Supreme Court Deals a Harsh Blow to FTC's Powers

FTC can no longer go straight to court to recover monetary damages

The Supreme Court dealt a harsh but legally correct blow to the Federal Trade Commission's enforcement powers on April 22, 2021. The Supreme Court ruled that the agency can no longer go directly to federal court to recover money damages from defendants who have committed deceptive trade acts. The ruling ends the decades-long practice of the FTC seeking, and receiving, disgorgement awards even though the Federal Trade Commission Act ("FTC Act") has always been quite clear that monetary damages can only be recovered after administrative proceedings.

While many felt that former President Donald Trump’s appointed justices would tip the Supreme Court to rule in favor of scaling back the government’s powers, the ruling was a unanimous 9-0 with liberal stalwart Justice Stephen Breyer delivering the decision of the court in the case styled AMG Capital Management, LLC v. FTC.

Note: this ruling considers only the FTC’s powers of consumer protection. It does not affect the FTC’s antitrust authority.

The crux of the ruling is that, despite many years of courts turning a blind eye to defendants’ arguments, Section 13(b) of the FTC Act does not permit the FTC to obtain court-ordered monetary relief. By its own terms, Section 13(b) limits the FTC to injunctive relief. The Supreme Court ended the legal fiction that monetary recovery was a type of injunctive relief. The opinion stated, “by its terms, this provision concerns prospective injunctive relief, not retrospective monetary relief. Section 13(b) allows the FTC to go directly to district court when [it] seeks injunctive relief pending administrative proceedings or when it seeks only a permanent injunction.”

The FTC still has an avenue, Section 19 of the FTC Act, to recover money from a wrongdoer, although that avenue has many speed bumps for the FTC, which is why the agency preferred to proceed under Section 13(b). Section 19 authorizes a court to “redress injury to consumers” including “the refund of money or return of property [and] the payment of damages,” but only after the FTC has obtained a cease and desist order in an administrative proceeding and the defendant has violated that cease and desist order. The extensive rights of appeal in the administrative proceedings make it difficult for the FTC to obtain a final order. Section 19 also has time restrictions that often reduce the FTC’s potential recovery: the FTC cannot recover for practices going back more than three years.

With the FTC currently limited in its ability to recover monetary relief, this ruling will have a profound negative effect on the FTC’s leverage in negotiating consent orders.

The FTC’s reaction was swift and decisive. Acting Chairwoman Rebecca Kelly Slaughter issued a statement reading, in part:

The Supreme Court ruled in favor of scam artists and dishonest corporations, leaving average Americans to pay for illegal behavior. With this ruling, the Court has deprived the FTC of the strongest tool we had to help consumers when they need it most. We urge Congress to act swiftly to restore and strengthen the powers of the agency so we can make wronged customers whole.
So what’s next? According to a CNBC report, the four sitting FTC commissioners, although often divided along party lines, have already met with the Senate Commerce Committee to unanimously ask for a legislative remedy to restore the FTC’s ability to obtain disgorgement of illegally obtained funds. Acting Chairwoman Rebecca Kelly Slaughter told the Senate committee, “Even while the Supreme Court case is pending, the uncertainty around 13(b) is affecting our work and affecting our cases. It’s making it harder for us to get that redress to consumers.”

Tags: FTC, US Supreme Court