

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU
May 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 2014-CFPB-0002

In the Matter of	:	
	:	ORDER DENYING MOTION
PHH CORPORATION,	:	REQUESTING LIST OF
PHH MORTGAGE CORPORATION,	:	DOCUMENTS WITHHELD BY
PHH HOME LOANS LLC,	:	ENFORCEMENT COUNSEL
ATRIUM INSURANCE CORPORATION, and	:	
ATRIUM REINSURANCE CORPORATION	:	

On January 29, 2014, the Consumer Financial Protection Bureau (Bureau) filed a Notice of Charges Seeking Disgorgement, Other Equitable Relief, and Civil Money Penalty in this proceeding. The hearing commenced on March 24, 2014, in Philadelphia, PA, and was not yet complete when it adjourned on March 28, 2014.

Respondents filed a Motion Requesting a List of Documents Withheld by Enforcement Counsel (Motion) on April 3, 2014. The Office of Enforcement (Enforcement) timely filed an opposition (Opp'n) and Respondents timely filed a reply (Reply).

Rule 206(c) of the Bureau's Rules of Practice for Adjudication Proceedings (Rules) governs withheld document lists. 12 C.F.R. § 1081.206(c). Under Rule 206(c), I "may" require Enforcement to submit a list of documents withheld under Rule 206(b)(1)(i)-(v), or to submit the documents to me. Id. Similar documents may be identified by category rather than individually, I have discretion to determine when identification by category is insufficient, and I may order production of a document if I determine that it was improperly withheld. Id. Documents withheld under Rule 206(b)(1)(iii) are an exception; I may not order their production or submission, and Enforcement need only inform the other parties that such documents have been withheld. Id.

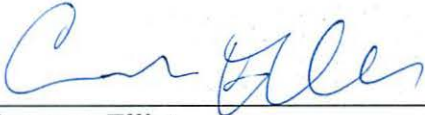
In response to the Motion, Enforcement states that it did not produce: (1) materials obtained from third parties relating only to other investigations; (2) unreadable documents (i.e., documents on unreadable disk drives and compact disks); (3) documents requested by other agencies but not transferred to the Bureau; and (4) "internal emails, memos, and compiled documents that reflect attorney mental impressions, attorney work product, or were duplicates compiled for law enforcement purposes by Enforcement Counsel or HUD investigators." Opp'n at 3-4. Enforcement also states that no documents were withheld pursuant to Rule 206(b)(1)(iii). Opp'n at 4.

Enforcement argues that the materials in categories (1) and (4) cannot properly be considered withheld, because they are not subject to production in the first place. Opp'n at 4-5. I agree. Rule 206(a) sets forth the basic requirement that Enforcement must make available for inspection and copying any document obtained by Enforcement "prior to the institution of proceedings, from persons not employed by the Bureau, in connection with the investigation leading to the institution of proceedings," as well as civil investigative demands issued in connection with the investigation, and, under certain circumstances, final Bureau examination or inspection reports. 12 C.F.R. § 1081.206(a)(1), (2). Materials obtained from third parties relating only to other investigations, and Bureau-generated internal emails, memos, and documents containing attorney work product, plainly do not fall within the ambit of Rule 206(a), and are therefore not subject to production. See 12 C.F.R. § 1081.206(a). Although investigative materials obtained from the U.S. Department of Housing and Urban Development (HUD), including HUD-generated internal emails, memos, and attorney work product, technically come from "persons not employed by the Bureau," the Bureau stepped into HUD's shoes for investigative purposes and such materials are functionally the same as Bureau materials.

Accordingly, the materials in categories (1) and (4) have not been "withheld," because there is no basis for Respondents to claim entitlement to them. Even assuming I have the authority to order their production or submission, I decline to do so because their description, although much more austere than would be expected in a formal privilege log, is sufficiently specific to conclude that they are not subject to production. See Reply at 3 (requesting a formal privilege log). Additionally, it would be pointless to order production of the materials in categories (2) and (3), that is, unreadable materials and materials not in Enforcement's possession.

Respondents contend that materials from other investigations relating to captive reinsurance are relevant to their case, and should be produced under Rule 206(a). Reply at 2-3. They do not cite to any language in Rule 206(a) supporting this contention, nor is there any. See 12 C.F.R. § 1081.206(a). Respondents also note that Enforcement "hypocritical[ly]" requested a privilege log when it issued a civil investigative demand to Respondent PHH Corporation during the investigation. Reply at 3-4. This is beside the point; civil investigative demands are not governed by Rule 206.

Accordingly, it is hereby ORDERED that Respondents' Motion Requesting a List of Documents Withheld by Enforcement Counsel is DENIED.



Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission