

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING)	RESPONDENTS'
File No. 2015-CFPB-0029)	MOTION TO STAY
)	
In the matter of:)	
)	
INTEGRITY ADVANCE, LLC and)	
JAMES R. CARNES)	
)	

RESPONDENTS' MOTION TO STAY PROCEEDINGS
PENDING RESOLUTION OF RELATED CASE ON APPEAL

Respondents Integrity Advance, LLC, and James R. Carnes (“Respondents”), respectfully move the Court to stay proceedings in this action pending resolution of the appeal filed by PHH Corporation in the Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”). *See PHH Corp. v. CFPB*, No. 15-1177 (D.C. Cir. June 19, 2015).

PHH involves issues that bear directly upon the instant case, specifically, the threshold issue of whether there is a statute of limitations applicable to any Consumer Financial Protection Act (“CFPA”) claims brought in an administrative action. This includes the Bureau’s authority to prohibit unfair, deceptive, or abusive acts or practices (“UDAAP”), including the claims brought in this case as to Respondent Carnes. The Court acknowledged the relationship between *PHH* and this case in its Order Denying Motion to Dismiss, stating “[t]he Director addressed a similar statute of limitations issue in *PHH Corp., et al.*, 2014-CFPB-0002, Decision of the Director at 10 (June 4, 2015).” Dkt. 75, at 20. Moreover, as the Court explained in detail at oral argument on Respondents’ Motion to Dismiss, and subsequently in its Order Denying Motion to Dismiss, *PHH Corp. v. CFPB* is binding precedent. *See* Dkt. 75, at 20 & n.3 (“[The Director of the

Bureau's] decision is presently on appeal before the United States Court of Appeals for the D.C. Circuit. However, the decision remains the official interpretation of the Bureau and is binding in these proceedings unless and until it is overruled by the Court of Appeals or the United States Supreme Court.”). The Bureau, in turn, would not face any undue hardship if the Court were to issue a stay because the Bureau is a party to *PHH* before the D.C. Circuit and is actively litigating the statute of limitations issue.

Legal Standard¹

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997). Administrative agencies routinely rely on the *Landis* standard when determining whether to grant a stay. For example, an Administrative Law Judge for the Environmental Protection Agency explained that “[a]n ALJ should consider a number of factors when deciding whether to grant a stay, including (but not limited to) judicial economy, unnecessary expense or delay, or potential hardship to the parties. Essentially, motions to stay are decided on questions of efficiency and fairness.” *In the Matter of Ray & Jeanette Veldhuis, Respondents*, CWA-9-99-0008, 2002 WL 2005526, at *4 (EPA ALJ Aug. 13, 2002); *see also In the Matter of Certain Spiral Grilled Products Including Ducted Fans & Components Thereof Order No. 4: Denying Respondents' Motion for Stay*, USITC Inv. No. 337-TA-426 (ALJ Mar. 15, 2000).

¹ The CFPB Rules of Practice for Adjudication Proceedings contain no standards for evaluating a motion to stay in this context. Rule 407 (stays pending appeal) is inapplicable here as it applies to a motion to the Director of the Bureau to stay all or part of a final decision and order pending judicial review of that order.

District courts and administrative law judges evaluate whether to stay a case pending disposition of another case by considering efficiency, fairness, and whether a stay would prevent inconsistent rulings. *See Landis*, 299 U.S. at 254-55 (courts granting stays must “weigh competing interests and maintain an even balance”); *Int'l Painters & Allied Trades Indus. Pension Fund v. Painting Co.*, 569 F. Supp. 2d 113, 120 (D.D.C. 2008) (“[a] trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.”) (alteration in original) (citation omitted)). For example, in one recent case, the district court stayed the proceedings, pending disposition of related cases on appeal, and explained that “[t]he Court is also concerned with the possibility of inconsistent rulings if the proceedings continue prior to resolution of the related appeals.” *Fed. Home Loan Mortgage Corp. v. Kama*, No. CV 14-00137 ACK-KSC, 2016 WL 922780, at *10 (D. Haw. Mar. 9, 2016) (emphasis added).

