

UNITED STATES OF AMERICA
FEDERAL RESERVE SYSTEM
CONSUMER FINANCIAL PROTECTION BUREAU

CRYSTAL G. MORONEY

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) 2021-MISC-Law Offices of Crystal
) Moroney, P.C. (Crystal G. Moroney)-0001
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**DECISION AND ORDER ON PETITION BY CRYSTAL G. MORONEY TO SET ASIDE
OR MODIFY CIVIL INVESTIGATIVE DEMAND**

Crystal G. Moroney has petitioned the Consumer Financial Protection Bureau for an order setting aside or modifying a civil investigative demand (“CID”) issued to her. For the reasons set forth below, the petition is **DENIED**.¹

I. BACKGROUND

Crystal Moroney is a lawyer who owned and managed a debt collection business, the Law Offices of Crystal G. Moroney (“LOCM”).² On September 29, 2021, the Consumer Financial Protection Bureau (“Bureau”) served Ms. Moroney with a CID requiring her appearance by videoconference for her oral testimony at an investigational hearing to be held on October 27, 2021.

The Bureau’s September 29, 2021 CID to Ms. Moroney informed her that:

¹ Although the petition identifies “Law Offices of Crystal Moroney, P.C.” as the petitioner, the Bureau construes the petition as one by Crystal Moroney herself. The relevant CID was issued to Ms. Moroney, not the Law Offices of Crystal Moroney (“LOCM”), and it calls for Ms. Moroney’s personal testimony. The counsel that submitted this petition previously informed the Bureau that counsel represents both Ms. Moroney and LOCM in connection with the challenged CID. Petition (“Pet.”), Exhibit A. The Bureau therefore construes this petition as a petition by Ms. Moroney to challenge the personal CID served on her.

² Pet. at 4; Complaint ¶¶ 3-4, *Law Offices of Crystal Moroney, P.C. v. Bureau of Consumer Financial Protection*, No. 7:19-cv-11594 (S.D.N.Y. filed Dec. 18, 2019) (ECF No. 1).

The purpose of this investigation is to determine whether debt collectors, furnishers, or associated persons, in connection with regularly collecting or attempting to collect consumer debt and furnishing consumer information to consumer-reporting agencies, have: (1) disregarded warnings that debts were the result of identity theft or otherwise disputed by consumers, in a manner that was unfair, deceptive, or abusive, in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; (2) ignored cease-and-desist requests and engaged in other prohibited communications with consumers or third parties, or failed to provide required notices, or made false or misleading representations in a manner that violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692b, 1692c, 1692e, 1692g; or (3) failed to correct and update furnished information, or failed to maintain reasonable policies and procedures in a manner that violated the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2, or Regulation V, 12 C.F.R. § 1022.42. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

The current CID seeks only Ms. Moroney’s oral testimony. Pursuant to 12 C.F.R. § 1080.6(c), the Office of Enforcement waived the meet-and-confer requirement with respect to this CID. Ms. Moroney then timely transmitted her petition on October 19, 2021.

Background on the Bureau’s underlying investigation is relevant to this petition. The Bureau issued three previous CIDs to LOCM for documents, responses to interrogatories, written reports, and tangible things. The first such CID was issued in June 2017, and the Bureau filed a petition to enforce it after LOCM failed to respond. *Bureau of Consumer Financial Protection v. Law Offices of Crystal Moroney, PC*, No. 7:19-cv-1732 (S.D.N.Y. filed Feb. 25, 2019). In that action, LOCM argued that the CID should not be enforced because the Bureau’s “structure” is unconstitutional and because the CID’s notification of purpose failed to provide adequate notice of the nature of the investigation. While that action was pending, the Bureau withdrew the first LOCM CID and replaced it with a new CID containing an expanded notification of the purpose of the investigation. The Bureau’s action to enforce the withdrawn LOCM CID was dismissed as moot.

LOCM then petitioned the Bureau to set aside its second CID. The Bureau denied the petition, LOCM failed to respond, and the Bureau filed suit to enforce that CID. *Bureau of Consumer Financial Protection v. Law Offices of Crystal Moroney, P.C.*, No. 7:20-cv-3240 (S.D.N.Y. filed Apr. 24, 2020). The district court ordered LOCM to comply with the second LOCM CID on August 19, 2020, and subsequently denied LOCM's request for a stay pending appeal. LOCM's appeal of the order enforcing that CID is currently pending. *Bureau of Consumer Financial Protection v. Law Offices of Crystal Moroney, P.C.*, No. 20-3471 (2d Cir. appeal docketed Oct. 7, 2020) (*LOCM II*).

