IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CONSUMER FINANCIAL PROTECTION BUREAU, Petitioner, v. INTEGRITY ADVANCE, LLC and JAMES R. CARNES, Respondents.	Civil Case No. 21-206

PETITION TO ENFORCE THE BUREAU'S JANUARY 11, 2021 FINAL ORDER

1. This petition brought by the Consumer Financial Protection Bureau (Bureau), pursuant to Section 1053 of the Consumer Financial Protection Act (CFPA), 12 U.S.C. § 5563(d), seeks enforcement against Integrity Advance, LLC (Integrity Advance), and James R. Carnes (Carnes) of the Bureau Director's Final Order, issued on January 11, 2021 (Bureau Final Order).[1] In support thereof, the Bureau submits the accompanying Memorandum of Law and Declaration of Stephen C. Jacques. In further support the Bureau alleges:

2. The Bureau Final Order required that Integrity Advance and Carnes pay restitution of $38,453,341.62. The Order also required Integrity Advance to pay a civil money penalty of $7,500,000 and Carnes to pay a civil money penalty of $5,000,000. Respondents were required either to make payment to the Bureau or if they sought appellate review, they could pay the restitution and civil money penalties into an acceptable escrow account in lieu of making

[1] Final Order, *Integrity Advance, LLC and James R. Carnes*, CFPB No. 2015-CFPB-0029 (Jan. 11, 2021) [Dkt. 309] (attached to Jacques Decl. as Exhibit C)

payment to the Bureau. Respondents were also ordered to cooperate with the Bureau in determining the identity, location, and amount of restitution due to each consumer entitled to redress. Respondents were ordered to comply within 30 days of service of the Bureau Final Order (i.e., February 11, 2021).

3. On February 9, 2021, Respondents filed a motion requesting that the Bureau Director stay the Bureau Final Order pending Respondents' then-upcoming appeal in the court of appeals.

4. On February 10, 2021, Respondents filed a petition for judicial review of the Director's Jan. 11, 2021 Final Order in the U.S. Court of Appeals, 10th Circuit. *See* Petition for Review, *Integrity Advance v. CFPB*, No. 21-9521 (10th Cir. Feb. 10, 2021).

5. On March 9, 2021, the Bureau Acting Director filed an order denying Respondents' motion for stay pending appellate review but granting their request for a 30-day stay to allow them to seek a stay from the 10th Circuit, U.S. Court of Appeals. Order Denying Motion to Stay, Mar. 9, 2021 (Agency Stay Denial).[2]

6. The Bureau Final Order became effective after the temporary administrative stay had expired on April 7, 2021.

7. Respondents have not applied for a stay from the Court of Appeals.

8. Respondents have not paid redress and penalties to the Bureau, nor have they deposited the required funds into an escrow account as permitted under the Bureau Final Order. Respondents are therefore in violation of the Bureau Final Order.

[2] Order Denying Motion for Stay, *Integrity Advance, LLC and James R. Carnes*, CFPB No. 2015-CFPB-0029 (Mar. 9, 2021) [Dkt. 313] (attached to Jacques Decl. as Exhibit D)

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this statutory action to enforce the Bureau Final Order pursuant to 12 U.S.C. § 5563(d)(1). This Court has personal jurisdiction over Integrity Advance and Carnes pursuant to 12 U.S.C. § 5563(d)(1) and Fed. R. Civ. P. 4.

10. Venue is proper in this Court pursuant to 12 U.S.C. § 5563(d)(1) and 28 U.S.C. §§ 1391(b) and 1395(a).

DESIGNATION OF TRIAL

11. Petitioner requests a hearing in this matter be conducted in Kansas City, KS.[3]

PARTIES

12. The Bureau is an agency of the United States charged with regulating the offering and provision of consumer-financial products or services under "Federal consumer financial laws," 12 U.S.C. § 5491(a). The Bureau is authorized and empowered to conduct hearings and adjudication proceedings that can result in the issuance of agency orders to ensure or enforce compliance with Federal consumer financial laws. 12 U.S.C. § 5563.

13. Defendant James R. Carnes is a natural person residing at 2700 Verona Rd, Mission Hills, KS, an address located in this district, and was both a founder and chief executive officer of Integrity Advance. Carnes is subject to the Bureau Final Order.

14. Integrity Advance is a Delaware limited-liability company that originated and serviced short term loans to consumers. Integrity Advance operated an office in Westwood, KS. Integrity Advance is subject to the Bureau Final Order.

[3] Petitioner is requesting a hearing, rather than trial, since this is an application for enforcement of an agency order pursuant to 12 U.S.C. § 5563(d).

BUREAU FINAL ORDER AND RESPONDENTS' FAILURE TO COMPLY

15. Section 5563(d) provides that the Bureau may apply to a United States District Court for the enforcement of "any effective and outstanding notice or order issued under this section" and that court "shall have jurisdiction and power to order and require compliance." 12 U.S.C. § 5563(d)(1).

16. Consistent with the statutory language of section 5563(d), and cases interpreting identical statutory language concerning the judicial review of administrative proceedings of other financial regulators, the Bureau need only establish the following: (1) the Bureau, pursuant to its authority under the relevant provisions of the CFPA, issued and served Respondents the Bureau Final Order, (2) the Bureau Final Order is "effective and outstanding," and (3) Respondents have failed to comply with the Bureau Final Order. *See Off. of Thrift Supervision v. Paul*, 985 F. Supp. 1465, 1470-72 (S.D. Fla. 1997) (enforcing OTS order under 12 U.S.C. § 1818(i)(1)); *United States v. Leuthe*, 2002 WL 442840, at *5 (E.D. Pa. Mar. 20, 2002) (enforcing FDIC order under 12 U.S.C. § 1818(i)(1)); *c.f. Fed. Home Loan Bank Bd. v. Hooper*, 656 F.Supp. 719, 720 (W.D. Va. 1986) (enforcing FHHLB order under 12 U.S.C. § 1464(d)(8)(A)).

17. The Bureau Final Order was issued on January 11, 2021, sets forth the specific violations of Federal consumer financial law by Respondents, and provides a statement of the reasons or basis for the Director's actions and the findings of fact upon which the decision was predicated. 12 U.S.C. § 5563(b)(3); 12 C.F.R. § 1081.405(c). The Bureau served the Bureau Final Order on Integrity Advance and Mr. Carnes through their counsel via electronic mail on January 11, 2021.

18. The Bureau Final Order required that Respondents pay redress and penalties within 30 days of service of that order, and the Acting Director's March 9, 2021 order denying

Respondents' motion for a stay gave Respondents an additional 30 days to seek a stay from the court of appeals. The Bureau Final Order thus became effective after the stay expired on April 7, 2021.

19. Respondents have not paid redress and penalties to the Bureau, nor have they deposited the required funds into an escrow account as permitted under the Bureau Final Order.

20. Respondents have therefore failed to fully comply with the Bureau Final Order duly served upon them.

WHEREFORE, the Bureau Requests

1. An order directing Integrity Advance, LLC, and James R. Carnes to show cause why they should not be required to comply with the Bureau Final Order;
2. An order directing Integrity Advance, LLC, and James R. Carnes to comply fully with the Bureau Final Order; and
3. Such other relief as this Court deems just and proper.

Dated: May 19, 2021

Respectfully submitted,

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