

Financial Services Bulletin

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Equal Credit Opportunity Act Lawsuit Against Bank Dismissed

On March 15, 2005, the United States District Court for the Middle District of Tennessee dismissed a lawsuit alleging violations of the Equal Credit Opportunity Act (ECOA) against a regional bank represented by Waller Lansden. The Court determined that the plaintiff organization, the Rainbow/PUSH Coalition (RPC), was not a proper plaintiff to sue the bank under that Act.

RPC had alleged in its complaint that the bank's credit pricing system for dealer indirect automobile loans, although facially neutral, unlawfully discriminated against African-American consumers because it resulted in a disparate impact against them. An "aggrieved applicant" can sue a "creditor" under the ECOA for damages resulting from the alleged violation or for an injunction to enforce the Act. Importantly, however, an "applicant" is defined as someone who applies to a creditor directly for an extension, renewal, or continuation of credit, or who applies indirectly for credit by use of an existing credit plan. As the Court wrote: "These statutory provisions indicate that Congress meant to protect those individuals who actually apply for credit."

The Court found no evidence that RPC itself had applied for credit from the bank "such that it could be an 'aggrieved applicant' in its own right," and thus, that it "does not fall within the zone of interests Congress meant to protect when enacting the ECOA." The Court next determined that, even though third parties sometimes can assert the rights of others, RPC could not show such a close relationship with the individuals who actually may have been aggrieved applicants. Nor could RPC show that those individuals faced a hindrance to bringing a lawsuit themselves such that RPC could stand in their shoes and bring the lawsuit. Finally, the Court held that the stated purpose of RPC as an association was not germane to remedying alleged violations of the ECOA, and that RPC "has no particular closeness to the allegedly aggrieved applicants identified" in the lawsuit.

This is an important decision for the financial services industry in that, of the approximately dozen ECOA lawsuits filed in federal court in Nashville in the past three years (resulting in multiple millions of dollars in attorneys fees for the plaintiffs' lawyers), it is only the second time the

federal court has dismissed an ECOA lawsuit. In July 2003 Judge Todd Campbell granted summary judgment in favor of AmSouth Bank. All of the other ECOA lawsuits filed in federal court in Nashville either have settled or (for the one case that was tried) have resulted in a decision favorable to the plaintiffs.

Joseph A. Woodruff and Mark H. Wildasin, members of Waller Lansden's Financial Services litigation practice, represented the bank defendant in both lawsuits dismissed by the federal court.

For more information on the Equal Credit Opportunity Act lawsuit or for any other questions, please feel free to contact Joseph Woodruff at (615) 850-8485, Mark Wildasin at (615) 850-8692, or any other member of Waller Lansden's Trial and Appellate Practice.

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