

10-1042 FREEMAN V. QUICKEN LOANS, INC.

DECISION BELOW: 626 F.3d 799

LOWER COURT CASE NUMBER: 09-30902

QUESTION PRESENTED:

Section 8(b) of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2607(b), provides:

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

In this case, the Fifth Circuit joined the Fourth, Seventh, and Eighth Circuits in ruling that this provision prohibits the acceptance of unearned fees only when those fees are divided with a culpable third party, as in a kickback arrangement. It acknowledged, however, that the Third, Second, and Eleventh Circuits, as well as the Department of Housing and Urban Development, have taken the contrary view that the provision also applies to unearned fees retained by a single defendant. The question presented is:

Whether Section 8(b) of RESPA prohibits a real estate settlement services provider from charging an unearned fee only if the fee is divided between two or more parties.

CERT. GRANTED 10/11/2011