

THE
NATIONAL LAW REVIEW

CFPB defends judgment in enforcement action against biweekly mortgage payment companies

Wednesday, January 17, 2018

Despite the CFPB's change in position after Mick Mulvaney's appointment regarding the need for Nationwide Biweekly Administration to post a bond to stay execution of the \$7.9 million judgment obtained by the CFPB, [the CFPB has opposed](#) Nationwide's motion to alter, amend, or vacate the judgment.

In its action against Nationwide, another related company, and the companies' individual owner, the CFPB alleged that the defendants engaged in abusive and deceptive acts or practices in violation of the CFPA UDAAP prohibition by making false representations regarding the costs of a biweekly mortgage payment program and the savings consumers could achieve through the program. A California federal district court [refused to award restitution](#) sought by the CFPB but did award the CFPB approximately \$7.9 in civil money penalties.

Although it had initially filed a response opposing the defendants' motion to stay execution of the judgment without posting a bond, [the CFPB filed a notice](#) following Mr. Mulvaney's appointment as Acting Director stating that it was withdrawing its response and took "no position on whether the court should require a bond pending the disposition of the defendants' anticipated post-trial motions."

In its opposition to the defendants' post-trial motion to alter, amend, or vacate the judgment, the CFPB rejected the defendants' argument that the CFPB was required to establish rules interpreting what constitutes deceptive acts or practices before bringing an enforcement action. The CFPB stated that "nothing the CFPA mandates that the Bureau engage in rulemaking prior to commencing a lawsuit against entities engaged in violations of Federal consumer financial law." It also rejected the defendants' argument that the deception standard in the CFPA is unconstitutionally vague, asserting that the defendants "cannot credibly argue that they were not on notice that the CFPA prohibited deceptive and abusive acts or practices in connection with the sale or offering of consumer financial products or services like [the defendants' biweekly payment program]."

Also rejected by the CFPB was the defendants' argument that they were entitled to relief from the judgment based on their current inability to pay. The CFPB stated that the court "appropriately imposed a \$7.93 million penalty commensurate with the size of the business as it was during the lawful conduct."

It seems likely that, in deciding to defend its judgment, the CFPB deemed the case one that involved garden-variety deception claims rather than one in which the CFPB had taken aggressive positions regarding its jurisdiction or in its theory of liability. The CFPB's approach also appears to be consistent with statements made by Mr. Mulvaney that he planned to review pending CFPB litigation on a case-by-case basis.

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Article By [Ballard Spahr LLP](#)
[Alan S. Kaplinsky](#)
[Consumer Finance Monitor](#)

[Real Estate](#)
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