

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU
February 20, 2014

ADMINISTRATIVE PROCEEDING
File No. 2014-CFPB-0002

In the Matter of	:	
	:	ORDER GRANTING MOTION TO
PHH CORPORATION,	:	INTERVENE AND DENYING
PHH MORTGAGE CORPORATION,	:	WITHOUT PREJUDICE MOTIONS
PHH HOME LOANS LLC,	:	FOR PROTECTIVE ORDER
ATRIUM INSURANCE CORPORATION, and	:	
ATRIUM REINSURANCE CORPORATION	:	

On January 29, 2014, the Consumer Financial Protection Bureau filed a Notice of Charges Seeking Disgorgement, Other Equitable Relief, and Civil Money Penalty (Notice) in this proceeding. The hearing is scheduled to commence on March 24, 2014, in Philadelphia, PA.

On February 14, 2014, I held a scheduling conference, during which the Office of Enforcement (Enforcement) expressed concerns about production of its investigative file to Respondents, because the file contains confidential information from third parties.

On February 14, 2014, Radian Guaranty Inc., United Guaranty Residential Insurance Company, Mortgage Guaranty Insurance Corporation, Genworth Mortgage Insurance Corporation, and Republic Mortgage Insurance Company (collectively, the Third Parties), filed a Motion to Intervene for the Purpose of Seeking a Protective Order (Motion to Intervene), pursuant to 12 C.F.R. § 1081.119(a). Attached to the Motion to Intervene were three exhibits: a protective order proposed by Enforcement (Ex. A); a February 12, 2014, letter from the Third Parties to Enforcement counsel (Ex. B); and a February 13, 2014, email from Enforcement counsel to the Third Parties responsive to Ex. B (Ex. C). On February 18, 2014, the Third Parties filed a Notice of Submission of Proposed Protective Order (Notice), attached to which were two exhibits, a protective order proposed by the Third Parties (Notice Ex. A), and a blueline version comparing Notice Ex. A to Ex. A (Notice Ex. B).

On February 19, 2014, Enforcement and Respondents filed a Joint Stipulated Motion for a Protective Order (Motion for Protective Order), to which was attached a proposed protective order (Stipulated Protective Order). The Stipulated Protective Order differs from the proposed protective order submitted to the Third Parties, and to the protective order submitted by the Third Parties, in numerous respects. Compare Stipulated Protective Order with Ex. A and Notice Ex. B.

The Third Parties represent that Enforcement notified them that it intended to disclose confidential material to Respondents, presumably in connection with production of Enforcement's

investigative file. Motion to Intervene at 1. The Third Parties sent a letter to Enforcement that consented to such disclosure, subject to entry of a protective order, pursuant to 12 C.F.R. § 1081.119(a), but expressed several concerns regarding the adequacy of Enforcement's proposed protective order. Ex. B. Enforcement then notified the Third Parties that they should seek relief in accordance with 12 C.F.R. § 1081.119, that is, by filing the instant Motion to Intervene, and that their letter (Ex. B) did not "operate to preserve or assert any rights" of the Third Parties. Ex. C.

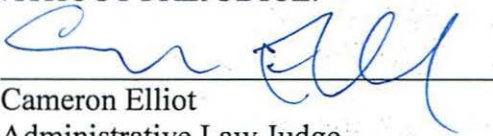
Although Respondents have not yet expressed their views on the Motion to Intervene, Enforcement apparently does not object to intervention. Ex. C. In view of the severe injury that unprotected disclosure may cause to the Third Parties, and given the clear urgency of full disclosure of the investigative file to Respondents, intervention by the Third Parties is warranted.

A protective order shall issue: (1) upon a finding that public disclosure of certain material will likely result in a clearly defined, serious injury to the party or third party requesting confidential treatment; (2) after finding that the material constitutes sensitive personal information within the meaning of 12 C.F.R. § 1081.112(e); (3) if all parties, including pertinent third parties, stipulate to the entry of a protective order; or (4) where public disclosure is prohibited by law. 12 C.F.R. § 1081.119(c).

The request for the Stipulated Protective Order is denied because the requirements of 12 C.F.R. § 1081.119(c) have not been met. The certificate of service attached to the Stipulated Protective Order does not reflect that it was served on the Third Parties, which is understandable given that the Third Parties will only be granted leave to intervene and participate in this proceeding upon issuance of this Order. However, in view of the Third Parties' participation in this proceeding moving forward, circumstance (3) – that all parties stipulate to the protective order – has not been met. See 12 C.F.R. § 1081.103 (defining "party" to include "any person who intervenes in the proceeding pursuant to [12 C.F.R.] § 1081.119(a) to seek a protective order"). There is no evidence that circumstance (4) has been met, and although the parties have suggested that circumstances (1) and (2) apply, there is insufficient evidence for me to make the required findings. Furthermore, inasmuch as the Notice is construed as a motion for entry of the Third Parties' proposed protective order, that motion is denied for the same reasons.

I encourage all parties to attempt to reach agreement on a stipulated protective order. If agreement cannot be timely reached, the parties should be prepared to submit evidence sufficient to satisfy 12 C.F.R. § 1081.119(c), pursuant to 12 C.F.R. § 1081.119(d).

It is HEREBY ORDERED that the Motion to Intervene for the Purpose of Seeking a Protective Order is GRANTED. It is FURTHER ORDERED that the Joint Stipulated Motion for a Protective Order and the Notice of Submission of Proposed Protective Order, to the extent it is a motion for a protective order, are DENIED WITHOUT PREJUDICE.


Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission