

[Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—S.D.N.Y.: RD Legal Funding moves to dismiss New York's CFPA claims, \(Aug. 7, 2018\)](#)

Banking and Finance Law Daily Wrap Up

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By [J. Preston Carter, J.D., LL.M.](#)

RD Legal Funding submitted a letter motion to the U.S. District Court for the Southern District of New York asking it to dismiss the New York Attorney General's Consumer Financial Protection Act claims against it for lack of subject matter jurisdiction, based on the court's June order finding the CFPA structure unconstitutional.

Constitutionality decision. The AG and Consumer Financial Protection Bureau sued RD Legal Funding, two other companies, and an associated individual, claiming that they violated state laws and the CFPA in the process of exchanging structured settlements for lump-sum payments. The U.S. district judge decided that the Bureau's single-director-removable-only-for-cause structure is unconstitutional, meaning the Bureau has no authority to sue the company. She also decided that the organizational section of the CFPA cannot be severed from the remainder of that Act; as a result, she ruled that the entire CFPA is unconstitutional. However, the judge then declined to dismiss the suit in its entirety, saying that the CFPA—which she had said was unconstitutional—allows the AG to bring an enforcement suit in federal court ([Banking and Finance Law Daily](#), June 22, 2018).

Joint letter to the court. In a July joint letter to the court, called for by the judge, the AG interpreted the judge's order as striking down the Bureau's structure but the not entire CFPA. In that way, the U.S. district judge still would have subject matter jurisdiction over the CFPA claims and supplemental jurisdiction over the state law claims. RD Legal Funding, however, indicated that there no longer is a basis for federal question jurisdiction and that it would address the issue in a separate motion ([Banking and Finance Law Daily](#), July 11, 2018).

Letter motion. RD Legal Funding's [letter motion](#) addresses the federal jurisdiction issue. The motion states that the court's June order struck each substantive provision of the CFPA that forms the basis of the AG's federal claims as well as the statutory provisions of Title X of the Dodd-Frank Act granting the AG enforcement authority over the CFPA. The motion noted that, as plaintiff, the AG has the burden to establish subject matter jurisdiction, and states, "Here, however, the entire basis for the NYAG invoking federal jurisdiction is Title X of the CFPA, which has been stricken." RD Legal Funding requests that the federal claims in the case be dismissed with prejudice, under Rule 12(h)(3) of the Federal Rules of Civil Procedure, and that the state law claims be dismissed without prejudice to being refiled in state court.

The case is No. 17-cv-890.

Attorneys: Hai Binh Thi Nguyen for the CFPB. Michael Dietz Roth (Caldwell Leslie & Proctor, PC) for RD Legal Funding LLC, RD Legal Funding Partners, LP and RD Legal Finance, LLC.

Companies: RD Legal Funding LLC; RD Legal Funding Partners, LP; RD Legal Finance, LLC

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