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Court Dismisses PPP Agent Fee Action

Today, in the first decision on a motion to dismiss in a case brought by an “agent” seeking fees from lenders for allegedly helping small business borrowers obtain loans under the Paycheck Protection Program, Judge Wetherell in the Northern District of Florida granted defendants’ motion to dismiss all claims. As to the “central issue of first impression . . . whether Plaintiff and others like it are entitled to any portion of the fees paid by the federal government to lenders like Defendants who were tasked with handing out hundreds of billions of dollars of ‘loans’ under the [PPP],” Judge Wetherell held that “[t]he short answer is ‘no.’”

Judge Wetherell reasoned that (i) “[t]he CARES Act does not require lenders to pay agent’s fees absent an agreement to do so (or create a private right of action for payment)” and “merely provides that the agent cannot collect a fee from anyone in excess of the amount established by the SBA”; (ii) the Interim Final Rule implementing the CARES Act “does not require that lenders share their fees” but “simply explains that, if any agent is to be paid a fee, the fee must be paid by the lender from the fee it receives from the SBA”; and (iii) the “existing Section 7(a) program requirements,” including that a loan applicant or agent execute a compensation agreement on Form 159, “do not conflict with the [Rule]” and therefore “apply to agents who assist borrowers in obtaining loans under the PPP.” Judge Wetherell also dismissed plaintiff’s state law claims because they all relied on plaintiff’s (erroneous) interpretation of federal law.

Judge Wetherell concluded the decision by observing that it was “highly unlikely that Plaintiff will be able to further amend the complaint to state a claim,” and that plaintiff could instead “try its luck at the Eleventh Circuit on the legal issues in this case.”

The full decision is available [here](#)

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