

MD agency trumps court in consumer protection case.
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The investigation into a New Jersey company's sale of a nonrefundable surety bond product to Maryland tenants and possible violations of state law is best left to the attorney general's Consumer Protection Division, the state's top court said yesterday.

In affirming the Baltimore County Circuit Court's dismissal of the declaratory judgment action brought by SureDeposit Inc., the Court of Appeals said the action would not resolve all of the issues in play.

SureDeposit had sought a declaration from the courts that the Maryland Security Deposit Law did not apply to the product it was selling; the agency, however, felt that it had primary jurisdiction in the matter since there were questions involving Maryland's Consumer Protection Act.

"Ultimately, I think the crux of the court's opinion is if there's an issue that can be properly decided by an administrative agency then the administrative agency should be allowed to do its job," said Assistant Attorney General Philip D. Ziperman, who argued the case for the Consumer Protection Division. "The Court of Appeals has agreed with us that this is a case that should be decided by the Consumer Protection Division. This is a case that involved issues that involve the agency's expertise."

But Andrew M. Dansicker, the lawyer for SureDeposit, said the court's decision just wastes resources.

"The company looks forward to being able to present the case in the administrative proceeding," he said, but "ultimately we'll be back in court on the same issues again, but that's the way the system is set up. It's a very inefficient system."

The Consumer Protection Division began its investigation into Converge Services Group LLC, d/b/a SureDeposit, in 2002, a year after the company began selling its security deposit substitute in the state.

Residential tenants could buy the surety bond by paying a premium to their landlord, who would forward the money to SureDeposit. SureDeposit would then compensate the landlords for any damages to the leased property.

The Consumer Protection Division, however, believed that the process was misleading to consumers, and did not make them aware that the landlords received fees for selling the surety bond.

"The surety bond product seems neither to protect nor insure the tenant from the typical landlord claim most often satisfied from a tenant's security deposit," Glenn T. Harrell Jr. noted yesterday in the court's opinion.

During the investigation, SureDeposit voluntarily suspended sale of its product in Maryland.

But by January 2003, suspecting that SureDeposit had engaged in trade practices that violated the Maryland Consumer Protection Act, Maryland Security Deposit Law and Application Fee Law, the division met with the company to discuss a proposed "assurance of discontinuance." That assurance would require SureDeposit to make restitution to its clients, in addition to permanently halting the sale of the surety bond product.

SureDeposit then filed for declaratory judgment in Baltimore County Circuit Court and began discovery requests. The division responded by making its own discovery requests.

At the same time, the division also filed an administrative statement of charges against the company and two of its officers, and later filed a motion to dismiss SureDeposit's circuit court complaint.

A Baltimore County judge accordingly dismissed the case; SureDeposit noted an appeal with the Court of Special Appeals but the Court of Appeals issued a writ of certiorari on its own motion.

Reviewing the dismissal, the top court said that even though it isn't clear that the Consumer Protection Division has exclusive primary jurisdiction on all of the issues, it is still best able to handle the investigation.

"This mixing of claimed violations from statutes within and without the agency's particular area of expertise, however, does not, on its face, justify bifurcating the resolution of the global dispute in the way SureDeposit desires," Harrell wrote.

WHAT THE COURT HELD

Case:

Converge Services Group LLP v. J. Joseph Curran Jr., et al., CA No. 13, Sept. Term 2004. Reported. Opinion by Harrell, J. Filed Nov. 8, 2004.

Issue:

Did the trial court err in dismissing a company's complaint for declaratory judgment when the Consumer Protection Division was investigating the company?

Holding:

No. A declaratory judgment would not conclusively determine the issue; the administrative remedy would provide a more complete resolution for judicial review.

Counsel:

Andrew M. Dansicker for appellant; Asst. AG Philip D. Ziperman for appellees.