

Banking and Finance Law Daily Wrap Up, ENFORCEMENT ACTIONS— D.D.C.: FDIC presses court to shut down attempt to stop administrative proceeding, (Aug. 26, 2024)

Banking and Finance Law Daily Wrap Up

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By Jeff Williams

The agency rejected the argument that the FDIC does not have the authority to pursue enforcement against the NCLA's client and that the action violates his Seventh Amendment rights.

The Federal Deposit Insurance Corporation (FDIC) has filed a combined opposition [brief](#) and motion to dismiss asking the U.S. District Court for the District of Columbia to dismiss a motion the New Civil Liberties Alliance (NCLA) filed seeking a temporary restraining order (TRO) to block the FDIC from continuing an administrative enforcement action against its client, John C. Ponte, who was included in a complaint the agency filed against officials of Rhode Island-based Independence Bank. That complaint alleged that the officials "directly or indirectly violated regulations and recklessly in unsafe or unsound practices" in connection with the bank. Those alleged infractions and practices occurred from June 2017 through 2019, the FDIC alleged in the complaint, which also said Ponte "caused the Bank to suffer more than a minimal loss or other damage" and received "financial gain or other benefit" as a result (*Ponte v. Federal Deposit Insurance Corporation*, No. 1:24-cv-02379 (D.D.C. Aug. 23, 2024)).

In its complaint (see [Banking and Finance Law Daily](#), Aug. 20, 2024), the NCLA called the FDIC complaint an "unlawful administrative proceeding," arguing the agency is exceeding the scope of its authority because Ponte is not a banker, "nor does he own or control any banks, which is the FDIC's sole statutory purview." The FDIC said in its [opposition](#) that Ponte has lost two previous attempts to enjoin the enforcement proceeding and failed to pursue appeals of either decision. Ponte has identified "no reason why the Court may, or should, waste its resources relitigating this issue," the agency said.

The TRO motion and complaint should both be dismissed, the agency said, taking issue with Ponte's stance that the FDIC does not have authority to pursue the enforcement action and that he is being unconstitutionally deprived of a jury trial. In addition, the FDIC said, Ponte cannot show that he would suffer irreparable harm or that he has a likelihood of succeeding on the merits in the case.

Section 8 of the Federal Deposit Insurance Act (FDIC Act) provides the FDIC with the authority to bring enforcement actions against institutions that engage in unsafe and unsound practices or violate laws and regulations, the agency said. In addition, it stated, Congress "carefully crafted" provisions that grant district courts authority to enforce agency actions or orders and enjoin or stay some temporary or interim agency remedial actions, suspension of deposit insurance, temporary cease-and-desist orders, and suspension or prohibition of institution-affiliated parties pending completion of administrative proceedings.

"Outside these specifically delineated circumstances, federal courts lack subject matter jurisdiction to interfere with FDIC enforcement proceedings," the FDIC said.

Among its arguments, the FDIC told the district court that Ponte's claim that the agency's action violates the Seventh Amendment because "many courts" have ruled that no jury is required to adjudicate restitutionary remedies. The FDIC noted it is seeking restitution related to approximately 1,500 high-risk loan applicants improper or excessive fees and extending undisclosed bridge loans to high-risk applicants that arranged to be paid when Small Business Administration loans they applied for were approved.

In addition, the FDIC said, "Simply put, an allegation of a constitutional violation is not a free pass to clear the high bar of establishing irreparable harm," adding that dismissal of the case is warranted because none of the

claims in Ponte's complaint "state a claim upon which relief can be granted, as all of them, even accepting the truth of their factual allegations, are legally deficient."

Attorneys: John Julian Vecchione (New Civil Liberties Alliance) for John C. Ponte. Andrew Jared Dober for the FDIC and Rohit Chopra.

Companies: Independence Bank; New Civil Liberties Alliance

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