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Joel Marcus  
Deputy General Counsel  
Federal Trade Commission  
(202) 326-3350

On Jul 28, 2021, at 5:19 PM, Bressler, Steven (CFPB) <[Steven.Bressler@cfpb.gov](mailto:Steven.Bressler@cfpb.gov)> wrote:

Joel,

I write about two things.

First – we got a terrible decision from a panel of the Seventh Circuit last Friday. In an appeal from an enforcement action against two mortgage-modification law firms and their principals, *CFPB v. Consumer First Legal Group*, No. 19-3396, 2021 WL 3123735 (7<sup>th</sup> Cir. July 23, 2021), the court (Wood, Easterbrook, & St. Eve) affirmed the district court's rulings that defendants violated Regulation O, including by collecting illegal upfront fees and making various deceptive misrepresentations. In so doing, the court affirmed that defendants did not qualify for Regulation O's limited exemption for attorneys because they were not engaged in the practice of law. *See* 12 C.F.R. § 1015.7. Although the court found that the Regulation O exemption did not apply, it nonetheless went on to state (this part of the opinion is lengthy but troubling dicta presented as a holding) that parts of that provision, originally promulgated by the FTC then transferred to the Bureau pursuant to the CFPB, exceeded the Bureau's authority to issue and were thus invalid. The court's reasoning turned on a narrow and, in our view, wrong reading of 12 U.S.C. § 5517(e), which limits the Bureau's authority over the practice of law.

The panel went on to vacate each part of the district court's remedial order. Most troubling, the court relied on *Liu v. SEC* to hold that the equitable restitution the district court awarded based on defendants' net revenues must be reduced to account for defendants' legitimate business expenses. The holding seems to be the *Liu* applies not only outside the securities law context of *Liu* itself, but to any kind of equitable remedy. So, e.g., a scammer who's an incompetent businessman and doesn't turn a profit would be immune from paying equitable restitution. The court remanded to the district court for further proceedings on remedies.

I wanted to make you aware of this case and also solicit your views on whether we should seek panel rehearing, or rehearing en banc; and, if we do, if the FTC would consider filing something in support on either or both issues. The *Liu* question is presumably a bigger deal for you, but as you know FTC did originally promulgate Reg O and retains enforcement authority, so it might also be of interest.

And, second – I wondered if you have any updates from the FCC or otherwise on *Henderson v. Source for Public Data*.

Thanks very much,  
Steve

Steven Y. Bressler  
Acting Deputy General Counsel for Litigation & Oversight | Legal Division  
Office: (202) 435-7248 | Mobile: (202) 285-1872

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[consumerfinance.gov](http://consumerfinance.gov)

FTC\_OGC-00004774