

**UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU**

**ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029**

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In the Matter of:)
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INTEGRITY ADVANCE, LLC and)
JAMES R. CARNES,)
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Respondents.)
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**ENFORCEMENT
COUNSEL'S OPPOSITION
TO RESPONDENTS'
MOTION TO AMEND
THEIR CONTROVERTED
ISSUES OF FACT**

**ENFORCEMENT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION
TO AMEND THEIR CONTROVERTED ISSUES OF FACT**

On March 9, 2016, the Hearing Officer in the above-captioned proceeding ordered the parties to meet and confer for the purpose of categorizing disputed and undisputed facts. Enforcement Counsel's proposed stipulated facts included facts detailing: a) net income for Integrity Advance for several years; b) the number of loans and total principal originated by Integrity Advance; c) the amount of compensation Willowbrook Marketing (Willowbrook), a company owned by Respondent Carnes, received from Integrity Advance parent company Hayfield Investment Partners (Hayfield); and d) the amount of compensation Willowbrook received as a result of EZ Corp. Inc.'s purchase of Hayfield. Respondents have filed a motion seeking to have this information redacted from both parties' March 23, 2016 statement of fact filings on the

assertion that they “disclose and/or contain information that could lead to the discovery of Respondent James R. Carnes’s personal financial information.” Resp. Mot. at 1.

Enforcement Counsel hereby opposes Respondents’ motion. None of the information at issue relates to Mr. Carnes in his personal capacity, much of the information is already publicly available, and Respondents have not satisfied the high bar for protection specified by the rules. Indeed, Respondents filed their own pleading containing the contested information before they subsequently changed their position and concluded the information should be protected. Moreover, any suggestion that Enforcement Counsel violated an agreement between the parties or the protective order entered in this matter is patently false.

Respondents Have Failed to Meet the High Bar for Redacting Information in an Administrative Proceeding

As an initial matter, even if the contested statements discussed Mr. Carnes’s personal financial information—and as is demonstrated below they do not—Respondents have not met the high bar necessary to overcome the strong presumption that documents in an administrative hearing are public. 12 C.F.R. § 1081.119(c); *Cf. EEOC v. Nat'l Children's Ctr.*, 98 F.3d 1406, 1409 (D.C. Cir. 1996) (noting a “strong presumption in favor of public access to judicial proceedings”). In order to justify sealing information in this proceeding, Respondents must demonstrate that “public disclosure will likely result in a clearly defined, serious injury to the person requesting confidential treatment” or “that the material constitutes sensitive personal information, as defined in § 1081.112(e).” 12 C.F.R. § 1081.119(c).¹

¹ The additional grounds for protection outlined by the rule, illegality of disclosure and stipulation of all parties, are not relevant here. See 12 C.F.R. § 1081.119(c)(3), (4).

Respondents' motion does not even attempt to meet this standard, and as is discussed in detail below, Respondents' proposed redactions do not, and indeed cannot, meet this standard. Respondents have not articulated a "clearly defined, serious injury" and the rules clearly do not contemplate protection of the financial information contained in Respondents' list of controverted facts, which only shows how much money certain companies earned. Indeed, Respondents offer no justification in law or policy for protecting the contested information. Respondent Carnes is a party to this matter and the amounts of money generated by his illegal activity are relevant to this proceeding and not subject to any reasonable claim of confidentiality.² Further, the information contained in the contested paragraphs is clearly relevant to any restitution, disgorgement, or penalties that the hearing officer might order in this matter.

**None of the Contested Information Relates to
Respondent Carnes Personally, or Constitutes His
Personal Financial Information**

Respondents have sought redaction of sixteen paragraphs proposed by Enforcement Counsel (¶¶ 125-129 and 131-141) on the theory that they contain or could lead to the discovery of Respondent Carnes's "personal financial information." Resp. Mot. at 1. However, only one of these paragraphs, ¶ 131, mentions Carnes by name and that paragraph does not contain any financial information. Similarly, paragraphs 134

² Respondents also do not argue that the information in question is sensitive personal information within the meaning of § 1081.112(e), and indeed, none of the requested redactions involve the types of information included within that provision. See 12 C.F.R. § 1081.112(e) (defining specific types of information, including *inter alia* bank account numbers and social security numbers, as sensitive personal information). The Federal Rules of Civil Procedure contain similar protections that pertain only to account numbers and not to particular sums of money received by a company or individual. See Fed. R. Civ. P. 5.2.

and 135 discuss the details of the EZ Corp. purchase of Hayfield and do not contain any financial information.

