



Consumer Financial
Protection Bureau

IN RE ZERO PARALLEL, LLC

2016-MISC-Zero Parallel-0001

**DECISION AND ORDER ON PETITION BY ZERO PARALLEL, LLC,
TO MODIFY OR SET ASIDE CIVIL INVESTIGATIVE DEMAND**

Zero Parallel, LLC, the recipient of a civil investigative demand (CID) from the Consumer Financial Protection Bureau's Office of Enforcement, has petitioned for an order to set aside or modify the CID. For the reasons set forth below, the petition is denied.

FACTUAL BACKGROUND

On April 25, 2016, the Bureau issued a CID to Zero Parallel seeking information about its products, services, and operations. The CID's "Notification of Purpose" stated that the CID had been issued "to determine whether lead generators or other unnamed persons have engaged or are engaging in unlawful acts and practices in connection with the marketing, selling, or collection of payday loans, in violation of Sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [CFPA], 12 U.S.C. §§ 5531, 5536, the Fair Credit Reporting Act, 15 U.S.C. § 1681m(a), Regulation V, 12 C.F.R. pt. 1022, the Truth in Lending Act, 15 U.S.C. § 1601, et seq., Regulation Z, 12 C.F.R. pt. 1026, the Electronic Fund Transfer Act, 15 U.S.C. § 1693, et seq., Regulation E, 12 C.F.R. pt. 205, the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, the Telemarketing Sales Rule, 16 C.F.R. pt. 310, or any other Federal consumer financial law," and to determine whether "Bureau action to obtain legal or equitable relief would be in the public interest." The CID posed fifteen document requests, two requests for written reports, and five interrogatories, and it also sought oral testimony on ten topics. The CID required Zero Parallel to produce the requested documents, responses to interrogatories, and written reports by May 25, 2016, and to produce a witness for oral testimony on June 3, 2016, at the United States Attorney's Office in Los Angeles, California. Pursuant to the Bureau's rules, Zero Parallel was required to schedule a meeting (meet-and-confer) to occur within ten days of its receipt of the CID.

Enforcement staff (Staff) held a meet-and-confer conference call with Zero Parallel's counsel on May 5, 2016. During that call, Zero Parallel's counsel did not raise

issues of burden or the Bureau's jurisdiction, nor did they request a modification of the CID. Instead, counsel inquired whether the CID related to the Bureau's separate litigation against Zero Parallel's founder, Davit Gasparyan, based on his involvement with a different company, D and D Marketing, Inc., d/b/a T3Leads. In response, Staff disclosed that Zero Parallel was itself the subject of a Bureau investigation. At the conclusion of the call, Zero Parallel's counsel informed Staff of the possibility that Zero Parallel would file a petition to modify or set aside the CID, on the grounds that the Bureau was misusing its investigative powers to obtain information to use in its litigation against Gasparyan and T3Leads and improperly attempting to circumvent the Federal Rules of Civil Procedure. On May 10, 2016, Zero Parallel's counsel sent Staff a letter requesting that the CID be held in abeyance pending resolution of the litigation involving T3 and Gasparyan. Staff declined that request.

Zero Parallel filed its Petition to Modify or Set Aside the CID (Petition) on May 16, 2016.

LEGAL DETERMINATION

Zero Parallel offers three arguments as to why the CID should be set aside. None warrant setting aside the CID.

First, the company argues that the Bureau lacks jurisdiction to issue the CID because Zero Parallel is not a "covered person" or a "service provider" under the CFPA. Pet. at 7-10. In enacting the CFPA, Congress gave the Bureau a variety of authorities, including the authority to enforce the CFPA's prohibition of unfair, deceptive, or abusive acts or practices, *id.* §§ 5531(a), 5536(a), with respect to "covered persons" and "service providers." The CFPA defines "covered person" as "any person that engages in offering or providing a consumer financial product or service." *See* 12 U.S.C. § 5481(6)(A); *see also id.* § 5481(15)(A) (defining "financial product or service"). A "service provider" is a person who "provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service"; the definition includes a person who "participates in designing, operating, or maintaining the consumer financial product or service" or who "processes transactions related to the consumer financial product or service." *Id.* § 5481(26)(A). "Service provider" does not, however, include a person solely because that person provides "a support service of a type provided to businesses generally or a similar ministerial service" or "time or space for an advertisement for a consumer financial product or service." *Id.* § 5481(26)(C).

