

Court Rules Against Consumer Financial Protection Bureau - Says Agency Structure is Unconstitutional

October 13, 2016 - A ruling from the District of Columbia Court of Appeals could force a restructuring of the CFPB. The ruling by three judge panel from the court has made the agency's structure unconstitutional.

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Most federal regulatory agencies are managed by a board of commissioners who are presidentially appointed. In order for these agencies to issue rulings that are legally binding, a majority of commissioners must be in agreement. Furthermore, due to rulings from the Supreme Court, boards of commissioners need to have enough members to reach a quorum when they issue rulings. For instance, if a board of commissioners has five members when fully staffed, its rulings have no legal effect if three of the positions on the board are vacant.

But the CFPB is different. Instead of a board of commissioners it has a single managing director. And because that director is only appointed once every five years and can't be fired, not even the president has any power over the agency or its managing director. This means that nobody in the executive or congressional branches of government oversees the agency. The court made the determination that this structure violates the Constitution.

The court's decision is important because the CFPB has broad powers to regulate banks and the economy. And the agency has used that power to impose fines and issue regulations. Those decisions - both prior and future - are now in question.

It is quite likely that the ruling will be appealed by the Obama administration. But the outcome of such an appeal is quite uncertain. This is especially true given the fact that the Supreme Court still has a vacancy since the death of Justice Scalia. If the court was to have a tie ruling on this issue, the lower court ruling would stand.

In that event, the agency would have to be restructured in such a way that it has either a board of commissioners or so that the managing director would report directly to someone in the White House. Either way, the agency would become accountable to someone for the rulings it issues.Â

byJim Malmberg

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