

CFPB Vacatur Bid Sheds Light On Agency Decision-Making

By **Jason McElroy** (May 8, 2025)

On March 26, the Consumer Financial Protection Bureau filed a motion, jointly with Townstone Financial Inc., to vacate the judgment and settlement in the enforcement action it settled with Townstone in November.

The motion is remarkable on its own, given the intense scrutiny of the action and the resources spent by the CFPB, including a successful appeal.

But the statements made in support of the motion to vacate are truly remarkable, confirming some long-held suspicions regarding bureau decision-making, and providing industry participants with hard-to-believe details about the inner workings of this specific enforcement decision.



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While the motion, even if successful, will not affect the U.S. Court of Appeals for the Seventh Circuit's precedent on the scope of the Equal Credit Opportunity Act, or ECOA, or any other active matter, it serves as a road map to the decisional process of the CFPB and likely provides insight into how other regulators make similar decisions.

Foremost, however, the filings demonstrate that government regulators are willing to move forward with enforcement actions where the underlying evidentiary foundation is weak if they deem the upside to be high enough.

Townstone Enforcement Action Overview

In 2020, the CFPB filed a lawsuit against Townstone and its owner, Barry Sturner, alleging violations of ECOA and its implementing regulation, Regulation B. The allegations claimed that Sturner made offensive comments on a radio show and podcast that unlawfully discouraged African Americans from applying for mortgages with Townstone.

The U.S. District Court for the Northern District of Illinois dismissed the complaint on Feb. 3, 2023, finding that ECOA does not address "prospective applicants." [1]

The CFPB appealed to the Seventh Circuit, which overruled the district court, relying on a provision of ECOA that provided authority to the attorney general to enforce ECOA against creditors "engaged in a pattern or practice of discouraging" applications. [2]

A few months after the Seventh Circuit's decision, on Nov. 1, 2024, the parties entered into a settlement agreement in which Townstone agreed to pay \$105,000 to settle the claims, but neither admitted nor denied any wrongdoing. [3]

The Motion to Vacate

The motion to vacate was filed jointly by the bureau and Townstone. [4] Relying on Federal Rule of Civil

Procedure 60(b)(6), which "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice," the bureau states that it undertook a review of this action pursuant to an executive order from President Donald Trump issued shortly after he took office in January.[5]

The executive order required agencies to review past enforcement actions for "misconduct" related to free speech rights and take action to correct the misconduct.[6]

As a result of this review, the CFPB's new leadership determined that its enforcement action against Townstone and its president and CEO, Sturner, had inappropriately infringed upon the company's free speech rights.[7]

In the bureau's press release announcing the filing, then-acting Director Russell Vought stated that "[t]his was a flagrant misuse of government resources to destroy a small business that did nothing wrong."[8]

Supporting their motion is a declaration from an Office of Management and Budget employee named Dan Bishop.[9] From these filings, we can glean the following high-level information about the decision-making process inside financial regulators.

Regulators Cast a Wide Net

The investigation commenced in 2017 — notably, this was during Trump's first term as president — after an internal CFPB memo analyzing Home Mortgage Disclosure Act data identified more than 22,000 companies for potential investigation.

Regulators Narrow Through Preset Criteria

The bureau applied a few qualifiers to winnow that number down, including companies that had accepted no more than 500 loan applications overall.[10] This winnowing process left 17 through a review process that the memo does not fully describe.[11]

Small Size Not a Barrier to Enforcement

The bureau noted that Townstone was a small company, with only 876 total applications over a three-year period, and that its discrepancy was also small — falling only 31 shy of the threshold the bureau used.[12]

Statistical Analysis May Be Sufficient to Bring an Enforcement Action

The filings explicitly state that the CFPB began its investigation "[w]ithout any articulated suspicion of a practice that caused the statistical disparity."[13] That is, the CFPB initiated its investigation into Townstone solely on the basis of a statistical disparity identified through a simple review of its Home Mortgage Disclosure Act data.

Weak Evidentiary Foundations Do Not Pose Barrier to Proceeding

The motion contains other surprising concessions.

An April 2018 memo in which CFPB staff recommended continuing the investigation stated that the company generated most of its business through radio programming, the company received a significant amount of its business through repeat and referral business, and the radio station's demographic information likely indicated limited African American and Hispanic listenership.

Most notably, the motion states that the allegedly offensive statements that served as the crux of the enforcement action amounted to six remarks in a total of 16 minutes, only 0.33% of all content the CFPB reviewed.

