

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING

File No. 2015-CFPB-0029

In the Matter of)
INTEGRITY ADVANCE, LLC and)
JAMES R. CARNES)

)

ORDER DIRECTING THE OFFICE OF ADMINISTRATIVE ADJUDICATION TO
MAINTAIN THE CURRENT STATUS OF THIS MATTER AND CAUTIONING THAT THE
PROHIBITION ON EX PARTE COMMUNICATIONS REMAINS IN EFFECT

In their briefs on appeal in this matter, Respondents relied on the panel's decision in *PHH Corp. v. CFPB*, 839 F.3d 1 (D.C. Cir. 2016), to support their argument that statutes of limitations that applied to actions brought in district court also applied in this administrative proceeding. They further relied on a concurrence by Judge Randolph in the same decision to argue that the administrative law judge who had presided over the trial in this proceeding was an inferior officer who was not appointed in accordance with the Appointments Clause of the Constitution. *Id.* at 55-56.

On February 13, 2017, the Bureau's Office of Administrative Adjudication notified the parties that this matter had been submitted for final Bureau decision. Pursuant to the Bureau's rules, the Bureau's "Director will issue ... the Director's final decision and order within 90 days after such notice...." 12 C.F.R. § 1081.405. However, three days later, the D.C. Circuit granted the Bureau's petition to rehear *PHH Corp. v. CFPB* en banc, and the court also vacated the panel's decision on which Respondents had relied. Accordingly, after seeking the parties' views, the Bureau's Director issued an order pursuant to 12 C.F.R. § 1081.115 requiring the Office of Administrative Adjudication to notify the parties that it had withdrawn the notice submitting this matter for final Bureau decision. The order advised that the Bureau would "make a further determination as to how this appeal should proceed (including whether to solicit the views of the parties) after the en banc court issues a decision in *PHH Corp. v. CFPB*."

On January 31, 2018, the en banc D.C. Circuit issued its decision in *PHH Corp. v. CFPB*, 881 F.3d 75 (D.C. Cir. 2018). Although the court reversed some parts of the panel's decision, it reinstated the portion on which Respondents based their statute of limitations argument. *Id.* at 83. The court declined, however, to resolve whether administrative law judges who preside at trials of the Bureau's administrative proceedings are inferior officers who must be appointed pursuant to the Appointments Clause, but the Supreme Court has recently agreed to address whether the administrative law judges of the Securities and Exchange Commission are officers of the United States. *Lucia v. SEC*, 86 U.S.L.W. 3356 (U.S. Jan. 12, 2018) (granting cert.). Resolution by the Court of that case is likely to be relevant to Respondents' argument regarding the Bureau's administrative law judge.

Accordingly, I have determined that at this time this matter should not be submitted for final Bureau decision, and, pursuant to my authority under 12 C.F.R. § 1081.115, I direct the Office of Administrative Adjudication to maintain the current status of this matter. I will make a further determination as to how this appeal should proceed (including whether to solicit the views of the parties) after the Supreme Court issues its decision in *Lucia v. SEC*.

Finally, I recently received a letter dated February 26, 2018, from counsel for Integrity Advance discussing the merits of this adjudication. That letter was an ex parte communication. See 12 C.F.R. § 1081.110(a). I caution that, even though issuance of the Director's Decision has been held in abeyance, the Bureau's rule regarding ex parte communications, 12 C.F.R. § 1081.110, remains in effect.

SO ORDERED.



Mick Mulvaney
Acting Director
Consumer Financial Protection Bureau

March 14, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the *Order Directing Office of Administrative Adjudication to Maintain the Current Status of this Matter and Cautioning that the Prohibition on Ex Parte Communications Remains In Effect* upon the following parties and entities in Administrative Proceeding 2015-CFPB-0029 as indicated in the manner described below:

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Consumer Financial Protection Bureau

Signed and dated on this 16th day of March, 2018 at
Washington, D.C.