Zero Parallel's jurisdictional argument fails, for two reasons. To begin, Zero Parallel waived this contention by failing to raise it during the meet-and-confer process, as required by 12 C.F.R. § 1080.6(c)(3). Nevertheless, the argument also fails on the merits. The CFPA authorizes the Bureau to issue CIDs to "any person" who may have information "relevant to a violation." 12 U.S.C. § 5562(c)(I). Because this authority extends to *any* person – not only covered persons or service providers – who may possess relevant information, the company's argument does not relate to the scope of the Bureau's investigative authority. Instead, the company's argument offers a

premature substantive defense against claims the Bureau has not asserted. As the Bureau has previously explained, an entity's fact-based arguments about whether it is subject to or has complied with substantive provisions of the CFPA are not defenses to the enforcement of a CID. *See In re J.G. Wentworth, LLC*, 2015-MISC-J.G. Wentworth, LLC-0001, at 2 (Feb. 11, 2016);¹ *In re Next Generation Debt Settlement, Inc.*, 2012-MISC-Next Generation Debt Settlement-0001, at 2 (Oct. 5, 2012).² Courts have agreed with federal agencies that have reached the same conclusion in similar circumstances. *See SEC v. Savage*, 513 F.2d 188, 189 (7th Cir. 1975) (SEC not required to establish that company's commodities future contracts were "securities" within the meaning of the Securities Act before subpoena would be enforced). The Supreme Court has "consistently reaffirmed" the principle that "courts should not refuse to enforce an administrative subpoena when confronted by a fact-based claim regarding coverage or compliance with the law." *EEOC v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1076 (9th Cir. 2001) (citing, *inter alia*, *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950)). As a result, the Bureau's inquiry is within its authority. *See Morton Salt Co.*, 338 U.S. at 652-53 (government investigation is appropriate if "the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant").

Second, Zero Parallel incorrectly contends that the CID's Notification of Purpose is overbroad and indefinite, as well as that it fails to meaningfully advise it of the conduct under investigation. Pet. at 10-11. I will address this argument notwithstanding that Zero Parallel waived it by not raising it during the meet-and-confer process. 12 C.F.R. § 1080.6(c)(3). When the Bureau issues a CID, it need not provide a detailed narrative describing the conduct under investigation; rather, a CID only must 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 also* 12 C.F.R. § 1080.5. The CID's Notification of Purpose identifies this specific conduct as acts and practices related to "whether lead generators or other unnamed persons have engaged or are engaging in unlawful acts and practices in connection with the marketing, selling, or collection of payday loans." It also identifies the legal basis for the violations under investigation: "Sections 1031 and 1036 of the [CFPA], 12 U.S.C. §§ 5531, 5536, the Fair Credit Reporting Act, 15 U.S.C. § 1681m(a), Regulation V, 12 C.F.R. pt. 1022, the Truth in Lending Act, 15 U.S.C. § 1601, et seq., Regulation Z, 12 C.F.R. pt. 1026, the Electronic Fund Transfer Act, 15 U.S.C. § 1693, et seq., Regulation E, 12 C.F.R. pt. 205, the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, the Telemarketing Sales Rule, 16 C.F.R. pt. 310, or any other Federal consumer financial law." The Bureau is not required to further specify the provisions under investigation, as it is "well settled that the boundaries of an [agency] investigation may be drawn 'quite generally,' in large part because at the investigative stage of a proceeding, the [agency] need only have a 'suspicion that the law is being violated in some way.'" *FTC v. O'Connell Assocs., Inc.*, 828 F. Supp. 165, 171 (E.D.N.Y. 1993)

¹ Available at http://files.consumerfinance.gov/f/201602_cfpb_decision-and-order-on-petition-by-jg-wentworth-llc-to-modify-or-set-aside-civil-investigative-demand.pdf.

