

Raitport, et al. v. Harbour Capital 09-CV-156-SM 9/12/13
UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Menachem Raitport, and
Crown Kosher Meat Market, Inc.,
Plaintiffs

v.

Case No. 09-cv-156-SM
Opinion No. 2013 DNH 120

Harbour Capital Corporation,
Defendant

O R D E R

The amended proposed class definition in this case is premised upon a doubtful proposition of law – that the Federal Communication Commission can, by regulation, govern specific business activity that Congress did not regulate by statute (and, implicitly did not authorize the FCC to regulate) – the sending of “solicited” facsimile advertisements. Congress surely intended to protect citizens from the impositions associated with unwanted, unwelcome, “unsolicited” facsimile advertisements, but likely did not think it necessary to protect citizens from “solicited” facsimile advertisements – ones they invited and affirmatively wished to receive.

Resolution of that question, however, is beyond the jurisdiction of this court. Congress has provided a limited administrative review process for such issues, followed by judicial review in the courts of appeals.

Following the Eighth Circuit's decision in Nack v. Walburg, 715 F.3d 680 (8th Cir. 2013), administrative proceedings were initiated that seek resolution of the precise question of law underlying this litigation. See Petitions, FCC Proceeding Nos. 02-278 and 05-338.

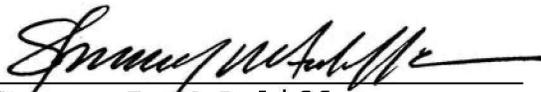
Given the substantial effect that the outcome of the pending administrative proceedings will have on disposition of the pending issues in this case, particularly with respect to certification of the proposed class, this litigation shall be stayed pending a final decision in those matters.

Should any party oppose staying these proceedings, the court will consider motions to lift the stay (supported by thorough briefing) filed within thirty (30) days of the date of this order.

Conclusion

All proceedings in this case are stayed pending final resolution of the relevant petitions in FCC Proceeding Nos. 02-278 and 05-338. The Clerk shall administratively close this case, subject to reopening on motion of any party following final resolution of the above-referenced administrative proceedings.

SO ORDERED.


Steven J. McAuliffe
United States District Judge

September 12, 2013

cc: Aytan Y. Bellin, Esq.
Michael J. Sheehan, Esq.
William E. Christie, Esq.