

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)
_____)

)
) ORDER DIRECTING
) PARTIES TO RESPOND
)
)
)

On February 13, 2017, the Bureau's Office of Administrative Adjudication notified the parties that this matter had been submitted for final Bureau decision. Consistent with 12 U.S.C. 5563(b)(3), the Bureau's rules provide that the "Director will issue ... the Director's final decision and order within 90 days after such notice, unless within that time the Director orders that the adjudication proceeding or any aspect thereof be remanded to the hearing officer for further proceedings." 12 C.F.R. 1081.405,

On February 16, 2017, the D.C. Circuit granted the Bureau's petition for rehearing en banc in *PHH Corp. v. CFPB*, No. 15-1177. The D.C. Circuit's en banc order appears to be relevant to two arguments Respondents have presented.


First, the en banc court vacated the panel decision in *PHH*, 839 F.3d 1 (D.C. Cir. 2016). *See John Doe Co. v. CFPB*, No. 17-5026, --- F.3d ---, 2017 WL 857030, at *2 (D.C. Cir. Mar. 3, 2017) ("[T]he *PHH* decision on which the Company relies has been vacated."). In their briefs before me, Respondents principally relied on the now-vacated panel decision in *PHH* to support their argument that Enforcement Counsel's claims under the Consumer Financial Protection Act are governed by the three-year statute of limitations provided in 12 U.S.C. 5564(g). *See, e.g.*, Respondents' Opening Appeal Brief at 6, Doc. 184; Respondents' Post-Oral Argument Supplemental Brief at 2-3, Doc. 203.

Second, the en banc court noted that it had separately ordered en banc consideration of *Lucia v. SEC*, 832 F.3d 277 (D.C. Cir. 2016), and directed the parties to address the appropriate disposition of the *PHH* case in the event that the en banc court concludes in *Lucia* that the administrative law judge who handled that case was an inferior officer rather than an employee. Respondents have argued that the administrative law judge who presided over this proceeding was an inferior officer who was not appointed in accordance with the Appointments Clause. *See, e.g.*, Respondents' Opening Appeal Brief at 2, Doc. 184; Respondents' Notice of Supplemental Authority, Doc. 197.

In light of the en banc order in *PHH*, I am inclined to direct the Office of Administrative Adjudication to withdraw the notification that this matter had been submitted for final Bureau decision. *Cf.* 12 U.S.C. 5563(b)(3) (authorizing Bureau to modify, terminate, or set aside orders once they have been issued); 12 C.F.R. 1081.115(a) (authorizing Director to grant extensions). I would then direct that Office to issue a new notification once *PHH* has been resolved. This course would delay my resolution of this appeal. However, I believe it would help minimize unnecessary or duplicative proceedings and would facilitate a more efficient resolution of this matter.

I therefore direct that, on or before March 24, 2017, Respondents and Enforcement counsel each file a statement of no more than five pages stating whether they object to the withdrawal of the notification that this matter has been submitted for final Bureau decision.

SO ORDERED.


Richard Cordray
Director
Consumer Financial Protection Bureau

March 9, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the *Order Directing Parties to Respond* upon the following parties and entities in Administrative Proceeding 2015-CFPB-0029 as indicated in the manner described below:

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Morgan

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Jameelah Morgan
Docket Clerk
Office of Administrative Adjudication
Consumer Financial Protection Bureau

Signed and dated on this 10th day of March, 2017 at
Washington, D.C.