

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 DENYING RESPONDENT'S
MOTION TO STAY PROCEEDINGS**

Hon. Parlen L. McKenna

On May 4, 2016, Respondents filed a Motion to Stay Proceedings Pending a ruling on appeal in a related case before the District of Columbia Circuit (D.C. Circuit) in *PHH Corp. v. CFPB*, No. 15-1177. Respondent's argue that the *PHH* appeal will resolve whether a statute of limitations applies to CFPB administrative proceedings (the decision of the CFPB Director in that case, which is binding on me and on which I relied in part when denying Respondents' Motion to Dismiss, held that no statute of limitations applies).

The Bureau filed a response on May 18, 2016, objecting to the stay. The Bureau argued that I do not have the authority to stay the proceedings under the CFPB Rules of Practice, 12 C.F.R. Part 1081. In the alternative, the Bureau asserted that even if a statute of limitations did apply, the Notice of Charges was timely filed. Additionally, the Bureau points out that although Respondents wish to stay the entire proceeding, their "arguments only raise the issue of whether a three year statute of limitations applies to [the] UDAAP

claims against Carnes. It makes no mention of [the] claims against Integrity Advance, which include UDAAP claims as well as EFTA and TILA claims.” Opposition at 5 n. 3.

Under the Administrative Procedures Act (APA), I am bound to follow the CFPB’s published rules of practice. *See* 5 USC 556(c). The CFPB Rules of Practice require me to issue a recommended decision not later than 300 days from the filing of a Notice of Charges. 12 C.F.R. § 1081.400(a). If the presiding judge determines that an extension of time to issue the recommended decision is necessary, he/she may submit a written request to the Director for an extension of time. 12 C.F.R. § 1081.400(b). This request must be made no later than 30 days prior to the deadline for issuing the recommended decision. The parties may file briefs in support or opposition, and the Director must determine whether the extension is necessary or appropriate in the public interest. *Id.*

It is clear from the Rules of Practice that the 300-day deadline is of the utmost importance. The Rules provide that “[t]he deadlines for action by the hearing officer established by §§ 1081.203, 1081.205, 1081.211, 1081.212, and 1081.400, or elsewhere in this part, confer no substantive rights on respondents.” 12 C.F.R. § 1081.106. In the Rule regarding motions for extensions of time limits, postponements, or adjournments, administrative law judges are directed to generally “adhere to a policy of strongly disfavoring granting such motions.” 12 C.F.R. § 1081.115(b). One consideration must be the impact on the ability to complete the proceedings within the 300-day time limit. 12 C.F.R. § 1081.115(b)(4). Finally, “[t]he granting of any extension of time pursuant to this section shall not affect any deadlines set pursuant to § 1081.400(a).” 12 C.F.R. § 1081.115(d).

The Rules of Practice allow brief stays, but—with the exception of a stay pending judicial review of the instant proceeding—they are generally disfavored or disallowed under the CFPB Rules. *See* 12 C.F.R. §§ 1081.205(h); 1081.208(h)(1); 1081.211(f); 1081.406.

Citing the standard set forth in *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936), Respondents state that I have broad powers to control my docket, including the issuance of stays. Motion at 2. Respondents contend that administrative agencies “routinely rely” on *Landis* in granting stays, pointing to several Environmental Protection Agency (EPA) decisions. *Id.* However Respondents fail to note that the EPA Rules do not prescribe a deadline for issuing decisions. Nor do the EPA rules contain express statements disfavoring or disallowing stays in the proceedings. *See* 40 C.F.R. Part 22. Clearly, there are significant differences between the EPA and CFPB Rules. Thus, I find that EPA regulations or decisions do not offer persuasive guidance on this issue.

