CFPB Notches CashCall “Win” with Significant Loss

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On January 19, 2018, the U.S. District Court for the Central District of California issued its findings of fact and conclusions of law in *CFPB v. CashCall, Inc.*, following the bench trial that occurred in late 2017. Although the Bureau technically “won” the case, the court’s decision represents a significant setback for the Bureau in terms of its available remedies.

By way of background, CashCall was the assignee of online loans that were purportedly originated under the laws of a federally recognized Indian tribe. The CFPB alleged that CashCall was the “true lender” for such loans and obtained partial summary judgment on this issue in 2016. A trial solely on the issue of remedies followed, and the court’s opinion solely concerned whether the CFPB was entitled to the nearly $300 million it sought in combined restitution and penalties.

The Bureau achieved a mere fraction of the relief sought a $10 million civil money penalty based on an unintentional violation of law. Significantly, the Bureau obtained *no restitution* for consumers based on the court’s conclusion that the Bureau had not proven that CashCall *intended* to mislead consumers. This holding represents a significant reversal of prior Bureau cases as well as those brought by the Federal Trade Commission. In the past, the FTC and CFPB have only had to show that a misrepresentation was “widely disseminated” and that consumers purchased the product before courts have ordered full restitution. Here, however, the court imposed an additional element of intent. Similarly, both the Bureau and the FTC have traditionally been allowed to presume that consumers relied on a misrepresentation, but the district court here required evidence that CashCall’s status as the “true lender” affected consumers’ decisions to enter into the loans. Because the Bureau provided neither evidence of intent nor evidence that consumers’ purchasing decisions were affected by the alleged misrepresentations, restitution was inappropriate.

Finally, a significant portion of the trial focused on CashCall’s reliance on its counsel’s advice in establishing its lending model. The court largely vindicated this approach, finding that CashCall’s counsel had provided reasonable advice regarding the risks of CashCall’s lending model and that it did not become apparent that the model was unlawful until the CFPB filed its case. Indeed, the court deemed the CFPB’s enforcement theory “unique.” This finding, in turn, led the court to assess only a Tier One penalty against CashCall (the lowest penalty available and one that applies only to unintentional violations).

In another administration, we might expect an appeal from the CFPB regarding these significant aspects of the case. Yet with the Bureau now under the leadership of Acting Director Mulvaney, it

is unclear whether the Bureau will appeal the decision. If it stands, the court's ruling will remain a hurdle for both the Bureau and the FTC to overcome in the future.

CFPB v. CashCall, Inc., CV 15-07522, 2018 U.S. Dist. LEXIS 9057 (C.D. Cal. Jan. 19, 2018).