² Available at http://files.consumerfinance.gov/f/201210_cfpb_2012-MISC-Next-Generation-Debt-Settlement-0001-Order.pdf.

(emphasis in original) (quoting *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992)). The Bureau has repeatedly found that where, as here, a Notification of Purpose identifies the conduct under investigation and the relevant provisions of law, the CID satisfies statutory and regulatory requirements. See, e.g., *In re Assurant, Inc.*, 2015-MISC-Assurant-0001, at 3 (Apr. 25, 2016);³ *In re J.G. Wentworth, LLC*, 2015-MISC-J.G. Wentworth, LLC-0001, at 2 (Feb. 11, 2016).⁴ Contrary to Zero Parallel's contention, that the Bureau could theoretically have framed its Notification of Purpose more narrowly does not create a legal obligation that it do so. The CID is thus not "too indefinite" to be enforceable. See *Morton Salt Co.*, 338 U.S. at 652-53.

Third, Zero Parallel asserts that the CID should be set aside because it was issued for an improper purpose: primarily, to seek information about Gasparyan relevant to the Bureau's separate litigation against him with respect to T3Leads. See *United States v. Powell*, 379 U.S. 48, 58 (1964) (court may decline to enforce administrative summons "issued for an improper purpose, such as to harass the [recipient] or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation"). It analogizes to the concerns that arise when the government initiates parallel civil and criminal proceedings against the same entity and concerning the same conduct. Pet. at 11-13 (citing, *inter alia*, *United States v. Kordel*, 397 U.S. 1 (1970), *United States v. Stringer*, 535 F.3d 929 (9th Cir. 2008), *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368 (D.C. Cir. 1980) (en banc)). Upon analysis of the authorities Zero Parallel cites, however, it is evident that this "parallel proceeding" analogy is misplaced. In each of these cases, the government (1) pursued two actions against the same entity and about the same underlying conduct (2) where one action was civil and one was criminal. Neither of those elements is present here. Accordingly, Zero Parallel has not met its burden, see *Powell*, 379 U.S. at 58, of demonstrating that the Bureau improperly issued the CID for the purpose of obtaining information it would not be entitled to in litigation.

The two Bureau matters at issue – the civil litigation against T3Leads and Gasparyan and the separate civil investigation of Zero Parallel – involve separate entities and by necessity involve separate conduct, because Zero Parallel did not even exist until after Gasparyan left T3Leads in 2014. That Gasparyan is a defendant in the litigation and happens to also be the founder of Zero Parallel is without consequence. Were it otherwise, the result would be untenable; once the Bureau has initiated litigation against Company A and related individuals for certain conduct, it would be wholly barred from investigating separate conduct by separate Company B, simply because one individual was involved in both companies. To tie the Bureau's hands in this way would frustrate the Bureau's mission to enforce Federal consumer financial laws. See 12 U.S.C. § 5511; see also *Kordel*, 397 U.S. at 11 (refusing to limit government's ability to bring both criminal and civil action because "[t]he public interest in protecting

³ Available at http://files.consumerfinance.gov/f/documents/201604_cfpb_decision-and-order-on-petition-by-assurant-inc-to-modify-or-set-aside.pdf.

⁴ Available at http://files.consumerfinance.gov/f/201602_cfpb_decision-and-order-on-petition-by-jg-wentworth-llc-to-modify-or-set-aside-civil-investigative-demand.pdf.

consumers throughout the Nation . . . requires prompt action by the agency charged with responsibility for administration of the [relevant] laws”); *United States v. Gel Spice Co., Inc.*, 773 F.2d 427 (2d Cir. 1985) (“If it were otherwise, anytime a prosecution was undertaken, the FDA would be precluded temporarily in that particular instance from protecting the health and safety of the public, although this function constitutes the main purpose of the Act.”).

