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IN RE ASPIRE FINANCIAL INC. )  
2013-MISC-Aspire Financial-0001 )  
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**DECISION AND ORDER ON ASPIRE FINANCIAL INC.'S PETITION  
TO MODIFY OR SET ASIDE CIVIL INVESTIGATIVE DEMAND**

Aspire Financial Inc. (Aspire) has petitioned the U.S. Consumer Financial Protection Bureau for an order modifying or setting aside a civil investigative demand (CID). For the following reasons, the petition is denied.

**FACTUAL BACKGROUND**

The Bureau has publicly announced its concern about conduct in the market for mortgages and reverse mortgages. On November 19, 2012, the Bureau issued a press release warning companies against misleading customers with false mortgage advertising. The press release notified mortgage industry participants that the Bureau would be actively investigating potential misrepresentations, inaccurate information, and misleading statements in mortgage advertising.<sup>1</sup>

Aspire advertises mortgage products under the jurisdiction of the Bureau. This matter arises from a CID issued by the Bureau's Office of Enforcement to Aspire on January 23, 2013, as part of the Bureau's mortgage investigation.<sup>2</sup> The CID comprises twelve Interrogatories and eight Requests for Documents, all of which clearly seek information concerning the conduct of Aspire's mortgage advertising business. The CID states, under "Notification of Purpose," that it was served "in connection with an investigation to determine whether mortgage lenders have engaged or are engaging in unlawful practices in the advertising, marketing, or provision of mortgage and reverse-mortgage products." The CID required responses by February 25, 2013.

On February 6, 2013, counsel for Aspire met and conferred with counsel from the enforcement team pursuant to Rule 1080.6(c) of the Bureau's Investigation Rules. 12 C.F.R. § 1080.6(c). Aspire submitted a letter to the enforcement team on February 11 detailing the purported burden to its business if its staff was required to complete production in the two weeks remaining before February 25. An email from Aspire on February 14 suggested that, as an alternative, responses could be substantially completed by March 25. Aspire submitted this petition to quash the next day, February 15, 2013.

<sup>1</sup> The November 19, 2012, press release warns against potential misrepresentations about government affiliation, potentially inaccurate information about interest rates, potentially misleading statements concerning the costs of reverse mortgages and potential misrepresentations about the amount of cash or credit available to a consumer. <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-warns-companies-against-misleading-consumers-with-false-mortgage-advertisements/>

<sup>2</sup> Aspire asserts that the CID was received by email on January 25, 2013.

## LEGAL DETERMINATION

1. Aspire contends that the Bureau's CID does not adequately describe the conduct under investigation. This argument is identical to an argument made in a previous petition to quash a CID, which the Bureau rejected. *See PHH Corp.*, 2012-MISC-PHH Corp-0001, at 5-6 (CFPB Sept. 20, 2012) (hereinafter *PHH Corp.*).<sup>3</sup>

The Aspire CID contains a "Notification" that the Bureau is investigating "unlawful practices in the advertising, marketing, or provision of mortgage and reverse-mortgage products." The notification also expressly informs Aspire that the Bureau is investigating possible violations of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Mortgage Acts and Practices Advertising Rule, the Real Estate Settlement Procedures Act, Regulation X, or any other Federal consumer financial law.<sup>4</sup>

Section 1052(c)(2) of the Dodd-Frank Act requires a CID to "state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation." 12 U.S.C. § 5562(c)(2). *See* 12 C.F.R. § 1080.5. *PHH Corp.* held that a notification functionally equivalent to the one in this CID satisfied Section 1052(c)(2).

Beyond that, the Bureau's ongoing investigative interest in mortgage advertising has been well known in the industry since the Bureau's November 19, 2012 press release. The conduct of potential interest to the Bureau is also apparent from even a cursory reading of the CID's detailed interrogatories and document requests. Here, as in *PHH Corp.*, the recipient of the CID has been fully informed of the conduct of interest to the Bureau and the potentially applicable provisions of law. *See Material Handling Institute, Inc. v. McLaren*, 426 F.2d 90, 92 (3d Cir. 1970).

2. Aspire's petition also challenges the CID on the ground that it is not limited to activity within the Bureau's enforcement authority, and in particular challenges the Bureau's authority to demand information concerning events before the effective date of Dodd-Frank and Regulation N. Aspire argues that Dodd-Frank and Regulation N are not retroactive and hence some of the requested information cannot be relevant to a possible violation of law within the Bureau's jurisdiction.

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<sup>3</sup> The decision in *PHH Corp.* is available at: [http://files.consumerfinance.gov/f/201209\\_cfpb\\_setaside\\_phhcorp\\_0001.pdf](http://files.consumerfinance.gov/f/201209_cfpb_setaside_phhcorp_0001.pdf).

<sup>4</sup> The Aspire CID's Notification of Purpose states that:

The purpose of this investigation is to determine whether mortgage lenders have engaged or are engaging in unlawful practices in the advertising, marketing, or provision of mortgage and reverse-mortgage products in violation of Sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§ 5531, 5536; the Mortgage Acts and Practices Advertising Rule, Regulation N, 12 C.F.R. Part 1014; the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 et seq., Regulation X, 12 C.F.R. §1024; or any other Federal consumer financial law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.



Again, this argument was considered and rejected in *PHH Corp.* The Bureau's CID authority under Section 1052(c)(1) of Dodd-Frank expressly extends to all information "relevant to a violation." 12 U.S.C. § 5562(c)(1). *PHH Corp.* considered a similar contention that conduct purportedly outside the statute of limitations and therefore beyond the reach of the Bureau's enforcement authority could not be the subject of a CID. In *PHH Corp.*, persuasive precedent was found which indicated that such evidence can be appropriately obtained because "the issue here is not whether all such information is itself actionable; rather, the issue is whether such information is relevant to conduct for which liability can be lawfully imposed." *Id.* at 7.

The Aspire CID seeks information concerning Aspire's course of conduct between January 2010 and the present. Aspire's continuing course of conduct is relevant, among other things, to its knowledge of the effects of its actions. Equally relevant to this investigation is whether and how Aspire has made adjustments to its business in order to comply with new legal requirements. Thus, all evidence sought by the petition, including evidence from a reasonable period prior to the effective date of Dodd-Frank and Regulation N, is relevant to the Bureau's investigation and is appropriately sought by means of issuing a CID.

3. Aspire's petition alleges in passing that the CID was unduly burdensome because it required a prompt production by February 25, which threatened to overwhelm Aspire's staff. Aspire indicated, however, that it was amenable to production within four additional weeks, and the parties were in discussions on this suggested extension when Aspire filed this petition. In any event, the filing of this petition automatically stayed the February 25 deadline, 12 C.F.R. § 1080.6(f), and this ruling provides Aspire with 30 days after the date of this Decision and Order to complete its responses. Moreover, if it sees fit, Aspire is free to engage in further discussions with the enforcement team about the time reasonably needed to complete its production.

### CONCLUSION

For the foregoing reasons, Aspire's petition to modify or set aside the Civil Investigative Demand in this matter is denied. Within 30 calendar days of this Decision and Order, Aspire is directed to produce all responsive documents, items, and information within its possession, custody, or control that are covered by the CID. Aspire is also welcome to engage in further discussions with the Bureau's enforcement team to request any brief further extension of the CID deadline that may be deemed appropriate by the Assistant Director for Enforcement or a Deputy Assistant Director for Enforcement.

  
Richard Cordray, Director

April 16, 2013