

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING)
File No. 2014-CFPB-0002)

In the matter of:)

PHH CORPORATION, PHH MORTGAGE)
CORPORATION, PHH HOME LOANS,)
LLC, ATRIUM INSURANCE)
CORPORATION, AND ATRIUM)
REINSURANCE CORPORATION.)

**RESPONDENTS' REQUEST FOR CLARIFICATION AS TO THE
HEARING LOCATION FOLLOWING THE WEEK OF MAY 19, 2014**

Respondents PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation (collectively, "Respondents"), request clarification of the Tribunal's March 31, 2014 Order (the "Order") to relocate the hearing to SEC Headquarters in Washington, D.C., beginning May 19, 2014.¹ Specifically, to the extent that the Order calls for proceedings to continue to be held in Washington, D.C., after the week of May 19-23, 2014, Respondents object and respectfully request that the remaining weeks of the hearing be held in Philadelphia, PA, out of consideration for the convenience of Respondents' corporate representatives and witnesses.

INTRODUCTION

During the scheduling conference on February 14, 2014, this Tribunal agreed to hold the hearing in Philadelphia, PA, upon Respondents' submission that that location would be convenient for Respondents' corporate representatives and witnesses, as a New Jersey location

¹ Respondents note that the transcript of the March 28, 2014 hearing was not available to them before Friday, April 4, 2014.

was not available. Many of Respondents' corporate representatives and witnesses reside in the Philadelphia area and all work at Respondents' headquarters in Mount Laurel, New Jersey, which is only a short commuting distance from Philadelphia, PA.

On March 28, 2014, the final day of the first week's hearing, the Tribunal noted the absence of any corporate representative for Respondents. Hearing Transcript (Tr.) of March 28, 2014, at 965. As Respondents pointed out, the General Counsel for PHH Mortgage had attended the hearing on each prior day of proceedings that week. Nonetheless, the Tribunal ordered that the hearing would recommence in Washington, D.C., beginning the week of May 19, 2014. Counsel for Respondents made clear that, while Respondents did not object to one week of proceedings in Washington, D.C., they specifically reserved their right to "reexamine the issue" at a later date. *See* Tr. at 968.

ARGUMENT

Respondents seek clarification of the Tribunal's Order with regard to the location of proceedings following the week of May 19-23, 2014. To the extent that such Order calls for the continuation of proceedings in Washington, D.C., beyond that week, Respondents object. For the convenience of Respondents' corporate representatives and witnesses, Respondents move the Tribunal to return the hearing to its original location in Philadelphia, PA, for all subsequent weeks of testimony.

Rule 200(b)(4) of the CFPB Rules of Practice for Adjudication Proceedings contemplates that Enforcement Counsel shall set forth in the Notice of Charges the time and place of the hearing. 12 C.F.R. § 1081.200(b)(4). Enforcement Counsel failed to include such information in the Notice of Charges issued to Respondents, and, thus, the location of the hearing was

determined by the Tribunal at the scheduling conference on February 14, 2014.² In ruling to hold the hearing in Philadelphia, the Tribunal considered the location and convenience of Respondents and their witnesses. Scheduling Conference Transcript of Feb. 14, 2014, at 6-7. Although no criteria appear in the CFPB Rules of Practice for determining the location of the hearing, such criteria are enumerated in the SEC Rules of Practice, from which the CFPB rules are modeled. *See* 77 Fed. Reg. 39058, 39058. SEC Rule of Practice 200(c) states: “The time and place for any hearing shall be fixed with due regard for the public interest and convenience and necessity of the parties, other participants, or their representatives.”³ 17 C.F.R. § 201.200(c). These considerations should remain central to determining the location of the hearing in this matter.

