

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,

Respondents

ORDER SETTING PARAMETERS FOR
ORAL ARGUMENT

Hon. Parlen L. McKenna

On February 25, 2016, the undersigned issued an Order confirming the date for oral argument on Respondents' pending Motion to Dismiss. The oral argument on this matter is set to commence at 10:00 a.m. on Tuesday, April 5, 2016, at the Federal Energy Regulatory Commission (FERC), located at 888 First Street, N.E., Washington, D.C., Courtroom 3, 2nd floor.

By agreement of the parties, each side will be allotted 30 minutes to argue their cases in chief. Since the Bureau has the ultimate burden of proof, it will go first. Each side will then have 15 minutes for rebuttal. The Parties may also be granted additional time to answer specific questions from the Court, if necessary.

Respondents have claimed the following in support of the Motion to Dismiss:

- (1) The CFPB never had authority to regulate the Respondents;
- (2) Each of the Bureau's claims are barred by either the CFPA's three-year statute of limitations or by TILA's and EFTA's one-year statute of limitations;

- (3) The Notice fails to state a claim under TILA and Regulation Z; and
- (4) Even if the CFPB did have authority over the Respondents and its claims were adequately and timely pleaded, the doctrine of retroactivity prohibits the CFPB from bringing any UDAAP claims arising from conduct that occurred before July 21, 2011.

See Brief in Support of Motion to Dismiss at 5. In its response in opposition, the Bureau clarified that “Counts III, IV, and VII are limited to deceptive or unfair acts and practices that occurred on or after July 21, 2011.” Respondents may address any retroactivity arguments that it believes are still extant.

The parties should also prepare to specifically address the following.

(1) With respect to the Bureau’s authority over Respondents,

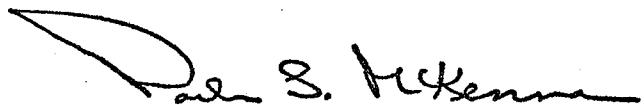
- Whether Respondents became “covered persons” on July 22, 2010, when § 1024 of the Consumer Financial Protection Act (CFPA) took effect, see 12 U.S.C. § 5301 note, or on the designated transfer date of July 21, 2011?
- Whether § 1066 of the CFPA limits the Secretary of the Treasury’s ability to perform certain Bureau statutory functions prior to the appointment and confirmation of a Director?
- Whether, even if the Secretary’s authority was limited to the actions specified in Subtitle F, the Bureau could nevertheless bring enforcement proceedings such as this one?

(2) With respect to the statute of limitations argument,

- Does the Decision of the Director in *PHH Corp., et al.*, 2014-CFPB-0002 (June 4, 2015), serve as binding precedent on the undersigned?

- Whether the Bureau's shared enforcement authority with the Federal Trade Commission against nonbank entities such as payday lenders is relevant? In particular, the Bureau had sole authority to enforce the statute at issue in *PHH Corp.*, while here there appears that either the FTC or the Bureau may have been able to pursue the TILA and EFTA claims.
- (3) With respect to the argument that the Notice of Charges fails to state a claim under TILA and Regulation Z, whether these allegations sufficiently lay out a claim upon which relief could be granted if found proved?

SO ORDERED.



Hon. Parlen L. McKenna
Administrative Law Judge
United States Coast Guard

Done and dated on this 17th day of March 2016 at
Alameda, California.

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing *Order Setting Parameters for Oral Argument* (2015-CFPB-0029) upon the following parties and entities in this proceeding as indicated in the matter described below:

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Done and dated this 17th day in March, 2016
Alameda, California

Cindy J. Melendres, Paralegal Specialist
to the Hon. Parlen L. McKenna