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King & Spalding Secures Full Settlement of CFPB and NYAG Enforcement Proceedings for \$1 Penalty

Over the past six years, the CFPB and NYAG have pursued hundreds of millions of dollars from one of our finance company clients, asserting a number of consumer protection claims across multiple jurisdictions.

Last week, King & Spalding partners David Willingham, Michael Roth, Jeff Hammer, and Sam Cortina resolved these actions for a mere \$1 penalty, with no admission of liability or finding of fault. No other affirmative payments were required and the settlement was approved by the court on November 28, 2022.

This victory was the direct result of a strategic advocacy plan that consistently exposed the inability of the state and federal agencies to prove the truth of their allegations.

THE BUSINESS

Our client (a series of companies collectively referred to as “RD Legal”) are legal finance companies whose businesses include the purchase of portions of plaintiffs’ proceeds from legal settlements or judgments. The transactions at issue included the purchase and sale by RD Legal of proceeds from a government fund that provided awards to those affected by the 9/11 terrorist attacks, a judgment entered in favor of those affected by a 1983 attack on the Marine barracks in Beirut, and a settlement agreement in favor of former NFL players. These transactions provided sellers with immediate liquidity to settle important financial liabilities (e.g., avoid foreclosure, pay outstanding medical bills, resolve tax liabilities), all while facing uncertainty of recovery from the relevant judgments and funds.

CFPB AND NYAG ENFORCEMENT

In early 2017, the CFPB and NYAG filed an enforcement action against RD Legal in the Southern District of New York, on the legal theory that RD Legal’s transactions were usurious loans and extensions of credit with



little or no collection risk. The regulators made it clear that this was an effort to put RD Legal out of business. King & Spalding was tasked with challenging the CFPB’s and NYAG’s claims on the merits, both factually and legally.

Initially, the CFPB and NYAG’s claims encompassed all facets of RD Legal’s fundings, and through various procedural developments the matter moved between the SDNY, the Eastern District of Pennsylvania, the Third Circuit, the Second Circuit, and the New York State Supreme Court.

RD Legal engaged in pointed and deliberate discovery to show that many of the enforcement agencies’ allegations—and in turn, claims—had no basis in fact and were potentially subject to Rule 11 sanctions.

Throughout six years of ardent litigation, RD Legal succeeded in having the CFPB’s structure declared unconstitutional, and NYAG’s claims significantly narrowed by the state court, which led to the NYAG voluntarily dismissing its entire proceeding in state court with prejudice as to all claims relating to the Beirut bombings, and the CFPB and NYAG amending their complaint in federal court to dismiss all claims related to NFL players.

Finally, in late November, RD Legal secured a final settlement of all remaining claims for a mere \$1 penalty and an agreement not to collect on some minor outstanding obligations. Significantly, the resolution does not require any other payments by RD Legal and no further monitoring of its business. RD Legal did not admit any of the allegations or fault.

KEY TAKEAWAY

King & Spalding has developed a complex and successful playbook for defeating CFPB and NYAG enforcement proceedings. Regardless of the specific enforcing agency, jurisdiction, or claims—we believe that clients must identify a strategic discovery plan early in the litigation that forces the applicable agencies to prove the truth of their allegations. Clients must also be prepared to exercise disciplined patience to execute that plan, despite changing jurisdictions or other procedural hurdles that may be out of their control. While agencies may undoubtedly have the upper hand during initial phases of litigation (e.g., conducting limitless pre-filing investigations) our experience in these matters demonstrates that agencies’ unfounded allegations and press releases may be successfully turned against them to the direct and substantial benefit of our clients.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,200 lawyers in 23 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

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