Justice Department Tells Court that CFPB Structure is Unconstitutional

March 28, 2017 - In case you missed it, the Department of Justice is now under new management, and it shows. Last year while under the Obama administration, the DOJ filed a court brief supporting the current structure of the Consumer Financial Protection Bureau. This past week, the DOJ filed another brief in the same case. This one argues that the agencies current structure is unconstitutional.

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In a case known as PHH Corp v. CFPB, the plaintiff in the case sued, claiming that the agency is unconstitutional because it has virtually no oversight. Unlike other government agencies, the CFPB's director can't be fired or replaced by the president, yet the agency has almost unlimited power over the financial services industry. About the only remedy to remove a bad director would be through impeachment by congress.

Last year, a three judge panel of the DC Court of Appeals ruled in favor of the plaintiff in the case and said that the agency needed to be restructured; replacing its current director with a commission or by having the director report to the president. The CFPB appealed that ruling and the case will be reviewed in May by all of the judges on the DC Court of Appeals. This is known as an en banc hearing.

Regardless of how the May proceedings go, there is a good chance that the case will wind up with the US Supreme Court for a final determination. Both parties in the case have stated that they intend to continue on with the case if there are rulings against them. Now that the Justice Department has come out in support of PHH Corp's position, there is a chance that congress and the administration will work to overhaul the CFPB prior to the case being resolved by the courts.

byJim Malmberg

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