Furthermore, the “parallel proceeding” cases upon which Zero Parallel relies each involve a criminal proceeding as well as a civil proceeding, unlike here, where the matters at issue are a civil lawsuit and a civil investigation. This distinction is no technicality. Significant Fourth and Fifth Amendment issues can arise in parallel civil and criminal proceedings, particularly if a compliant defendant providing information in a civil matter is unaware of a pending criminal investigation. *See Stringer*, 535 F.3d at 938-941. Similarly, if the government sought to gain information with a civil administrative subpoena for use in a criminal proceeding, that procedure would risk broadening the government’s right to criminal discovery or “infring[ing] on the role of the grand jury as a principal tool of criminal accusation.” *United States v. LaSalle Nat’l Bank*, 437 U.S. 298, 312 (1978). These concerns are not present when only civil proceedings are at issue. *See United States v. Frowein*, 727 F.2d 227, 231 (2d Cir. 1984) (“The policy considerations served by the *LaSalle* holding are absent in the context of a civil proceeding.”).

Even if the “parallel proceedings” analogy were apt, however, such proceedings “are unobjectionable” in the absence “of substantial prejudice to the rights of the parties involved.” *Dresser Indus.*, 628 F.2d at 1374. Zero Parallel has not demonstrated any such prejudice, because at bottom, the Bureau’s CID to Zero Parallel is not seeking information related to T3 or to Gasparyan’s conduct while at T3. Gasparyan did not found Zero Parallel until he had ceased involvement with T3Leads, meaning that facts discovered about Zero Parallel are unlikely to be relevant to the Bureau’s litigation with Gasparyan concerning T3Leads. Zero Parallel therefore has not shown that the Bureau is impermissibly using this CID to skirt the Federal Rules of Civil Procedure. *See Pet.* at 13-14.

Zero Parallel also suggests that the Bureau issued the CID in bad faith and for the improper purpose of punishing Gasparyan for not settling with the Bureau, *see Pet.* at 2, 11-12, but it has not met its burden of demonstrating bad faith. *See Powell*, 379 U.S. at 58. The Bureau has authority to issue a CID whenever it “has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible thing, or may have any information, relevant to a violation.” 12 U.S.C. § 5562(c)(1). Here, the Bureau informed Zero Parallel that it was the subject of an investigation, and it issued the CID to Zero Parallel because it had reason to believe the company might have information relevant to its potential violations of Federal consumer financial law. Furthermore, the Bureau may issue CIDs pertaining to a violation “before the institution of any proceedings under the Federal consumer financial law.” *Id.* Accordingly, the Bureau may not issue CIDs seeking information about T3Leads or Gasparyan concerning his involvement with T3Leads, because the Bureau has instituted a proceeding against them. But nothing in the statute bars the

Bureau from seeking information about the subject of a different investigation about whom proceedings have not been initiated. *See In re Stanley Plating Co., Inc.*, 637 F. Supp. 71, 72 (D. Conn. 1986) (enforcing administrative warrant where defendant “has cited no authority for the proposition that pendency of a civil action creates any limitation on the enforcement procedures authorized by [statute]. There is nothing in the statutes that suggests any such limitation being so intended by Congress”) (internal citation omitted). That Gasparyan has been involved in both T3Leads and Zero Parallel does not suffice to demonstrate that the Bureau issued its CID to Zero Parallel in bad faith, rather than for the purpose of carrying out its mandate to investigate violations of Federal consumer financial protection laws. *See Gel Spice Co.*, 773 F.2d at 432 (finding no bad faith where agency charged with “protecting health and safety of the public” continued civil investigation of entity pending conclusion of criminal proceedings). And Zero Parallel is not insulated from the Bureau’s investigatory authority simply because its founder is engaged in litigation with the Bureau related to another company he founded.

CONCLUSION

For the foregoing reasons, Zero Parallel’s petition to modify or set aside the CID is denied. Within 21 calendar days of this Decision and Order, Zero Parallel is directed to produce all responsive documents, items, and information within its possession, custody, or control that are covered by the CID. Zero Parallel is also directed to produce a witness for oral testimony. The company is welcome to engage in further discussions with Staff about any further suggestions for modifying the CID, which may be adopted by the Assistant Director for Enforcement or his Deputy as appropriate.



Richard Cordray, Director

July 14, 2016