During the first week of the hearing, one employee of Respondents, Sam Rosenthal, testified over a period of three days. On each of these days, Madeline Flanagan, General Counsel for PHH Mortgage Corporation, was in attendance at the hearing, and also met with counsel for Respondents both before and after the day’s proceedings. During this time, Counsel for Respondents were also able to meet with witnesses in the Philadelphia area, including Respondents’ expert witness. Relocation of the hearing to Washington, D.C., will inconvenience Respondents’ witnesses and limit their ability to meet with counsel. Relocation of proceedings will also burden corporate representatives of Respondents, who intend to attend the hearing. *See* Declaration of Madeline Flanagan, Attachment A.

² In failing to include the location of the hearing in its Notice of Charges, as required by Rule 200(4)(b) of the CFPB Rules of Practice, the Bureau waived any right to determine the location of the hearing.

³ Similarly, the federal change of venue statute provides that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought. . . .” 28 U.S.C. § 1404(a).

Such inconveniences will be most prejudicial during Respondents' case-in-chief, for which Respondents have designated fifteen potential witnesses from the Philadelphia area. Of these individuals, nine witnesses are currently employed by Respondents and reside in the greater Philadelphia area; three witnesses are current employees of Radian Group, Inc., located in central Philadelphia; and one witness is a former employee of Radian who resides in Trenton, New Jersey, which is located a short distance from Philadelphia. Further, Respondents' expert witness and anticipated rebuttal expert both reside in the Philadelphia area.

The Bureau has also designated as witnesses three individuals currently employed by Respondents, one individual employed by Radian, and one additional individual otherwise within a short drive of Philadelphia. These witnesses will potentially have to travel to Washington, D.C., both during the week of May 19-23, as the Bureau completes its case-in-chief, and in subsequent weeks, as Respondents put on their case-in-chief.

The relocation of proceedings to Washington, D.C., will also burden Respondents' business operations during the time of the hearing. Several witnesses hold senior management positions with Respondents, including Michael Bogansky, Senior Vice President and Controller for PHH Corporation, Sam Rosenthal, Vice President of Risk Management, and Richard Bradfield, Senior Vice President of Capital Markets and Treasurer. Requiring several such employees to attend the hearing for an indeterminate period of time in Washington, D.C., would significantly disrupt Respondents' business operations.

As an additional matter, in ruling to relocate the hearing to Washington, D.C., the Tribunal noted the number of counsel for Respondents and the Bureau who had travelled from

Washington, D.C., to Philadelphia, PA.⁴ Respondents believe that the location of the hearing carries significantly greater potential to burden the parties' witnesses and corporate representatives than to burden counsel for the parties. The convenience of the parties and witnesses should remain paramount in determining the location of this proceeding.

CONCLUSION

For all the foregoing reasons, Respondents seek clarification of the Tribunal's May 31, 2014 Order. To the extent such Order calls for the continuation of proceedings in Washington, D.C., after the week of May 19, 2014, Respondents object and move to recommence the hearing in Philadelphia, PA, for all subsequent proceedings.

Dated: April 16, 2014

Respectfully submitted,

WEINER BRODSKY KIDER PC

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⁴ Respondents do not believe that the residence and number of attorneys representing either party is a proper consideration for determining the location of the hearing. While the Tribunal counted the Bureau's nine out-of-state employees in determining to relocate the hearing to Washington, D.C., Respondents note that more than half of the Bureau employees did not appear to have an active role in the hearing. The mere presence of such additional attorneys should not weigh against Respondents in the Tribunal's determination of the hearing location. Further, the fact that the Bureau is headquartered in Washington, D.C., does not mean that all of the Bureau's representatives travelled from Washington, D.C. At least one attorney for the Bureau traveled from its office in St. Louis, Missouri, and another is assigned to the Bureau's New York office. These two individuals presumably would find it no more difficult to attend the hearing in Philadelphia.

PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation

CERTIFICATION OF SERVICE

I hereby certify that on the 16th day of April, 2014, I caused a copy of the foregoing Respondents' Motion for Clarification to be filed with the Office of Administrative Adjudication and served by electronic mail on the following parties:

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