Indeed, the decision to stay a proceeding need not even hinge on whether the particular issues pending disposition are identical to, or critical to, underlying issues in the case at hand. For example, in *Federal Home Loan Mortgage Corp. v. Kama*, the district court explained:

[T]he court need not find that two cases possess identical issues; a finding that the issues are substantially similar is sufficient to support a stay. The issues involved in the pending proceedings need not be “controlling of the action before the court” for a stay to be ordered.

Id. at *4 (internal citation omitted) (quoting *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979)). Similarly, the Environmental Protection Agency has acknowledged that “[a] court may consider granting a stay of the [administrative] proceedings where a similar case in another, or higher, court has the ‘propensity to be dispositive’ on the issue at hand and a decision has not yet been rendered.” *In the Matter Veldhuis*, 2002 WL 2005526, at *4 (quoting

Sam Galloway Ford, Inc. v. Universal Underwriters Insurance Co., 793 F. Supp. 1079, 1081 (M.D. Fla. 1992)). As explained below, this Court should stay these proceedings pending the D.C. Circuit’s resolution of *PHH v. CFPB*.

Argument

The appeal currently pending before the District of Columbia Circuit in *PHH Corp. v. CFPB*, No. 15-1177 (D.C. Cir.), directly bears upon the threshold question of whether the CFPA’s three-year statute of limitations applies to the CFPA claims brought in this forum.

Specifically, Respondents have argued that the CFPA’s three-year statute of limitations time-bars the Bureau’s UDAAP claims against Respondent Carnes. *See* Resp’ts Br. Mot. to Dismiss, Dkt. 28-A, at 16-19. This Court, relying upon the Decision of the Director and Final Order issued in *In the Matter of PHH Corporation*, Docket No. 2014-CFPB-0002, Dkt. 226, 227 (June 4, 2015), accepted “[t]he Bureau’s argument that no statute of limitations applies in these administrative proceedings,” reasoning that “I am bound to apply the Director’s interpretation, which was clearly set out in *PHH*.³” Order Denying Mot. to Dismiss, Dkt. 75, at 29. In so concluding, the Court did not address whether, *assuming a statute of limitations did apply*, the claims against Respondent Carnes would or would not be time-barred. The Court, however, acknowledged that the Decision of the Director is on appeal before the D.C. Circuit and also contemplated that the D.C. Circuit decision, which would be binding on these proceedings, could overturn the Director’s Decision. *Id.* at 20 n.3.

Accordingly, the Court should stay these proceedings in the interest of justice. Indeed, a decision from the D.C. Circuit that a statute of limitations does apply to CFPA claims brought in administrative adjudications would require the Court also to consider whether the Bureau’s UDAAP claims as to Mr. Carnes are, in fact, time-barred. It would be substantially unfair (and

also inefficient) for this case to proceed in light of such uncertainty.² To this end, one court recently acknowledged in a case with a similar posture that “[a]lthough the rulings [on appeal] will likely not resolve all of the issues before the Court, *they will probably assist the Court in determining threshold issues,*” and, thus, the court concluded that “staying proceedings pending the appeals of related cases will serve the interests of judicial efficiency and economy and will help to clarify the issues and questions of law going forward.” *Kama*, 2016 WL 922780, at *9-10 (emphasis added). Here, too, the Court should stay the administrative proceedings in the instant case pending the D.C. Circuit’s resolution of *PHH Corp. v. CFPB*.

