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Freeman, et al. v. Quicken Loans, Inc.: Supreme Court Declines To Expand Consumer Protections Beyond Congress' Exact Words

Adhering to the exact wording of the Real Estate Settlement Procedures Act ("RESPA"), the U.S. Supreme Court held in a rare, unanimous decision that a violation of Section 8(b) of RESPA does not apply unless a charge for real estate settlement services is divided between two or more parties. It cannot be based upon a fee retained by only one service provider.

In *Freeman, et al. v. Quicken Loans, Inc.*, the plaintiff had alleged that certain fees paid to the lender were unearned because they did not result in a lower interest rate and the "loan origination fee" paid to the same lender was also unearned because it was no different from the lender's "loan processing fee." The Court's opinion, written by Justice Antonin Scalia, notes that RESPA Section 8(b) only prohibits entities from accepting any "portion, split or percentage of any charge made or received for the rendering of a real estate settlement service . . . other than for services actually performed."

The justices held that this statutory language "unambiguously covers only a settlement-service provider's splitting of a fee with one or more other persons." The Court rejected the borrowers' argument that Section 8(b) should be read to bar the charging of undivided unearned fees because it would further RESPA's goal of protecting consumers from unnecessarily high settlement charges. "Vague notions of statutory purpose," the Court wrote, "provide no warrant for expanding [the disputed] prohibition beyond the field to which it is unambiguously limited: the splitting of fees paid for settlement services."

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The decision reasoned that "Congress' use of different sets of verbs, with distinct tenses, to distinguish between the consumer-provider transaction and the fee-sharing one would be pointless if, as petitioners contend, the two transactions could be collapsed into one." According to the Court, limiting Section 8(b) to fee-splitting transactions "at least has the virtue of making it a coherent response [to fee splitting], rather than an incoherent response to the broader problem of unreasonably high fees."

In so ruling, the Court disregarded the U.S. Department of Housing and Urban Development's ("HUD") 2001 Statement of Policy — interpreting Section 8(b) to bar all unearned fees regardless of whether fees were split — and the interpretation advanced by the Consumer Financial Protection Bureau ("CFPB") in its *amicus* brief urging the Court to adopt the borrowers' interpretation of Section 8(b). Notably, the Court did not directly address what level of deference should be accorded informal agency documents like the HUD policy statement, explaining that HUD's analysis went "beyond the meaning that the statute can bear," and it

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would have been rejected even if it had accorded full deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

The *Freeman* decision demonstrates that administrative agencies cannot expand federal consumer protections beyond the express terms enacted by Congress, which some argue that the CFPB has been attempting to do. Future disputes over CFPB attempts to "add" protections to existing laws (perhaps concerning disparate impact issue related to the Equal Credit Opportunity and Fair Housing Acts) can be expected, and *Freeman* will be an important weapon for those disagreeing with the agency in such battles.