Even under *Landis*, a trial judge must balance the parties’ competing interests when determining if a stay should be granted or denied. 299 U.S. at 254-55. In further analyzing *Landis*, the Federal Circuit stated, “[o]verarching this balancing is the court’s paramount obligation to exercise jurisdiction timely in cases properly before it.” *Cherokee Nation v. U.S.*, 124 F.3d 1413, 1416 (Fed. Cir. 1997). Respondents have cited *In the Matter of Certain Spiral Grilled Products Including Ducted Fans & Components Thereof*, Order No. 4, USITC Inv. No. 337-TA-426 (Mar. 15, 2000), as support for their position that an administrative law judge may stay a proceeding. The judge in that case held that “if the stay requested by respondents, or any stay, is to be indefinite, one must

determine whether there is a pressing need for such a stay, and one must balance the interests of the parties, as in the *Cherokee Nations* case.” *Id.*

Applying the balancing test, I find both parties risk prejudice if there is a delay in the adjudication. The alleged violations took place in 2011 and 2012; Respondents state that “there is no possibility that evidence will grow stale or that witnesses will lose their already-fading memories if the Court grants a stay.” Reply at 2-3. While it is true the documentary evidence will speak for itself whenever the hearing takes place, there is undoubtedly a risk that witnesses could become unavailable or that their “already-fading memories” would further deteriorate if the hearing is postponed. I find that the need to preserve witness testimony without further delay outweighs Respondents’ interest in staying the proceeding for an unspecified period of time.

Clearly, in CFPB proceedings, a judge’s generic power to grant a stay is in conflict with the Bureau’s specific Rules of Practice. As the presiding judge, I am constrained by strict regulatory time limitations. Even if I were to grant a stay, I would still be required to issue a Recommended Decision within 300 days from the date the Notice of Charges was filed or to petition the Director for an extension of time. The Bureau has correctly pointed out that *PHH* may not be resolved for a long time. No one knows when the D.C. Circuit will issue its decision, and thereafter “a party could seek rehearing, rehearing en banc, petition for certiorari, or all of the above.” Opposition at 6. While the Respondents are only seeking a stay for the pendency of the current appeal, the relevant issue for me is whether the D.C. Circuit will issue its decision in time for me to file a Recommended Decision in this case within the 300 days allotted to me.

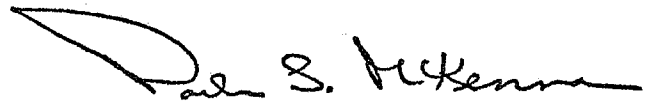
In light of this, I will not apply to the Director for an extension of time of unspecified duration to issue the recommended decision in this matter. Under the Bureau's stated policies, I do not believe it likely that such a request would be granted. The Federal Register commentary to the adoption of the Final Rules states "the Bureau's intent is that such extensions will be requested by hearing officers and granted by the Director only in rare circumstances." 77 Fed. Reg. 39058, 39059 (June 29, 2012). The Bureau also noted that it "believes that mandatory deadlines for the completion of certain stages of administrative proceedings, and a policy strongly disfavoring extensions, postponements or adjournments, is necessary to ensure that these proceedings are expeditious and fair." *Id.* at 39065.

Moreover, even if I were to apply for an extension, this proceeding would still go forward as scheduled pending the Director's decision on the extension. Any further delays in adjudicating this matter would certainly compromise my ability to issue a decision within the 300-day deadline if the Director ultimately denied a request for extension. It is therefore in the interest of judicial economy for this hearing to take place as scheduled.

ORDER

Respondents' Motion to Stay Proceedings Pending Resolution of Related Case on Appeal is **DENIED**.

IT IS SO ORDERED.



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

Done and dated on this 27th day in May, 2016 at
Alameda, California.

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing *Order Denying Respondent's Motion To Stay Proceedings* (2015-CFPB-0029) upon the following parties and entities in this proceeding as indicated in the manner described below:

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Done and dated this 27th day of May, 2016
Alameda, California.



**Cindy June Melendres
Paralegal Specialist to the
Hon. Parlen L. McKenna**