

Legal analysis to guide the mortgage industry and protect its interests.

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Section 8(b) Violations of RESPA Not Shown by an Alleged “Surcharge” or by Duplicative Charges for Same Services **by C. Lee Reeves**

Federal judges in Alabama recently sided with the mortgage industry in three cases alleging RESPA violations. Specifically, plaintiff’s lawyers alleged that certain fees charged in real estate closings by real estate service providers violate § 8(b) of RESPA because the charges were allegedly duplicative and the services were already paid for by another charge. Defense attorneys responded that the Eleventh Circuit had previously held in *Friedman v. Market Street Mortgage Corp.*, 520 F.3d 1289, 1296 (11th Cir. 2008), that RESPA does not govern excessive fees because it is not a price control provision, which is what those plaintiff’s allegations really would mean.

Even more recently, the Eleventh Circuit in *Morrisette v. Novastar Home Mortgage, Inc.*, 2008 WL 2610550 (C.A. 11 July 3, 2008), held that § 8(b) was not violated when the plaintiff claimed that the fee that the mortgage servicer charged was for services that must, by law, be provided for no more than a certain amount, and the actual fee that was charged was higher than permitted, and thus the surcharge above that fee limit was in reality a fee for something other than services performed. The Eleventh Circuit rejected that contention and held that merely because the plaintiff was charged an inflated fee for a service, even if the fee was larger than what state law permitted, nevertheless there was a service provided and the excess fee could not be considered to be a fee for no services.

In *Edwards v. Accredited Home Lenders, Inc.*, 2008 WL 2952075 (S.D. Ala. July 29, 2008), the court considered whether § 8(b) of RESPA was violated because the plaintiff had already been charged a closing fee as compensation for the general closing services that the lender provided, and the plaintiff claimed that the specific fees for specific services, such as recording fees and abstract fees, were actually fees for no services since the general closing fee was charged for those particular services. The court held that the plaintiff’s claim that a duplicative fee would violate § 8(b) of RESPA is not a violation because that would be merely an “overcharge” made by the closing lender when some services were provided, and thus that fee was not a fee for “other than services actually performed.” The court held the plaintiff’s claims were invalid.