

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

National Association of)
Mortgage Brokers,)
)
Plaintiff,)
)
v.)
)
Board of Governors of)
The Federal Reserve System,)
et al.,)
Defendants.)

No. 1:11-cv-00506 (RLW)

National Association of)
Independent Mortgage)
Professionals, Inc.,)
)
Plaintiff,)
)
v.)
)
Board of Governors of)
The Federal Reserve System,)
Defendant.)

No. 1:11-cv-0489 (BAH)

DEFENDANTS' MOTION TO CONSOLIDATE CIVIL ACTIONS

Now come the defendants, the Board of Governors of the Federal Reserve System , Ben S. Bernanke, and Sandra F. Braunstein, and move to consolidate these two related cases. Both actions involve a challenge to a regulation

promulgated by the defendant Board (the “loan originator rule”), which will restrict the forms of compensation available to loan originators (mortgage brokers and loan officers employed by mortgage lenders). The rule, 12 C.F.R. § 226.36(d) and (e), is an amendment to the Board’s Truth in Lending regulation, Regulation Z (12 C.F.R. Part 226). The rule was published in the Federal Register on September 24, 2010, and becomes effective on April 1, 2011. *See* 75 Fed. Reg. 58509.

On March 8, 2011, the National Association of Independent Housing Professionals (“NAIHP”) filed case no. 1:11-cv-00489 (the “NAIHP Action”). NAIHP states that it “represents the interests of thousands of independent housing professionals, including mortgage brokers and mortgage originators, located in all 50 states and the District of Columbia.” Complaint ¶ 12, NAIHP Action. The case was assigned to Judge Howell. NAIHP simultaneously filed an application for a temporary restraining order and preliminary injunction. On the morning of March 9, 2011, in accordance with Judge Howell’s instructions, the Board and NAIHP agreed to and submitted a proposed briefing schedule with respect to the motions under which the Board’s response would be due on March 18, 2011. Defendant filed the proposed schedule with the Court shortly thereafter.

On the afternoon of March 9, undersigned counsel was contacted by counsel for the plaintiff in 1:11-cv-00506 (“the NAMB Action”), the National Association of Mortgage Brokers (NAMB), notifying the Board that NAMB would be filing

suit challenging the loan originator rule. According to the NAMB Action Complaint, ¶ 5, NAMB “represents the interests of more than 70,000 mortgage broker professionals located in all 50 states and the District of Columbia.”

Undersigned counsel informed plaintiff’s counsel that the NAIHP Action had been filed previously and advised that NAMB indicate that its suit was related to the previously filed NAIHP Action. On the evening of March 9, 2011, NAMB filed the NAMB Action without indicating that a related suit existed. The case was assigned to Judge Robert Wilkins. On March 10, 2011, undersigned counsel filed a Notice of Designation of Related Civil Cases in both this case and in the NAIHP Action.

Both the NAMB Action and the NAIHP Action challenge the Board’s statutory authority to issue the Rule, and claim that the Rule violates the Administrative Procedure Act. Both cases seek a temporary restraining order and a preliminary injunction enjoining the Rule’s effective date.

There is no reason why two judges of this Court must consider the same legal and factual arguments regarding the Rule and its alleged effects on mortgage loan originators. The plaintiffs in both actions represent the same interests; the Rule challenged in both cases are the same; the administrative records in both cases will be the same; the Board’s defenses to the actions will be the same. Judicial economy would be served by having one judge handle these two cases on

a consolidated basis rather than burdening both the court and the defendant with having to deal with two separate cases.

Defendant has filed this Motion to Consolidate in both Actions simultaneously.

Respectfully submitted,

March 10, 2011

s/s Katherine H. Wheatley
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Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on March 10, 2011, I served the within Motion to Consolidate Civil Actions on the undersigned counsel by filing the Motion with the Court's ECF System:

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