

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

In the Matter of)	ORDER DENYING MOTION
)	TO STAY APPEAL AND
INTEGRITY ADVANCE, LLC and)	REMAND TO HEARING
JAMES R. CARNES)	OFFICER

On October 18, 2016, Respondents Integrity Advance, LLC, and James R. Carnes (hereinafter Integrity Advance) filed a Motion to Stay Appeal and Remand to Hearing Officer in this adjudicative proceeding. The matter at issue is an enforcement action brought by the Consumer Financial Protection Bureau, alleging that Integrity Advance violated the Truth in Lending Act, the Electronic Funds Transfer Act, and the Consumer Financial Protection Act in connection with providing payday loans to consumers. On September 27, 2016, Administrative Law Judge Parlen L. McKenna issued a Recommended Decision concluding that Integrity Advance had violated all three of those statutes. Integrity Advance filed its Notice of Appeal on September 30, 2016, and the Bureau's Enforcement Counsel filed its Notice of Appeal on October 12, 2016.

In the course of the proceedings in this matter, the ALJ concluded, based on the Bureau's decision in *In the Matter of PHH Corp.*, 2014-CFPB-0002, Decision of the Director (June 4, 2015), that no statute of limitations applied to the Bureau's administrative proceedings. On October 11, 2016, the D.C. Circuit issued its panel opinion in *PHH v. CFPB*, No. 15-1177, 2016 WL 5898801 (D.C. Cir. Oct. 11, 2016), and rejected the Bureau's holding that, when the Bureau enforced the Real Estate Settlement Procedures Act administratively, the Bureau was not bound by the statute of limitations in that Act. *Id.* at *38. Accordingly, Integrity Advance now moves that the Bureau stay further proceedings in connection with the appeals that it and Enforcement counsel have filed, and remand the matter to the ALJ so that he may address the impact of the D.C. Circuit's panel decision.

I have decided to deny Integrity Advance's Motion for three reasons. Because I am denying the Motion in its entirety, because of the impending due date for the parties' opening briefs, and because as discussed below the Motion does not comply with the Bureau's rules, I do so without waiting for a response from Enforcement Counsel. In these circumstances, I do not believe that 12 C.F.R. 1081.405(d)(1) requires me to delay my decision.

First, Section 205(f) of the Bureau's Rules of Practice for Adjudicative Proceedings, 12 C.F.R. 1081.205(f), states that all motions "shall be accompanied by a signed statement

representing that counsel for the moving party has conferred or made a good faith effort to confer with opposing counsel in a good faith effort to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement.” Integrity Advance did not submit a signed statement to accompany its Motion. Instead, in footnote 1 of its Motion, Integrity Advance merely states that it met and conferred with Enforcement Counsel “regarding this issue.” This footnote is neither a signed statement, nor a statement that the parties were “unable” to “resolve by agreement the issue raised by the motion.” Integrity Advance’s failure to file the signed statement required by Rule 205(f) justifies my rejection of its Motion. *See also* 12 C.F.R. 1081.104(b)(6) (authorizing rejection of “written submissions that materially fail to comply with the requirements of this part”).

Second, the position asserted by Integrity Advance in its Motion is premature. The mandate in the D.C. Circuit’s panel decision in *PHH v. CFPB* has not yet issued. Depending on the course of any further appeals, the mandate in that case may not issue for some time yet. Remanding this matter for the ALJ to apply a decision that may or may not ever be finalized in its current form would not be a sensible or justifiable expenditure of resources at this time.

Third, the Bureau’s rules provide that, when a party appeals an ALJ’s Recommended Decision, “the Director will consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition, will, to the extent necessary or desirable, exercise all powers which he or she could have exercised if he or she had made the recommended decision.” 12 C.F.R. 1081.405(a). That means that I will apply *de novo* review as to all issues raised in the appeals, including both issues of fact and issues of law. Thus, on appeal I am fully capable of addressing the impact on this matter of the D.C. Circuit’s panel decision in *PHH v. CFPB*, once that decision is finalized. Integrity Advance contends that if a statute of limitations applies to this matter, the administrative record may not be sufficient to determine whether the Bureau timely filed its Notice of Charges. Motion at 6. The Bureau’s Rules provide me with ample authority to assess whether the record is sufficient to address all the issues raised on appeal. If, after those issues have been briefed, I then conclude that the record is deficient, I will take appropriate action to address any such deficiency as needed.

Although the parties have not sought additional time for the filing of their briefs, I have decided that there is good cause to extend the briefing schedule in light of the brief uncertainty raised by Integrity Advance’s Motion and so that the parties will have additional time to address in their briefs the impact (if any) of the D.C. Circuit’s panel decision. *See* Bureau Rule 1081.115(a)-(b). Accordingly, the opening briefs of both parties will be due on November 4, 2016, answering briefs will be due on December 5, 2016, and reply briefs will be due December 12, 2016.

For the reasons set forth above, I DENY in its entirety Integrity Advance's Motion to Stay Appeal and Remand to Hearing Officer. I also ORDER that the briefing schedule be revised as follows:

November 4, 2016	Opening Briefs
December 5, 2016	Answering Briefs
December 12, 2016	Reply Briefs

SO ORDERED.



Richard Cordray
Director
Consumer Financial Protection Bureau

October 21, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the *Order Denying Respondents' Motion to Stay Appeal and Remand to Hearing Officer* upon the following parties and entities in Administrative Proceeding 2015-CFPB-0029 as indicated in the manner described below:

Via Electronic Mail to Representatives for Consumer Financial Protection Bureau

Alusheyi J. Wheeler, Esq.
1700 G Street, NW
Washington, DC 20552
alusheyi.wheeler@cfpb.gov

Deborah Morris, Esq., Email: deborah.morris@cfpb.gov
Craig A. Cowie, Esq., Email: craig.cowie@cfpb.gov
Wendy J. Weinberg, Esq., Email: wendy.weinberg@cfpb.gov
Vivian Chum, Esq., Email: vivian.chum@cfpb.gov

Via Electronic Mail to Representatives for Respondent

Allyson B. Baker, Esq.
Venable LLP
575 7th Street, NW
Washington, D.C., 20004
abbaker@venable.com

Hilary S. Profita, Esq., Email: hsprofita@venable.com
Peter S. Frechette, Esq., Email: psfrechette@venable.com
JP Boyd, Esq., Email: jpboyd@venable.com

Jameelah
Morgan

Digitally signed by
Jameelah Morgan
Date: 2016.10.21
11:47:12 -04'00'

Jameelah Morgan
Docket Clerk
Office of Administrative Adjudication
Consumer Financial Protection Bureau

Signed and dated on this 21st day of October, 2016
at Washington, D.C.