Banking and Finance Law Daily Wrap Up, ENFORCEMENT ACTIONS—N.D. Ill.: CFPB, Townstone oppose public advocacy groups on vacatur of settlement, (Apr. 17, 2025)

Banking and Finance Law Daily Wrap Up

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By Justin Marcus Smith, J.D.

Their joint brief contends the National Fair Housing Alliance coalition, as proposed *amici curiae* in the case, has ignored that the CFPB putatively targeted Townstone merely for the political views of its owner.

The Consumer Financial Protection Bureau (CFPB) and erstwhile enforcement target Townstone Financial, Inc. (Townstone) filed a joint brief opposing an *amicus* motion brought by numerous public advocacy groups led by the National Fair Housing Alliance. The advocacy groups do not agree with a CFPB decision to vacate a CFPB $105,000 final judgment by settlement entered against Townstone. The CFPB and Townstone said the case the CFPB had pursued against Townstone for seven years lacked, on First Amendment grounds, an evidentiary and legal foundation. The joint CFPB and Townstone brief maintains that the CFPB's action against Townstone represented a serious miscarriage of justice such that Fed. R. Civ. P. 60(b)(6) was the appropriate vehicle for vacatur relief. The CFPB attempted to clarify it had no evidence of actual discrimination (*CFPB v. Townstone Financial, Inc.*, No. 1:20-cv-04176 (N.D. Ill. Apr. 15, 2025)).

Background. In late March 2025, CFPB Acting Director Russell Vought and enforcement target Townstone Financial, Inc. filed a joint motion in the U.S. District Court for the Northern District of Illinois seeking vacatur of the final settlement between them. The settlement followed a CFPB lawsuit that accused Townstone of redlining. The vacatur motion argued the CFPB enforcement action leading to the settlement lacked a sufficient factual predicate and was affected by CFPB animus toward the constitutionally protected viewpoints of Townstone's owner (see *Banking and Finance Law Daily*, Mar. 27, 2025).

A group of public advocacy movants sought leave to file an *amicus* brief opposing vacatur. The movants included the National Fair Housing Alliance, Public Citizen, the American Civil Liberties Union, and numerous other advocacy groups. The advocacy groups have argued that CFPB Director Vought and others should not use Fed. R. Civ. P. 60(b) like a "magic eraser" to undo final judgments (see *Banking and Finance Law Daily*, Apr. 8, 2025).

Rule 60(b). In reply to the *amicus* motion, the CFPB and Townstone (the parties) filed a joint opposition brief arguing that the proposed *amici* cannot dispute the court has discretion to grant vacatur under Fed. R. Civ. P. 60(b) because that rule is "fundamentally equitable," "open-ended" and "flexible." The CFPB said the current opinion of its leadership, that the Townstone settlement was unjust, was not a mere "political" judgment. The current managerial judgment of CFPB leadership is that the settlement was legally and constitutionally infirm because the CFPB had improperly targeted Townstone for the political views of its owner.

The parties' brief continued that nothing in the decisions they cited suggested that the R. 60(b)(6) standard could be relaxed only when two parties agree to settle on appeal, albeit vacatur must also serve the public interest. The CFPB emphasized that the settlement was not a court decision on the merits and was not precedential. The CFPB continued that vacatur would not waste judicial resources, would not affect the interests of any private parties other than Townstone, and Townstone had no remaining obligations under the settlement. The CFPB added there was also no concern over which section of R. 60 to apply to a vacatur decision because the parties made their vacatur motion "well within one year of the judgment."

Bishop declaration. The CFPB argued the circumstances of the case were "truly extraordinary" whether or not the court were to apply the extraordinary circumstances test under R. 60(b)(6) or the more relaxed standard to

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vacatur. The CFPB referenced that Dan Bishop, senior advisor of the Office of Management and Budget, had submitted a declaration in support of the parties' vacatur motion. The CFPB said his declaration revealed the CFPB never had a valid reason to sue Townstone because the CFPB case "turned on an alleged statistical disparity in minority mortgage applications" and "six statements that represented a mere sixteen minutes out of 78 hours of total programming from Townstone's radio show."

According to the parties' vacatur brief, "a mere statistical disparity in applications is not actionable under ECOA." In addition, the CFPB said it never argued the alleged statistical disparity would be enough to sustain CFPB action and "admitted all along that this was a discouragement case under Regulation B." Assuming that was so, the CFPB said "the entire case hinged on the six statements" from the Townstone radio show, whereas the CFPB had "admitted internally" that most of the show content was "overtly political, and often highly critical of the Bureau."

The CFPB insisted here that agency attorneys had acted against Townstone only because they believed Townstone's CEO and employees had "engaged in wrong-think." The CFPB attempted to clarify it had "no evidence of actual discrimination or even complaints by any consumers, and in fact, Townstone both hired minority loan officers and engaged in outreach to minority communities."

Attorneys: Gregory Wood Jones for the Consumer Financial Protection Bureau. Sean Patrick Burke (Mattingly Burke Cohen & Biederman LLP) and Marx David Sterbcow (Sterbcow Law Group, LLC) for Townstone Financial, Inc. and Barry Sturner. Joshua Karsh (Mehri & Skalet PLLC) and Karla Gilbride (Public Citizen Litigation Group) as proposed amici curiae for ACLU of Illinois, American Civil Liberties Union, Chicago Lawyers' Committee for Civil Rights, Consumer Federation of America, Fair Housing Center of Central Indiana, HOPE Fair Housing Center, Metropolitan Milwaukee Fair Housing Council, National Association of Consumer Advocates, National Consumer Law Center, National Fair Housing Alliance, Open Communities, Public Citizen, and South Suburban Housing Center.

Companies: ACLU of Illinois; American Civil Liberties Union; Better Markets; Chicago Lawyers' Committee Civil Rights; Consumer Federation of America; Fair Housing Center of Central Indiana; HOPE Fair Housing Center; Metropolitan Milwaukee Fair Housing Council; National Association of Consumer Advocates; National Consumer Law Center; National Fair Housing Alliance; Open Communities; Public Citizen; South Suburban Housing Center; Townstone Financial, Inc.

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