

UNITED STATES OF AMERICA
Before the
BUREAU OF CONSUMER FINANCIAL PROTECTION

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

In the Matter of:)	SCHEDULING CONFERENCE
)	ORDER
INTEGRITY ADVANCE, LLC and)	
JAMES R. CARNES,)	
)	
Respondents.)	

On July 19, 2019, the parties filed a *Joint Status Update*. In the update, the parties were to address the three questions set forth in my June 3, 2019, *Order Directing Parties to Identify Issues for Remand Hearing*. The parties have now addressed two of these questions. Specifically, the parties have indicated that Enforcement Counsel intends to pursue all of the charges set forth in the November 18, 2015, *Notice of Charges*, and have stated that settlement is not an option at this time. With regard to the third question, asking the parties to identify the preliminary issues that need to be addressed before proceeding to a formal hearing, the parties have not identified any specific issues, but have indicated that both sides intend to file motions for summary disposition and that Respondents intend to file a motion to dismiss the *Notice of Charges*. Respondents have also indicated their intent to seek additional discovery. The parties have requested a clarification of the current status of the record and the pre-hearing process and a scheduling conference to be conducted on or after August 16, 2019.

Status of the Record

As the judge appointed to adjudicate this matter, I am in possession of the entire record of the previous hearing, in electronic format. I also have a hard copy of the hearing transcripts for July 19-21, 2016, and several binders of documentary exhibits to include: Respondents' Exhibits 1-24; Respondents' Redacted Exhibits 8-10; Enforcement Counsels' Exhibits, Binder 1, Exhibits 1-78; Enforcement Counsels' Exhibits Binder 2, 79-100; and Enforcement Counsels' Redacted and Under Seal Exhibits, 1-41, 45, 55, 68, 69, 75 A-D, 91).

Pre-hearing Process

This matter is governed by the Rules of Practice for Adjudication Proceedings (“Rules”) set forth at 12 C.F.R. Part 1081 and the Administrative Procedure Act, 5 U.S.C. 554, et seq. As stated in section 1081.101 of the Rules, the Bureau’s policy is to conduct such adjudication proceedings fairly and expeditiously. Because this case has been remanded, some of the timelines set forth in the rules may no longer be practicable. Therefore, after consultation with the parties at the scheduling conference, I will issue a scheduling order, setting forth relevant pre-hearing deadlines.

I will conduct a **telephonic scheduling conference** on **August 16, 2019**, at **10:00** Eastern Time. Details for the conference will be provided at a future time. Prior to the scheduling conference, the parties are to review Rule 1081.203. The parties are directed to confer and prepare a *Joint Proposed Pre-hearing Schedule* which will be due to me no later than **August 14, 2019**, so that we may discuss it at the conference. The proposal will include deadlines for dispositive motions, replies, and answers.

Since both parties have indicated a desire to file motions for summary disposition, they will be the first order of business in this matter. If, after adjudicating these motions and resolving jurisdictional questions, issues still remain for hearing, I will then conduct another conference to discuss next steps in the hearing process.

As the parties are aware, this case has been remanded based on the Supreme Court’s holding in *Lucia v. SEC*, 138 S. Ct. 2044 (2018) which determined that Administrative Law Judges are inferior officers who must be appointed by the President, a court of law, or the head of a department. Accordingly, it was determined that Judge McKenna, who presided over the previous hearing in this matter, had not been properly appointed. In *Lucia*, the Court held that the appropriate remedy for an adjudication tainted with an appointments violation is a new hearing before a properly appointed official. Thus, as a properly appointed official, I have been appointed to conduct a rehearing in this matter.

In *Lucia*, the Supreme Court did not elaborate upon the type of new hearing required to remedy an appointments clause violation, thereby leaving it to the judges’ discretion to determine how to comply with its ruling and conduct new hearings. However, the United States Court of Appeals for the District of Columbia Circuit has elaborated upon the nature of such a rehearing, finding that a de novo record review, rather than live trial-like adversarial hearing is reasonable. *Intercollegiate Broadcasting System, Inc. v. Copyright Royalty Bd.*, 796 F.3d 111 (2015).

During the previous hearing in this matter, both parties had the opportunity to call witness, who testified under oath and were subject to both direct and cross examination. Documentary exhibits were offered and admitted into the record with full regard and adherence to applicable administrative due process rules of practice and procedure. The

parties also stipulated to several facts. Neither side was prevented from calling and fully examining all witnesses, from presenting all relevant documentary and other forms of evidence, and fully developing a true and accurate record.

Therefore, in the event that this matter proceeds to hearing following resolution of summary disposition motions, it is my intent to conduct a de novo record review. However, I will, at the appropriate time, give the parties the opportunity to present arguments as to whether the record needs to be supplemented with further evidence. I note that the Respondents have already indicated their intent to seek additional discovery. As directed by the Director in her May 28, 2019, *Order Directing a Remand to the Bureau's Administrative Law Judge*, I will not give any weight to, nor presume the correctness of, any prior opinions, orders, or rulings issued by Judge McKenna.

Questions regarding the logistics of the scheduling conference may be directed to my Operations Analyst, Jameelah Morgan, at jameelah.morgan@cfpb.gov, (202) 435-7917.

SO ORDERED this 24th day of July, 2019.

Christine L.
Kirby

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Kirby
Date: 2019.07.24 10:07:09
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HON. CHRISTINE L. KIRBY
Administrative Law Judge

Signed and dated on this 24th day of July 2019 at
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the *Scheduling Conference Order* 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
Benjamin Clark, Esq., Email: benjamin.clark@cfpb.gov
Stephen C. Jacques, Esq., Email: stephen.jacques@cfpb.gov

Via Electronic Mail to Representatives for Respondent

Richard J. Zack, Esq.
Pepper Hamilton, Esq.
3000 Two Logan Square
Philadelphia, PA 19103
zackr@pepperlaw.com

Michael A. Schwartz, Esq., Email: schwarma@pepperlaw.com
Christen M. Tuttle, Esq., Email: tuttlec@pepperlaw.com

Jameelah
Morgan

Digitally signed by
Jameelah Morgan
Date: 2019.07.24
11:40:27 -04'00'

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

Signed and dated on this 24th day of July, 2019 at
Washington, D.C.