



In its motion, PHH discusses the harm that it contends would result from each provision of the Bureau's order. With respect to the first three injunction provisions, PHH complains that they are overbroad, unclear, punitive, and "exceed[] the scope of this administrative proceeding." Mot. at 7-9. At best, these arguments might support PHH's contention that the provisions should be overturned, but they do not show that any of the three provisions would cause PHH the sort of harm justifying a stay. That is especially so because each provision is congruent to the nature and scope of PHH's violations of law that were established in this case and to accepted forms of fencing-in relief: (1) the injunction to stop further violations of section 8 of RESPA; (2) the injunction not to enter into any other captive reinsurance arrangements for 15 years, which was the gravamen of the violations in this case and mirrors the period of PHH's violations; and (3) the injunction not to refer any real estate settlement services business to any provider in return for payments triggered by those referrals for 15 years, which again was the gravamen of the violations in this case and mirrors the period of PHH's violations.

The fourth provision of the injunction requires PHH to maintain records of any "thing of value" that it receives from any real estate settlement service provider. PHH also challenges the merits of this provision, but again, this challenge to the merits of the provision is not relevant to whether it causes irreparable harm. In addition to this merits challenge, PHH claims that the provision would cause it "real harm," consisting of "expenditures that cannot be recovered, undone, or recouped." Mot. at 11. It contends that, to comply with this provision, it "would be required to spend and divert vast resources to hire and train new employees." *Id.*

PHH bears the burden to show that this provision would cause it irreparable harm, but the only evidence of harm it offers is contained in a single paragraph of the declaration of its compliance officer, Eric Sadow, attached as an exhibit to its motion. That paragraph consists of one sentence:

I estimate that it will take a minimum of six to twelve new full-time employees within the Compliance Department just to work on this section IV of the Final Order and that it will take more than six months to complete even the first portion of gathering information regarding the period from July 21, 2008, to the present.

Ex. B ¶ 17. Elsewhere in his declaration, Mr. Sadow explains that PHH Mortgage, one of the respondents, has nearly 4000 employees. *See* Ex. B ¶ 11. But nowhere does he provide any evidence as to the cost of hiring and training "six to twelve" employees, nor does his declaration support PHH's contention that hiring and training these employees will require it to "divert vast resources," or in any way jeopardize its operations. Economic harm of this sort can justify a stay only if PHH can show that it will have a "severe" effect on its business. *See Toxco*, 724 F. Supp. 2d at 31. PHH makes no such showing.

The final provision of the order requires PHH to pay approximately \$109 million in disgorgement. Even though the provision permits PHH to make its payment into an escrow account pending appellate review, PHH nonetheless claims that making the payment into an escrow account will cause it irreparable harm. PHH's evidence of harm comes from the declaration of its treasurer, Hugo Arias, which is attached as an exhibit to PHH's motion. Mr. Arias claims that PHH plans to use the \$109 million to fund mortgage loans, and that if the money is unavailable, "the Company will be required to utilize its warehouse lines of credit, which will impose additional costs. I estimate that these costs will amount to approximately \$1,250,000 per annum, or approximately

\$105,000 per month.” Ex. A ¶ 8. Again, PHH fails to provide any evidence as to how this expense would impose any “severe” consequences upon its business operations, yet that is the critical consideration here – the impact of the purported economic harm on PHH’s business, not the monetary amount *per se*. See *Sterling Commercial Credit-Mich., LLC v. Phoenix Indus. I, LLC*, 762 F. Supp. 2d 8, 15-16 (D.D.C. 2011). Nor is it dispositive that compliance might impose costs that PHH could not recoup, assuming it prevails in its challenge. Alleged economic injury must be “more than simply irretrievable; it must be serious in terms of its effect on the [movant].” *Toxco*, 724 F. Supp. 2d at 31 (quotation marks omitted). PHH has not made such a showing.

PHH cites several cases in support of its contention that it has shown irreparable harm because it may have expenses that it will not be able to recoup. But none of those cases suggests that unrecoverable loss, no matter how small relative to PHH, constitutes irreparable harm. In any event, PHH’s argument would prove far too much. By providing PHH with the option to pay the disgorgement into escrow, the order treats PHH the same way that the federal rules treat litigants who seek to stay a money judgment pending appeal. Under the Federal Rules of Civil Procedure, a party that has a money judgment entered against it may obtain a stay of that judgment by posting a supersedeas bond. See Fed. R. Civ. P. 62(d). Just like PHH, the party that posts the supersedeas bond loses the use of the money pending appeal. But if the cost of losing the use of money pending appeal always constituted irreparable harm, then virtually every litigant ordered by a federal agency or a lower court to pay money would be able to make this showing.

Because PHH has not satisfied its burden to show irreparable harm, I conclude that it has not satisfied the requirements for a stay pending judicial review. However, I will stay the effective date of the order for 30 days (until August 5, 2015) to permit PHH an opportunity to seek a stay from the D.C. Circuit in the orderly course of business.

For the reasons set forth above, I DENY Respondents’ Motion to Stay the Director’s Final Decision and Order to the extent it seeks a stay pending judicial review. However, I GRANT a 30-day stay of the Order, so that the Order will now take effect on August 5, 2015.

SO ORDERED the 24<sup>th</sup> day of June, 2015.

Richard Cordray

Director

Consumer Financial Protection Bureau