After the Bureau served the second CID, LOCM brought suit against the Bureau to enjoin the investigation. *Law Offices of Crystal Moroney, P.C. v. Bureau of Consumer Financial Protection*, No. 7:19-cv-11594 (S.D.N.Y. filed Dec. 18, 2019). That civil action has been stayed until the Bureau's action to enforce the second CID is resolved.

On August 26, 2021, the Bureau served a third CID on LOCM. LOCM did not petition to set aside or modify that CID and instead produced documents in response.

II. LEGAL DETERMINATION

Ms. Moroney makes three arguments for setting aside the CID: (1) that the Bureau lacks authority to issue the CID because the Bureau's "funding mechanism" is unconstitutional; (2) that the CID does not provide sufficient notice of the subjects of the questions to be asked her, presumably as an entity representative, during her oral testimony; and (3) that the CID was issued for an improper purpose. She separately asks that the Bureau at a minimum postpone her obligation to comply with the CID until the Second Circuit resolves LOCM's pending appeal of a prior CID enforcement order, which presents the same challenge to the constitutionality of the Bureau's funding.

For the reasons set forth below, the petition is denied.

1. The administrative process for petitioning to modify or set aside CIDs is not the proper forum for raising and adjudicating challenges to the constitutionality of provisions of the Bureau’s statute. Ms. Moroney contends that the Bureau should set aside the CID because the way in which Congress funded the Bureau is unconstitutional, which in turn renders the CID invalid. Petition (“Pet.”) at 8-16. In the alternative, Ms. Moroney asks that the Bureau defer the date for her testimony set out in the CID until after the United States Court of Appeals for the Second Circuit has decided the constitutionality of the Bureau’s statutory funding mechanism in *LOCM II*. Pet. at 20.

“[G]overnment agencies may not entertain a constitutional challenge to authorizing statutes.” *United Space All., LLC v. Solis*, 824 F. Supp. 2d 68, 97 n.10 (D.D.C. 2011) (quotation omitted); *see also Buckeye Indus., Inc. v. Sec’y of Labor*, 587 F.2d 231, 235 (5th Cir. 1979) (“No administrative tribunal of the United States has the authority to declare unconstitutional the Act which it is called upon to administer.”); *Robinson v. United States*, 718 F.2d 336, 338 (10th Cir. 1983) (same). As a consequence, the Bureau has consistently taken the position that the administrative process set out in the Bureau’s statute and regulations for petitioning to modify or set aside a CID is not the proper forum for raising and adjudicating challenges to the constitutionality of the Bureau’s statute. *See, e.g., In re Equitable Acceptance Corp.*, 2019-MISC-Equitable Acceptance Corp.-0001 (Dec. 26, 2019),³ at 2; *In re Kern-Fuller and Sutter*, 2019-MISC-Candy Kern-Fuller and Howard E. Sutter III-0001 (Apr. 25, 2019),⁴ at 2; *In re Nexus Servs., Inc.*, 2017-MISC-Nexus Services, Inc. and Libre by Nexus, Inc.-0001 (Oct. 11,

³ Available at https://files.consumerfinance.gov/f/documents/cfpb_equitable-acceptance-corp__decision-and-order-on-petition.pdf.

⁴ Available at https://files.consumerfinance.gov/f/documents/cfpb_petition-to-modify_candy-kern-fuller-and-howard-e-sutter__decision-and-order.pdf.

2017),⁵ at 2. LOCM’s petition to deny the second LOCM CID on different constitutional grounds was denied for this reason. *In Re Law Offices of Crystal Moroney, P.C.*, 2019-MISC-Law Offices of Crystal Moroney, P.C.-0001 (Feb. 10, 2020),⁶ at 2-3. In the event that the Bureau determines at a later date that it is necessary to seek a court order compelling Ms. Moroney’s compliance with this CID, *see* 12 U.S.C. § 5562(e), she can raise her constitutional arguments as a defense to that proceeding in district court.

