

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



_____)
IN RE JAWAT NESHEIWAT,)
_____)
2018-MISC-Jawad Nesheiwat-0001)
_____)

**DECISION AND ORDER ON PETITION BY JAWAD NESHEIWAT
TO MODIFY OR SET ASIDE CIVIL INVESTIGATIVE DEMAND**

Jawad Nesheiwat has petitioned the Consumer Financial Protection Bureau for an order to modify or set aside a civil investigative demand (CID) issued to him. For the reasons set forth below, the Petition is granted in part and the CID’s notification of purpose is modified as described in this Order. Nesheiwat also requests confidential treatment of materials submitted. That request is denied.

FACTUAL BACKGROUND

On October 29, 2018, the Bureau served a CID on Nesheiwat, a former executive at a mortgage lending company, seeking oral testimony. As explained in the CID’s notification of purpose:

The purpose of this investigation is to determine whether student loan debt-relief providers, mortgage lenders, or other persons, in connection with obtaining, using, or disclosing consumer information or with marketing or selling products and services relating to student loan consolidations, repayment plans, and forgiveness plans, have engaged in unfair, deceptive, or abusive acts or practices in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; or have violated the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or the Telemarketing Sales Rule, 16 C.F.R. Part 310.

The notification of purpose further advised that the investigation also seeks “to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.” The CID required Nesheiwat to provide oral testimony on November 26, 2018. It stated that the Deputy Assistant Director of the Bureau’s Office of Enforcement had waived the meet and confer requirement in 12 C.F.R. § 1080.6(c), as authorized by that provision.

Nesheiwat timely filed his Petition to Modify or Set Aside the CID on November 17, 2018.

LEGAL DETERMINATION

I. Compliance With 12 U.S.C. § 5562(c)(2)

Nesheiwat argues that the CID should be modified or set aside because its notification of purpose does not “state the nature of the conduct constituting the alleged violation which is under investigation,” as required of all Bureau CIDs by 12 U.S.C. § 5562(c)(2).

On April 23, 2019, the Bureau issued a statement advising the public that the Office of Enforcement has changed its practices so that notifications of purpose contained in its CIDs provide the recipients of CIDs with even more information regarding the focus of Bureau investigations. Consistent with this approach, and in order to provide Nesheiwat with a better understanding of the nature of the Bureau’s investigation, I am exercising the discretion afforded by section 1052(f)(1) of the CFPA and 12 C.F.R. § 1080.6(e)(4) to modify the notification of purpose contained in this CID as follows:

The purpose of this investigation is to determine whether student loan debt-relief providers, mortgage originators, or associated persons, in connection with obtaining, using, or disclosing consumer information or with marketing or selling products and services relating to student loan consolidations, repayment plans, and forgiveness plans, have: made false or misleading representations to consumers in a manner that is unfair, deceptive, or abusive in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; or have obtained or used consumer reports without a permissible purpose in a manner that violates the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., principally § 1681b; or have made false or misleading representations to consumers or requested or received prohibited payments from consumers in a manner that violates the Telemarketing Sales Rule, 16 C.F.R. Part 310. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

Nesheiwat’s arguments based on the original, unmodified notification of purpose do not provide a basis for setting aside or further modifying the CID, as the modified statement of purpose clearly satisfies the statutory standard. *See, e.g., CFPB v. Heartland Campus Sols., ECSI*, 747 F. App’x 44, 48 n.3 (3d Cir. 2018) (“Congress required [the Bureau] to identify only the type of conduct that may violate the law and the law being violated.”).

II. Request for Confidential Treatment

Nesheiwat requests confidential treatment of his Petition and this Order—specifically, the redaction of his name. That request is denied.

The Bureau’s regulations governing investigations provide that a CID petition and the Bureau’s order in response thereto are “part of the public records of the Bureau unless the Bureau determines otherwise for good cause shown.” 12 C.F.R. § 1080.6(g). As the Bureau has

explained, a petitioner bears the burden of demonstrating good cause that a petition should not be made public. *See In re Firstsource Advantage, LLC*, 2017-MISC-Firstsource Advantage, LLC-0001 (July 23, 2018), at 6-7; *In re Great Plains Lending, LLC*, 2012-MISC-Great Plains Lending-001 (Sept. 12, 2013), at 2; *see also Martin Marietta Corp. v. Dalton*, 974 F. Supp. 37, 40 n.4 (D.D.C. 1997) (“In ‘reverse-FOIA’ cases, the party seeking to prevent a disclosure the government itself is otherwise willing to make assumes that burden”). This standard mirrors that of the Federal Trade Commission. *See* 16 C.F.R. § 4.9(c)(1); *see also* FTC, Disclosure of Investigations, 42 Fed. Reg. 64135, 64135 (Dec. 22, 1977) (explaining, with respect to the FTC’s similar CID petition process, that “the administrative interpretations of [the Commission’s] laws and rules embodied in the motions and the applications, and the Commission’s response thereto should be disclosed”); FTC, Rules of Practice, 77 Fed. Reg. 59294, 59300 (Sept. 27, 2012) (“redaction of information that reveals the identity of the subject of a nonpublic investigation would impair the public’s ability to assess and understand these important rulings”). It is also consistent with the “general policy favoring disclosure of administrative agency proceedings.” *FCC v. Schreiber*, 381 U.S. 279, 293 (1965) (affirming agency authority to promulgate a rule generally requiring public disclosure of investigative information).

In evaluating whether a petitioner has shown “good cause” under 12 C.F.R. § 1080.6(g) to warrant withholding a petition and responsive order (or portions thereof) from the public record, the Bureau generally looks to the standards for withholding material from public disclosure established by the Freedom of Information Act (“FOIA”). *See In re Heartland Campus Sols., ECSI*, 2017-MISC-Heartland Campus Solutions, ESCI-001 (Sept. 8, 2017), at 9. Accordingly, the Bureau will publicly disclose a petition to modify or set aside a CID unless either (i) the petitioner has made a factual showing that the information in the petition falls within one of the FOIA exemptions or (ii) the Bureau determines that there exists other good cause to withhold all or a portion of the petition from public disclosure and the withheld information is not otherwise required by law to be made public.

Nesheiwat asks that his name be redacted from all public materials concerning this Petition. Nesheiwat’s Petition, however, does not articulate any argument why his name would be protected from disclosure under FOIA. It also does not clearly identify any harm he would suffer from disclosure. Instead, it simply states that all of his communications concerning the CID constitute “personal, privileged, private, and sensitive information and are intended to be confidential.” That bare assertion is insufficient to meet Nesheiwat’s burden to show that good cause exists for redacting his name from this Petition and Order. *Cf.* 12 C.F.R. § 1080.6(g) (“Any showing of good cause must be made *no later than the time the petition is filed.*”). Accordingly, his request to file this petition anonymously is denied.

CONCLUSION

For the foregoing reasons, the Petition to Modify or Set Aside the CID is granted in part and the notification of purpose is modified as set forth above. Nesheiwat is directed to provide oral testimony at a time and location to be specified by Enforcement staff, or at another mutually agreeable time and location arranged with Enforcement staff.

April 25, 2019

Kathleen L. Kraninger
Kathleen L. Kraninger, Director