

United States Court of Appeals For the First Circuit

Nos. 11-1414
11-1905

ASHLEY RILEY BIRKELAND

Plaintiff - Appellant

v.

PETER J. MCNULTY LAW FIRM, ET AL.

Interested Parties - Appellees

Before

Torruella, Lipez and Howard,
Circuit Judges.

JUDGMENT

Entered: October 12, 2011

Having considered appellant's response to this court's order to show cause, we now dismiss No. 11-1414 for lack of standing. Appellant has suffered no redressable injury from the fee award. She has not alleged, for example, that class counsel sold the class short as part of a collusive fee agreement. See Glasser v. Volkswagen of America, Inc., 645 F.3d 1084, 1088-89 (9th Cir. 2011); Lobatz v. U.S. West Cellular of California, Inc., 222 F.3d 1142, 1146-47 (9th Cir. 2000). Cf. In re Cendant Corp. PRIDES Litig., 243 F.3d 722, 726 & n.4 (3d Cir. 2001) (noting that appellant's district court objection to class counsel's representation and fee request concerned a "'confidential Supplemental Agreement' between lead plaintiff and Cendant" that, in combination with "'lead counsel's excessive fee request . . . multiplies the potential that the class and the public will suspect that the settlement contains a collusive or improper provision by which Lead Plaintiff, Lead Counsel, and/or Cendant will benefit at the expense of the class'"). Nor does Fed. R. Civ. P. 23(h)(2) effectively confer on appellant standing to appeal. The district court's jurisdiction to review fee applications with the input of objectors is one thing; our appellate jurisdiction is another.

Failing to present an Article III case or controversy, No. 11-1414 is dismissed. Appellant's request for a stay of the appeal is denied as moot. No. 11-1905 is dismissed as moot.

By the Court:

/s/ Margaret Carter, Clerk

cc:

David A. Barry
Garrett D. Blanchfield Jr.
Phillip A. Bock
Hugh J. Bode
Natalie Flores Campbell
Jeffrey L. Chase
Ilan Chorowsky
Joel L. DiLorenzo
Martin T. Galvin
Michael B. Gallub
Julie D. Goldstein
Jack Gorny
Daniel V. Gsovski
Edward F. Haber
Russell Henkin
Brad R. Irwin
K. Stephen Jackson
Randal R. Kelly
Andrew R. Levin
Sheryl S. Levy
Charles E. Mangan
Peter J. McNulty
John Jacob Pentz III
Eugene R. Richard
Brian G. Ruschel
Joseph G. Sauder
Mark Schlachet
Thomas G. Shapiro
Thomas P. Sobran
Adam M. Stewart
Kirk D. Tresemer
Joseph L. Tucker
Allan Van Gestel
Jonathan H. Waller
John K. Weston