

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 GRANTING IN PART
) THE ALJ'S REQUEST FOR
) ADDITIONAL TIME TO ISSUE
) THE RECOMMENDED DECISION
)

On March 6, 2020, Administrative Law Judge Christine L. Kirby submitted a request pursuant to Bureau Rule 1081.400(b), 12 C.F.R. § 1081.400(b), seeking additional time within which to file the Recommended Decision in the above-captioned matter. The request is granted in part, as set forth below. As a result, Judge Kirby shall file the Recommended Decision no later than September 30, 2020.

The Bureau filed its Notice of Charges in this matter on November 18, 2015. On September 27, 2016, Administrative Law Judge Parlen L. McKenna issued a Recommended Decision concluding that Respondents had violated the Truth in Lending Act, the Electronic Fund Transfer Act, and the Consumer Financial Protection Act. Both the Respondents and the Bureau's Enforcement Counsel appealed. After the parties had briefed and argued their appeals, the Office of Administrative Adjudication notified the parties that, pursuant to Bureau rule 1081.405(d), the matter had been submitted for final decision. However, on March 30, 2017, Bureau Director Richard Cordray issued an order withdrawing that notice pending the D.C. Circuit's en banc review of *PHH Corp. v. CFPB*, 839 F.3d 1 (D.C. Cir. 2016), *rev'd* 881 F.3d 75 (D.C. Cir. 2018) (en banc). And on March 15, 2018, Acting Bureau Director Mick Mulvaney issued an order holding this matter in abeyance pending the Supreme Court's resolution of *Lucia v. SEC*, No. 17-130, 138 S. Ct. 2044 (2018). On May 28, 2019, I issued an Order remanding this matter to Judge Kirby for a new hearing and recommended decision.¹

On March 6, 2020, Judge Kirby filed a Notice of Procedural Status and Request for Additional Time to Issue Recommended Decision. In that Notice, she explained that neither my Order of May 28, 2019, nor the Bureau's rules, specify a date for completion of the recommended decision in this proceeding, a proceeding that is being conducted after a remand. She also explained that certain preliminary matters had caused substantial delay, and she identified several issues that remain to be resolved. Judge Kirby stated that she could not predict how much time she would need to complete the proceeding. Accordingly, she requested "an extension for submission of a recommended decision until no later than 90 days after the deadline for filing post-hearing

¹ Both *PHH* and *Lucia* involved the constitutionality of administrative proceedings conducted by ALJs who, like Judge McKenna, had been hired as employees, not appointed as officers of the United States. As I concluded in my May 28 Order, Judge Kirby's appointment by Director Cordray was consistent with the Constitution's Appointments Clause.

responsive briefs pursuant to Rule 305(b) [12 C.F.R. § 1081.305(b)] and in no event later than 180 days from the date of the Director's order on this request."

As Judge Kirby notes, the Bureau's rules tie the issuance of the Recommended Decision to the filing of the Notice of Charges and provide that "the hearing officer [that is, the Administrative Law Judge (ALJ)] shall file a recommended decision ... in no event later than 300 days after filing of the notice of charges." 12 C.F.R. 1081.400(a). The rules do not expressly address what happens when a matter is remanded to the ALJ, and my Order of May 28, 2019, did not specify a date for completion of the recommended decision. If the 300-day rule applied, that would mean that the recommended decision in this matter would now be due on March 23, 2020. Because it is the Bureau's policy to conduct administrative adjudications expeditiously, 12 C.F.R. § 1081.101, and because return of jurisdiction to an ALJ on remand for further proceedings is akin to recommencement of the matter before the ALJ, the rules are best read to impose the same 300-day deadline. Thus, I hold that the recommended decision is currently due on March 23. In any event, the Bureau's rules do provide for extensions:

In the event the [ALJ] presiding over the proceedings determines that it will not be possible to issue the recommended decision within the [300-day time period], the [ALJ] shall submit a written request to the Director for an extension of the time period for filing the recommended decision. This request must be filed no later than 30 days prior to the expiration of the time for issuance of a recommended decision.

12 C.F.R. § 1081.400(b). The Bureau's rules allow the parties three days within which to submit "briefs in support of or in opposition" to Judge Kirby's request." § 1081.400(b). Neither party did so.

I have determined that an extension under §1081.400(b) is necessary in the public interest. Thus, I have decided to grant Judge Kirby's request, even though she failed to make her request within 30 days of the March 23 deadline.

As Judge Kirby notes, the Respondents have filed a motion to stay all proceedings pending the Supreme Court's resolution of *Seila Law v. CFPB*, No. 19-7 (argued March 3, 2020). Regardless of whether she grants such a stay, the Court's decision in *Seila Law* may have an impact on this proceeding. Accordingly, the due date for a recommended decision in this matter is extended until September 30, 2020. That should give Judge Kirby ample time to address the impact of the Supreme Court's decision as well as any other issues that remain. However, I deny Judge Kirby's request that I tie the deadline for the recommended decision to the parties' filing of post-hearing responsive briefs because she has not yet set a deadline for the filing of those briefs.

For the reasons set forth above, I GRANT the ALJ's Request for Additional Time to Issue Recommended Decision, and the ALJ shall now file her Recommended Decision no later than September 30, 2020. Further requests for extension are disfavored absent extraordinary circumstances.

SO ORDERED.



Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau

March 19, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the *Order Granting in Part the ALJ's Request for Additional Time to Issue the Recommended Decision* upon the following parties and entities in Administrative Proceeding 2015-CFPB-0029 as indicated in the manner described below:

Via Electronic Mail to Representatives for Bureau of Consumer Financial Protection

Benjamin Clark, Esq.
1700 G Street, NW
Washington, DC 20552
benjamin.clark@cfpb.gov

Stephen C. Jacques, Esq., Email: stephen.jacques@cfpb.gov
Alusheyi J. Wheeler, Esq., Email: alusheyi.wheeler@cfpb.gov
Deborah Morris, Esq., Email: deborah.morris@cfpb.gov

Via Electronic Mail to Representatives for Respondent

Richard J. Zack, Esq.
Pepper Hamilton, Esq.
3000 Two Logan Square
Philadelphia, PA 19103
zackr@pepperlaw.com

Michael A. Schwartz, Esq., Email: schwarma@pepperlaw.com
Christen M. Tuttle, Esq., Email: tuttlec@pepperlaw.com
Saverio S. Romeo, Esq., Email: romeos@pepperlaw.com

Jameelah
Morgan

Digitally signed by
Jameelah Morgan
Date: 2020.03.27
14:05:48 -04'00'

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

Signed and dated on this 27th day of March 2020
at Washington, D.C.