

Insights

AMG CAPITAL MANAGEMENT V. FTC – WHAT HAPPENED AND WHAT’S NEXT?

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SUMMARY

In a unanimous ruling, the Supreme Court recently eliminated the ability of the Federal Trade Commission (“FTC”) to seek monetary relief in district court under § 13(b) of the Federal Trade Commission Act (“FTC Act”) – a power the FTC has been exercising since the 1970s.

What Happened?

In *AMG Capital Management, LLC v. Federal Trade Commission*, the FTC filed suit against Petitioner Scott Tucker under § 5(a) of the FTC Act for misleading consumers with certain terms of payday loans. Instead of first using the administrative proceedings available to the FTC under § 5 and § 19, the Commission sought a permanent injunction *and* equitable monetary relief (i.e., restitution and disgorgement) in federal court under § 13(b). The FTC did so notwithstanding that the statute expressly authorizes only a “temporary restraining order or a preliminary injunction” or a “permanent injunction.” See 15 U.S.C. § 53(b)(2). The district court directed Tucker to pay \$1.27 billion in restitution and disgorgement. The Ninth Circuit affirmed, citing circuit precedent interpreting the statutory text broadly to include the “relief necessary to complete justice, including restitution.”

Despite decades of practice and acceptance by many lower courts, the Supreme Court unanimously reversed and held that Congress did not intend the “permanent injunction” language of § 13(b) to grant the FTC the authority to obtain monetary relief directly in federal court. Relying on standard rules of statutory interpretation, the Court explained that the statute *explicitly* refers to *only* injunctions, and injunctions generally do not include awards of monetary relief. Although the Court had interpreted similar language in other statutes (the Emergency Price Control Act and the Fair Labor Standards Act) to encompass monetary relief, the Court held in its opinion that those prior cases did not purport to set forth a universal rule of interpretation and that in the instant case, § 13(b) as a whole indicates that a “permanent injunction” does not include this relief. Congress enacted other provisions that provide for monetary relief, like § 19, around the same time that it enacted § 13(b), but those provisions have important limitations and conditions regarding such

relief. The Court thus concluded: “It is highly unlikely that Congress would have enacted” these provisions if § 13(b) was intended to implicitly allow “the Commission to obtain that same monetary relief and more without satisfying those conditions and limitations.”

Moreover, the Court explained that more closely tying the FTC’s powers under § 13(b) to the statutory text “produces a coherent enforcement scheme”, closing its opinion with this observation:

Nothing we say today, however, prohibits the Commission from using its authority under §5 and §19 to obtain restitution on behalf of consumers. If the Commission believes that authority too cumbersome or otherwise inadequate, it is, of course, free to ask Congress to grant it further remedial authority.

What’s Next?

So what does this mean? At first blush, this decision will probably force the FTC to pursue monetary damages and civil penalties via the administrative proceedings called for under § 5(b) of the FTC Act. But the FTC may still have some tricks up its sleeve, which are not necessarily mutually exclusive:

- The FTC can [continue to pressure Congress](#) to amend § 13(b) to broaden the scope of relief available under the provision (see also the [FTC’s October 2020 letter to Congress](#)).
- The FTC also could promulgate more rules and strengthen existing ones under its rulemaking process (§ 18 of the FTC Act). Acting Commissioner Slaughter announced the formation of a new, centralized rulemaking group in the General Counsel’s office at the end of March. If the rulemaking group lays the groundwork to issue new rules, then the Commission will have the ability to bring civil suits seeking monetary relief under § 19(a)(1) (consumer redress) or § 5(m)(1)(A) (penalties) for violations of those rules. While developing such rules certainly will take time on the front end, once they are in place, the ability to enforce them through civil suits could lead to a dramatic increase in enforcement actions in federal courts.
- The Commission may also ramp up its administrative proceedings to secure more binding cease and desist orders. These orders would serve as precedent and could similarly be used to file civil suits for monetary penalties under § 19(a)(2) (consumer redress) or § 5(m)(1)(B) (the penalty offense, which has been dormant since the 1980’s, but which Commissioner Chopra has recently advocated resurrecting – see [this paper](#)).

Whatever the result of these efforts, in the meantime, for many types of cases the FTC will have to use its administrative process to seek monetary relief unless or until Congress amends the statute or new rules are promulgated. The administrative process is much slower and more complex than seeking monetary relief via § 13(b), and it is unclear what the consequences will be. It could be that the inefficiency of the process serves as a disincentive to the FTC to act in many cases, or the

potential for a lengthy and unpredictable (and therefore potentially more expensive) process deters bad conduct or motivates defendants to settle.

The FTC may also increasingly refer qualified cases to the Justice Department or Consumer Financial Protection Bureau, or collaborate more frequently with state attorneys general to seek monetary relief under the states' consumer protection statutes in appropriate cases.

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