The CFPB's motion further noted that its so-called sue-or-settle memo, which argued for an enforcement action internally, included no evidence that any person heard or was adversely affected by the remarks, and that no evidence supported any causal connection between the statements and the application shortfall.[14]

Summarizing its assessment, the bureau stated that any disparity "did not appear to be explained by" the company's location or marketing, and that its use of AM radio programming likely could have explained the applicant pool.[15]

When asked by former Director Kathy Kraninger to explain the CFPB's evidence and knowledge of the radio station demographics, the motion states the investigators responded by saying they had no information related to the radio station's demographics, and did not investigate the possibility that the radio station's demographics could explain the shortfall in applications.[16]

Effectively, here, the bureau is admitting it had no evidence to support a claim of redlining, which is how the bureau itself characterized the action.[17]

Despite the paucity of evidence described, the bureau's enforcement director and the director of the Office of Fair Lending and Equal Opportunity urged Kraninger to authorize the enforcement action — which she ultimately authorized in July 2020, more than a year after the settle-or-sue memo was finalized.[18]

One notable item missing from the bureau's declaration, though, is any of the documentation summarized therein. Bishop states in his declaration that he is "forbearing to place the referenced documents themselves on public record." [19]

But the statements, if true, support the argument that the bureau had scant evidence of discrimination or discouragement when it filed the complaint — a truly disconcerting development.

Conclusion

The CFPB's legal theory in the Townstone matter was controversial at the time, and continues to engender debate in the legal community and the consumer finance industry.

While the Seventh Circuit's opinion endorsing the CFPB's legal theory of discouragement under ECOA remains good law, even if the district court vacates the judgment, it also is not likely to be the final decision on the matter.

As this filing has shown, government regulators are willing to move forward with enforcement actions, presumably relying on the leverage associated with such an action and further discovery to augment what may be weak cases.

Companies facing the prospect of similar enforcement actions in the future must be willing to attack the factual bases and evidence underlying the government's claims in order to obtain favorable results, whether that be through litigation, settlement or both.

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[1] Consumer Financial Protection Bureau v. Townstone Financial, Inc., Case No. 1:20-cv-4176, 2023 WL 1766484 (N.D. Ill. Feb. 3, 2023) rev'd at 107 F.4th 768 (7th Cir. 2024).

[2] Consumer Financial Protection Bureau v. Townstone Financial, Inc., 107 F.4th 768 (7th Cir. 2024).

[3] CFPB v. Townstone Financial, Inc., Case No. 1:20-cv-4176, Dkt. No. 135-1 (N.D. Ill. Nov. 1, 2024). On the same day, the parties filed a stipulation of dismissal of the complaint against defendant Barry Sturner. Id. at Dkt. No. 134. The Settlement Agreement was thus only entered into between the CFPB and Townstone Financial, Inc.

[4] CFPB v. Townstone Financial, Inc., Case No. 1:20-cv-4176, Dkt. No. 145 (N.D. Ill. March 26, 2025).

[5] Id. at Dkt. No. 145-1, pp. 1-2.

[6] 90 Fed. Reg. 8243 (Jan. 20, 2025). See also 90 Fed. Reg. 8235 (Jan. 20, 2025) (Executive Order on "Ending the Weaponization of the Federal Government").

[7] CFPB v. Townstone Financial, Inc., Case No. 1:20-cv-4176, Dkt. No. 145-1, at 2 (N.D. Ill. March 26, 2025).

[8] <https://www.consumerfinance.gov/about-us/newsroom/cfpb-seeks-to-vacate-abusive-unjust-case-against-townstone/>.

[9] CFPB v. Townstone Financial, Inc., Case No. 1:20-cv-4176, Dkt. No. 145-2 (N.D. Ill. March 26, 2025).

[10] Id. at 2, ¶15.

[11] Id.

[12] Id. at 3, ¶6.

[13] Id. at 3, ¶7.

[14] Id. at 6, ¶ 12.

[15] Id. at 4, ¶9.

[16] Id. at 7-8, ¶13.

[17] <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-address-townstone-financials-unlawful-redlining/>. Note that this URL currently produces a "404: Page not found" message on the Bureau's website, consistent with media reports that the CFPB scrubbed its website earlier this year after it was visited by the Department of Government Efficiency. See, e.g., <https://www.ksm.com/news/were-about-to-get-annihilated-musk-doge-descend-on-consumer-bureau/>. However, the internet archive's wayback machine maintains a copy of the page as of November 12, 2024, available here: <https://web.archive.org/web/20241112213126/https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-address-townstone-financials-unlawful-redlining/>.

[18] Id. at 10, ¶20.

[19] Id. at 2 ¶4. The Declaration also notes that Townstone's counsel has not seen the underlying documents referenced either.