Indeed, the D.C. Circuit’s ruling in *PHH* on the CFPA statute of limitations issue would be binding on this Court. Moreover, the CFPA, like other enabling acts, contemplates the D.C. Circuit rendering final decisions as to the legality of agency actions. *See* 12 U.S.C. § 5563(b)(4) (final decision and order of the Director is subject to appeal to the D.C. Circuit); *see also Fed. Elec. Comm’n v. NRA Political Victory Fund*, 513 U.S. 58, 93–97 (1994). Federal district courts, of course, routinely stay cases when the resolution of a pending appeal would provide direct, if not binding, authority as to questions presented in the district court case. *See, e.g., Fergerstrom*

² After oral argument in *PHH* before the D.C. Circuit, *The National Law Review* reported that:

The Panel was also troubled by Cordray’s seemingly-arbitrary approach to the statute of limitations. Judge Kavanaugh observed that under its theory, the CFPB could impose liability for decades-old conduct. Judge Randolph asked why the standard reasons for having a set limitations period – e.g. difficulty obtaining evidence, loss of memory, etc. – did not apply equally here, *forcing the CFPB’s counsel to concede that those reasons were present in this case and that he knew of no legislative history justifying the omission of a statute of limitations for administrative adjudications.*

Jennifer L. Gray & Murray B. Silverstein, D.C. Circuit Panel Questions Constitutionality of the CFPB, Nat’l L. Rev. (Apr. 18, 2016) (emphasis added), <http://www.natlawreview.com/article/dc-circuit-panel-questions-constitutionality-cfpb>.

v. PNC Bank, N.A., No. CIV. 13-00526 DKW, 2014 WL 1669101, at *13 (D. Haw. Apr. 25, 2014) (“In light of the similar factual and legal issues raised in the above cases and the pending appeals, and the Court’s finding that it has CAFA jurisdiction over this matter, the Court recommends that this action should be stayed pending disposition of the [Ninth Circuit] appeals.”). For example, in *Munoz v. PHH Corp.*, No. 1:08CV0759 AWI DLB, 2011 WL 4048708 (E.D. Cal. Sept. 9, 2011), the district court reasoned that “the Supreme Court’s resolution of [*First American Financial Corporation v.] Edwards* [No. 10-708] will provide direct authority on the standing issue; that is, whether allegations of unlawful kickbacks/fee splitting under RESPA, in the absence of an actual, distinct injury, are sufficient to confer Article III standing. *Id.* at *4 (emphasis added). The court concluded that “[t]here is no rational reason to proceed further in this case until the standing issue has been clarified by the Supreme Court.” *Id.* Here, of course, the D.C. Circuit’s decision would be binding, not merely persuasive, authority on the question of whether the Bureau’s UDAAP claims as to Respondent Carnes are time-barred. Thus, the Court should stay these proceedings pending the D.C. Circuit’s decision in *PHH*.

Finally, a stay of administrative proceedings in the instant case would not cause the Bureau any undue hardship. First, the Bureau is a party to the *PHH* case before the D.C. Circuit and, as such, is actively litigating the statute of limitations issue. Moreover, the Bureau has a direct and obvious interest in efficiency, particularly in avoiding inconsistent rulings as to whether a statute of limitations applies to CFPA claims brought in administrative adjudications. Finally, Respondents are not requesting a stay of indefinite duration. Rather, Respondents request that the Court stay proceedings until the D.C. Circuit issues its decision in *PHH*, which

will resolve the questions surrounding whether the Bureau's UDAAP claims as to Mr. Carnes are time-barred.

Conclusion

For the reasons stated above, Respondents respectfully request that the Court grant Respondents' Motion to Stay Proceedings Pending Resolution of Related Case on Appeal and stay the proceedings in the instant case until the D.C. Circuit issues its decision in *PHH v. CFPB Corp.*

Respectfully submitted,

Dated: May 4, 2016

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CERTIFICATION OF SERVICE

I hereby certify that on the 4th day of May, 2016, I caused a copy of the foregoing Answer to be filed by electronic transmission (e-mail) with the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Heather L. MacClintock (Heather.L.MacClintock@uscg.mil) and Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), and served by electronic mail on the following parties who have consented to electronic service:

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