Willkie Arbitration Award for Womply Resolves More Than Half a Billion Dollars of Liability

News

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Willkie litigators recently secured a major arbitration victory for Womply, a Paycheck Protection Program (PPP) technology service provider, securing more than $117 million in damages and defeating counterclaims brought by Benworth Capital Partners for more than $420 million. A final award was issued on June 12, resolving more than half a billion dollars in dispute.

The high-stakes dispute raised novel regulatory issues related to the PPP, a government program created in response to the COVID-19 pandemic that guaranteed small business loans from private lenders, and the legality of related contract and fee agreements.

In 2020, Womply, a technology services provider to small businesses, saw clients struggled to obtain PPP loans because traditional lenders focused on lending to large businesses, which netted lenders larger processing fees. In early 2021, Womply devoted resources to developing a technology platform called "PPP Fast Lane" to lower the barriers to small businesses obtaining PPP loans by making processing, reviewing, and managing a large volume of small-dollar PPP loan applications more efficient for lenders.

Benworth, a Florida-based lender, used PPP Fast Lane to fund more than 300,000 PPP loans with a principal amount exceeding $4 billion, for which it received more than $680 million in fees from the SBA; but Benworth failed to pay Womply all of the fees Womply earned under the parties' agreements. Womply commenced arbitration in August 2021, and Benworth counterclaimed for more than $420 million, alleging that (i) Womply's fees exceeded SBA caps on fees for providing assistance with PPP loan applications, (ii) Womply's contracts were illegal and void because Womply failed to have the SBA review and approve its contracts, which Benworth claimed was required by federal law, and (iii) even if the contracts were lawful and enforceable, Womply misinterpreted the contractual fees, was not entitled to any further fees, and had to refund Benworth hundreds of millions of dollars.

The arbitration hearing took place from March 2023, and included testimony from five fact witnesses and the former Head of Capital Access at the SBA, who was responsible for overseeing the administration of the PPP. Closing arguments took place in June 2023. On December 21, 2023, the arbitrator issued an interim award denying all of Benworth's counterclaims seeking damages and awarding Womply more than $86 million, plus contractual interest as well as its costs of collection. The arbitrator found Womply's witnesses credible, and agreed that Womply's contracts and fees were valid and that, even if they were not, Benworth was required to pay for the services it used. Pointedly, the arbitrator noted that Benworth's arguments as to the illegality of the agreements were not anywhere to be found within the factual record and were not expressed "until the parties' relationship began to deteriorate and litigation was imminent." Accordingly, the arbitrator denied Benworth's counterclaims seeking more than $420 million.

Under the agreements between Womply and Benworth, Womply was also entitled to contractual interests and costs of collection, including reasonable attorneys' fees. The parties submitted extensive briefing on these issues and the arbitrator held an evidentiary hearing in April 2024. In June, the arbitrator issued a final award awarding Womply more than $25 million in contractual interest, more than $5.8 million in attorneys' fees, and more than $370,000 in costs for a total award of $117,944,228 million.

The cross-office arbitration team consisted of partners Alex Cheney and Stuart Lombardi, counsel Josh Levy; and associates Tiffany Lin, Dan Morris, Katherine Hanley, Adriana Morton and Vincent Palmeri.