



December 8, 2020

VIA ECF

Hon. Kenneth M. Karas
Charles L. Brieant Jr. Federal Building & Courthouse
300 Quarropas Street
White Plains, NY 10601

*Re: CFPB v. Law Offices of Crystal Moroney, P.C., Case No. 7:20-cv-3240 (KMK)
Response to CFPB's Supplemental Letter to Its Opposition to
Motion to Stay Pending Appeal*

Dear Judge Karas:

On December 3, 2020, Petitioner CFPB filed a Supplemental Letter (ECF No. 43) to its Opposition (ECF No. 35) to Respondent Law Offices of Crystal Moroney, P.C.'s Motion to Stay Pending Appeal (ECF No. 34). Petitioner's supplemental filing advances arguments related to the merits of CFPB's enforcement action—merits upon which this Court has already ruled. To be clear, the pending Motion is not for *reconsideration*; it is to *stay*. CFPB's supplemental briefing, therefore, is immaterial to Respondent's request that the Court maintain the *status quo* and prevent irreparable harm to Respondent posed by pre-appeal compliance with this Court's Order.

CFPB's Supplemental Letter has two principal flaws, aside from whether CFPB should have sought leave before filing the Letter. First, it asks the Court to apply the wrong standard of review for consideration of a stay pending appeal. Second, it does not offer the Court information relevant to the pending Motion, irrespective of the standard of review.

CFPB Asserts an Incorrect Standard of Review for Motions to Stay Pending Appeal

CFPB offered its supplemental filing "to notify the Court of recent authority relevant to ... Respondent's likelihood of success on the merits of its claims." Pet.'s Suppl. Letter, ECF No. 43 at 1 (Dec. 3, 2020). CFPB's characterization of the standard of review is flat wrong—motions to stay pending appeal do not require a "likelihood of success on the merits." Rather, the question this Court must answer is "whether the movant has demonstrated *a substantial possibility, although less than a likelihood*, of success on appeal[.]" *Gen. Mills, Inc. v. Champion Petfoods USA, Inc.*, No. 20-CV-181-KMK, 2020 WL 915824, at *2 (S.D.N.Y. Feb. 26, 2020) (emphasis added) (internal quotations and citations omitted). CFPB's December 3rd filing does not notify the Court of any recent authority

changing this standard; it merely restates the erroneous “likelihood of success” standard the Bureau advanced in its September 24th Opposition to Respondent’s Motion to Stay.

The Cases to Which CFPB Provides Notice Are Irrelevant to the Motion to Stay

CFPB notified this Court of two district court cases and one Second Circuit Summary Order that have no bearing on whether this Court should grant Respondent’s request for a stay pending appeal to the Second Circuit. Moreover, it cannot be inferred from these three decisions that there is a district court trend—and certainly not an appellate court trend—regarding CFPB’s post-*Seila Law* funding structure or the Director’s post-*Seila Law* ratification attempts.

For instance, *Bureau of Consumer Financial Protection v. Citizens Bank, N.A.*, No. 20-044, 2020 WL 7042251 (D.R.I. Dec. 1, 2020), cites *CFPB v. Law Offices of Crystal Moroney, P.C.* three times to support its holding that Director Kraninger validly ratified her prior unconstitutional acts and that CFPB’s funding structure is not unconstitutional. Slip Op. at 19, 24 & 34. Similarly, *Bureau of Consumer Financial Protection v. Fair Collections & Outsourcing, Inc.*, No. 8:19-cv-02817, 2020 WL 7043847 (D. Md. Nov. 30, 2020), cites *CFPB v. Law Offices of Crystal Moroney, P.C.* four times to support the same conclusions. Slip Op. at 8, 18 n.5 & 19. Because the Rhode Island and Maryland courts relied on *this* Court’s holding in *this* case, CFPB’s Supplemental Letter does not notify this Court of new authority, it simply reiterates *this* Court’s decision on the merits. That two district court judges in jurisdictions outside this circuit adopted this Court’s reasoning does not change Respondent’s probability of success before the Second Circuit on either of these issues.

The third case to which CFPB notified this Court is *CFPB v. RD Legal Funding, LLC*, No. 18-2743, -2860, -3033 & -3156, 2020 WL 6372988 (2d Cir. Oct. 30, 2020). *RD Legal Funding* is merely a Summary Order affirming, vacating, and remanding portions of *CFPB v. RD Legal Funding, LLC*, 332 F. Supp. 3d 729 (S.D.N.Y. 2018), as required by the Supreme Court’s *Seila Law* decision. Slip Op. at 4 (citing *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2208 n.12 (2020)). The Second Circuit remanded “for the district court to consider in the first instance the validity of Director Kraninger’s ratification of this enforcement action.” *Id.* The Summary Order explicitly left to the district court a decision on the merits of the ratification issue and provided no insight into how the Second Circuit views the merits of the appeal in *RD Legal Funding*, let alone the merits of the appeal in this case. Thus, the Second Circuit’s Summary Order has no bearing on the pending motion.

Conclusion

For the reasons set forth above, Petitioner’s Supplemental Letter does not notify the Court of any relevant recent authority which could aid the Court in deciding Respondent Law Offices of Crystal Moroney, P.C.’s request for a stay of the August 19 judgment, pending appeal.

Respectfully submitted,



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