2. Ms. Moroney is not entitled to further information concerning the Bureau’s anticipated questions. Ms. Moroney objects that the CID does not describe the topics of the testimony demanded in sufficient detail, which she contends violates the Bureau’s regulations requiring that a CID “describe with reasonable particularity the matters for examination” where it seeks “oral testimony from an entity,” 12 C.F.R. § 1080.6(a)(4)(ii). Pet. at 17-18. Ms. Moroney’s petition assumes that Ms. Moroney is being called to testify as a representative of LOCM and therefore is being denied the advance notice provided in such circumstances so that an entity representative can be properly prepared for testimony. The petition argues that an undue burden will be imposed if Ms. Moroney (or presumably anyone else) is required to testify for LOCM without such notice. Pet. at 17-18.

Ms. Moroney misunderstands this CID. The CID seeks testimony from Ms. Moroney personally, not from LOCM. The CID has been served on Ms. Moroney personally with a letter that is addressed to her by name and that begins by telling her that the CID is issued “to you.” The CID itself defines “you” as “Crystal G. Moroney.” The letter and accompanying CID nowhere state that LOCM is required to designate one or more individuals to testify on behalf of

⁵ Available at https://files.consumerfinance.gov/f/documents/cfpb_petition-to-modify_nexus_decision-and-order.pdf.

⁶ Available at https://files.consumerfinance.gov/f/documents/cfpb_law-offices-crystal-moroney_decision-and-order-on-petition.pdf.

the firm. Ms. Moroney instead has been called as an individual witness to provide her knowledge of the transactions, communications, records, events, and other facts that relate to her conduct and to the conduct of others including LOCM. The CID therefore does not, and need not, “describe with reasonable particularity the matters for examination,” as would be required by 12 C.F.R. 1080.6(a)(4)(ii) if the CID called for testimony from LOCM.

Nor could Ms. Moroney object that she is entitled to further detail about the matters the Bureau will cover when she appears in her personal capacity for the investigational hearing. Ms. Moroney has been more than adequately apprised of the purpose of this investigation and the general scope of her testimony. This CID to Ms. Moroney includes a detailed notification of the purpose of the Bureau’s investigation. In addition, Bureau staff responded to Ms. Moroney’s request for more information by informing her of topics expected to be covered during her testimony. Moreover, it has long been accepted that “[e]very citizen of course owes to his society the duty of giving testimony to aid in the enforcement of the law.” *Piemonte v. United States*, 367 U.S. 556, 559 n.2 (1961) (citations omitted).

To the extent Ms. Moroney may have understood this CID as calling for testimony from LOCM rather than her personally, this Decision and Order should clarify that the CID requires Ms. Moroney to testify only in her personal capacity as a fact witness to her personal knowledge of the subjects under investigation.

3. The CID was not issued for an improper purpose. Finally, Ms. Moroney argues that the continuation of this investigation through the issuance of a CID requiring Ms. Moroney to attend one virtual investigational hearing results in an improper abuse of process. Pet. at 18-20. In particular, she claims that this CID was issued only to punish her law firm for challenging the constitutionality of the Bureau. *Id.* at 18-19.

Ms. Moroney provides no basis in her petition to conclude that the Bureau seeks the testimony called for by the CID to “punish” Ms. Moroney or her law firm, or for any reason other than to further the Bureau’s law enforcement investigation. In support of her claim of an improper purpose, Ms. Moroney’s petition merely cites unsurprising friction during this investigation. For instance, she points out that run-of-the-mill disputes have occurred occasionally in connection with the withdrawal, revision, and reissuing of this CID. *Id.* at 19. In addition, she describes routine disagreements concerning the appropriateness of, or necessity for, interactive back-and-forth meet-and-confer sessions. *Id.* And she complains that the Bureau served her in person with this CID. *Id.* The occurrence of such events over the course of this investigation does not suggest that the current CID is for an improper purpose, and it is not.

III. CONCLUSION

For the foregoing reasons, the petition to set aside or modify the CID is **DENIED**. Ms. Moroney has asked that, if her petition is denied, she be given 14 days from the date of the order to appear for her oral testimony. That request is **GRANTED**. Ms. Moroney is directed to appear for oral testimony and comply in full with this CID within 14 days from the date of this Order. Ms. Moroney is welcome to engage in discussions with Bureau staff about another date for her appearance that may be acceptable to the Assistant Director or Deputy Assistant Director of the Office of Enforcement.

IT IS SO ORDERED.

Dated: December 13, 2021



Rohit Chopra
Director