Court Grants Summary Judgment to Class in Unauthorized Practice of Law Class Action

03.18.2014

A federal district judge has concluded that a national mortgage broker engaged in the unauthorized practice of law by hiring nonlawyers to close mortgage-loans for West Virginia borrowers.

The judge, the Hon. John P. Bailey of the United States District Court for the Northern District of West Virginia, granted partial summary judgment to a class of nearly 700 West Virginians who obtained Home Loan Center, Inc. loans that were closed by notaries public. In his ruling, Judge Bailey held that "the closing of real estate loans by persons who are not licensed attorneys, who are not acting under the direct supervision of a licensed attorney, and who are not a bona fide full-time lay employee performing legal services for his or her regular employer constitutes the unlawful practice of law[.]" According to the ruling, the broker's "use of a notary [to close loans] foreclosed the opportunity that the plaintiff would have had to ask questions about the documents or the terms of the loan, which, in [the plaintiff's case] resulted in his refinancing to a higher interest rate than he had prior to the refinancing."

Judge Bailey also granted summary judgment to the class on their claim that Home Loan Center violated state law by overcharging borrowers for closing services performed by the notaries.

The case was brought by West Virginia resident Lijkel Dijkstra, represented by Bailey Glasser lawyers Jonathan Marshall, John Barrett and Patricia Kipnis, and Michael Adams of Hinerman & Associates of Weirton, West Virginia.

The case remains pending for purposes of determining the appropriate statutory penalty and damages. The case is styled *Dijkstra v. Carenbauer*, No. 5-11-CV-152 (N.D. W. Va.). The summary judgment order was issued on February 26, 2014. The opinion may be found at 2014 WL 791140 (N. D. W. Va. Feb. 26, 2014).

BAILEY GLASSER LLP

COURT GRANTS SUMMARY JUDGMENT TO CLASS IN UNAUTHORIZED PRACTICE OF LAW CLASS ACTION

Attorneys

John W. Barrett

Patricia Mulvoy Kipnis

Jonathan R. Marshall

Practice Areas

Class Actions