



News

CFPB Denies Petition From Credit Repair Org. to Set Aside CID

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In the September 8, 2020 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz reviewed the Consumer Financial Protection Bureau's recent denial of a petition from a credit repair organization to set aside a civil investigative demand it had received from the Bureau, disagreeing with the premise that the CFPB's request was unlawful because it could not bring an enforcement action against the company:

The CFPB's investigative authority is extremely expansive, and we have observed that its enforcement ability is powerful. The CFPB investigative process often starts with a broad Civil Investigative Demand ("CID"). If the recipient objects to the CID, the objection is decided by the CFPB Director. Not surprisingly, the objections are often overruled. At that stage, the recipient either responds to the CID or seeks help in the federal courts.

Another example of this process is playing out with Daniel A. Rosen, Inc., d/b/a Credit Repair Cloud ("CRC"). The CFPB issued it a CID for information on whether CRC requested or received prohibited payments from consumers in violation of the Telemarketing Sales Rule ("TSR"), or provided substantial assistance in such violations that could violate the Consumer Financial Protection Act ("CFPA").

CRC objected to the CID, arguing that the CFPB could not bring an enforcement action against it under either the TSR or the CFPA. Director Kraninger considered the objection. The Director stated that a challenge to the relevance of a CID raises two questions: (1) whether the Bureau has the authority to investigate the topics described in the CID's Notification of Purpose, and (2) whether the CID requests information that is relevant to those topics. The objection focused on the first question, and it recently was denied.

In the Decision and Order, the Director pointed out that the CFPB's investigation authority is broader than its enforcement authority. She also noted that the company made a number of fact-based claims, such as it "does not interact with consumers," and "has no role in facilitating or assisting a credit repair company requesting or receiving any payment," but fact gathering is the purpose of the CID. Director Kraninger declined to resolve factual issues when it is in the process of gathering relevant information. We will now see if CRC responds to the CID and seeks court intervention.

Attorneys

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