintiff and class members to three times the loan origination and settlement charges they paid to the mortgage company. The complaint also includes claims that the bonuses violated the Utah Residential Mortgage Practices and Licensing Act and for some members of the class, California's Unfair Competition Law (UCL).

On Monday the mortgage company filed for dismissal of the RESPA, Utah and California claims. As to RESPA the company argues that the complaint alleges no facts showing the company paid a referral fee in connection with the named plaintiff's loan or paid anyone for services not provided. The motion cites Ninth Circuit precedent that RESPA Section 8 does not prohibit overcharges nor does the named plaintiff have a RESPA claim to the extent he is trying to allege that he was charged too much for his loan. The company argues that the plaintiff's Utah unjust enrichment and California UCL claims should be dismissed because his TILA/Regulation X and other claims provide an adequate legal remedy. As a further reason for dismissal of the UCL claim, the company argues that only injunctive relief and restitution are available under the UCL and plaintiff's claim is one for damages rather than restitution.

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