Paragraphs 125-129 discuss Integrity Advance's earnings and the number of loans the company originated. Respondents advance no argument as to how this information could be imputed to Mr. Carnes personally or, even if it could be imputed, why it would constitute sensitive personal information or cause clearly defined, serious injury. Finally, the remaining paragraphs at issue discuss the earnings of Willowbrook Partners. Although not clearly stated in their motion, Respondents' argument appears to be that this information relates to Mr. Carnes because of his ownership interest in that company. However, Respondents refused to stipulate to Mr. Carnes's ownership interest in Willowbrook and fail to explain how this information, reflecting payments made years ago in most cases, provides insight into Mr. Carnes's personal financial situation or would cause "clearly defined, serious injury" to Mr. Carnes.

Much of the Information at Issue Is Publicly Available

As alleged in the Notice of Charges, Respondent Integrity Advance was wholly owned by Hayfield. *See* Notice at ¶ 5. In November of 2012, Hayfield entered into an asset purchase agreement wherein it agreed to sell most of its assets to EZ Corp., Inc., a publicly-traded company. Because it is publicly held, EZ Corp. disclosed the asset purchase agreement in its SEC filings. Hence, the full asset purchase agreement is freely available online.³ The facts contained in half of the contested paragraphs (¶¶ 134-141) come either directly from this publicly available document or stem from the purchase

³ See <http://www.sec.gov/Archives/edgar/data/876523/000087652312000036/a10-1xassetpurchaseagreem.htm> (last visited April 6, 2016).

transaction. Respondents have provided no justification for protecting information that has been publicly available for years.⁴

The Facts at Issue are Not Covered by the Protective Order

Respondents allege that the proposed statements of fact at issue were filed “in contravention” of the parties’ joint motion for a protective order. *See Mot.* at 1. As an initial matter, Respondents do not allege, because they cannot, that Enforcement Counsel violated the protective order entered by the Hearing Officer. The order contains no provisions protecting the information of Respondent Carnes. *See Protective Order* (entered December 29, 2015).

Instead, Respondents misconstrue both the terms of the protective order and the prior dealings between the parties. The parties’ joint motion seeking a protective order states that the Bureau agreed not to file documents containing Mr. Carnes’s personal financial information *prior to March 1, 2016* without providing prior notice to Respondents. *See Joint Stipulated Motion for a Protective Order* (filed December 23, 2015). Even if the contested paragraphs did contain Carnes’s personal financial information (which they do not), the filing at issue here was made on March 23, 2016.

In addition, despite Respondents’ insinuations otherwise, the parties never agreed that the protective order should cover Carnes’s personal financial information, that they would jointly move the Hearing Officer for a modification of the protective order to cover Carnes’s personal financial information (aside from that information that qualifies as sensitive personal information under § 1081.112(e)), or that Enforcement

⁴ Pursuant to the Protective Order in this administrative proceeding, “the protections conferred by th[e] Order do not cover any information that is public knowledge at the time of disclosure[.]” *Stip. Protective Order* at 3.

Counsel would never file documents containing Carnes's financial information. Instead, when the parties were negotiating the initial protective order, they could not agree on the propriety of such a provision. In order to comply with the Hearing Officer's order to file a protective order, the parties agreed to file a motion that included a statement that prior to March 1, 2016, Enforcement Counsel would provide Respondents with notice before filing documents containing Carnes's personal financial information. This provision was intended to give Respondents time (by March 1 unless Enforcement Counsel provided notice earlier) to either file a motion justifying sealing Carnes's personal financial information, or to provide Enforcement Counsel with evidence demonstrating the need to seal such information. Respondents have failed to do either.

Respondents' Apparent Concerns Were not Raised in a Timely Fashion

Respondents had full knowledge of the facts that Enforcement Counsel planned to submit to the court. Enforcement Counsel proposed a comprehensive list of stipulations to Respondents on March 17, 2016, and the parties held a meet and confer session on March 21, 2016. Each of the sixteen facts that Respondents now seek to redact was contained on Enforcement Counsel's initial list. Respondents raised no objections and did not argue that any of the proposed facts impermissibly disclosed Carnes's personal financial information. Indeed, Respondents filed their own pleading containing the contested information without moving to seal the information. In any case, as is demonstrated above, Respondents' motion fails to meet the high standard required to seal information in this presumptively public proceeding.

Conclusion

For the reasons discussed above, Enforcement Counsel respectfully requests that the Hearing Officer deny Respondents' motion to amend their controverted issues of fact.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April 2016, I caused a copy of the foregoing Enforcement Counsel's Opposition to Respondents' Motion to Amend Their Controverted Issues of Fact to be filed by electronic transmission (e-mail) with the Office of Administrative Adjudication (CFPB_electronic_filings@cfpb.gov), the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), Heather L. MacClintock (Heather.L. MacClintock@uscg.mil), and served by email on the Respondents' counsel at the following addresses:

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