DC Court of Appeals Appears Divided on Constitutionality of CFPB

May 25, 2017 - In October of last year, a three judge panel, selected at random, ruled that the structure of the Consumer Financial Protection Bureau is unconstitutional. The agency works under a single director who was appointed by former President Obama but who can't be fired by President Trump except for cause; meaning that the agency can't be supervised by the executive branch.

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Complicating matters further, the CFPB's budget is guaranteed by law. The agency was established under the Dodd-Frank financial services law. And Dodd-Frank has language in it that requires CFPB funding from the Federal Reserve, and forbids the Federal Reserve from denying agency funding requests. This means that the agency isn't supervised by congress.

For these reasons, the Court of Appeals determined that the CFPB's structure violated the Constitution. But the CFPB appealed the ruling and the court agreed to rehear the case En Banc - meaning, in front of all eleven judges who are members of the court.

Yesterday, the second hearing took place in the case of PHH Corp v. CFPB. PHH is a mortgage lender that was fined more than $100 million by the CFPB. Instead of paying the fine, the company sued.

Based on the questioning, the court appears to be divided along partisan lines. Five of the judges are Republican appointees and six were appointed by Democrats, so it currently looks like the CFPB has a slight edge in the case with the court. But that isn't the entire story.

In October case, the Obama Administration supported the CFPB in the case. The Trump Administration supports PHH. In the hearing yesterday, a Justice Department attorney joined oral arguments against the CFPB.

Regardless of what the court decides the ruling will almost assuredly wind be appealed to the Supreme Court.
byJim Malmberg
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