



OFFICE OF ADMINISTRATIVE ADJUDICATION
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UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

In the Matter of:

PHOENIX TITLE LOANS, L.L.C.,

Respondent.

Administrative Proceeding
File no. 2016-CFPB-0020

ORDER GRANTING RESPONDENT'S MOTION TO FILE RESPONSE
BEYOND DEADLINE

Background

On September 21, 2016, the Consumer Financial Protection Bureau (“Enforcement”) served a *Notice of Charges* on Respondent. In accordance with the Rules of Practice for Adjudication Proceedings (“Rules of Practice”), Respondent’s Answer was due on October 5, 2016. 12 C.F.R. 1081.201. Respondent failed to file a timely answer, but on October 21, 2016, filed a *Motion to File Response Beyond Deadline*. On October 31, 2016, Enforcement filed an opposition to Respondent’s motion.

In the motion, Respondent’s General Manager, William M. Kidwell, who appears to be proceeding *pro se* on behalf of Respondent, asserts that after receiving the *Notice of Charges*, he attempted to contact CFPB Enforcement attorneys telephonically and left a phone message with the belief that he would hear back from Enforcement quickly. He made a mistake by failing to calendar the task and missed the filing deadline through human error, with no malicious intent. He further asserts that Respondent is compiling information for a response as well as a possible settlement, and that this matter has taken top priority.

In its opposition, Enforcement asserts that Respondent’s failure to calendar the matter or to contact the CFPB until after the answer deadline had passed constituted a lack of diligence. Enforcement asserts that this lack of diligence should be deemed to constitute a waiver of Respondent’s right to appear and contest the allegations against it.

In support of its position, Enforcement asserts that Respondent attempted to mislead the hearing officer about when the Company first attempted to contact the CFPB about the case. It further asserts that Respondent has caused the substantial prejudice that would result from a denial of its motion to file an answer beyond the deadline. Enforcement acknowledges, however, that the proceeding is only one month old and no extensions have been previously granted, thereby making it unlikely that extending Respondent’s time to file an Answer would affect my ability to adhere to

the timeline set forth in the Rules of Practice.

Standard of Review

Change of time limits are governed by 12 C.F.R. § 1081.115. According to the rule, a hearing officer may extend time limits for good cause shown. In considering a motion for extension of time limits, the hearing officer should adhere to a policy of strongly disfavoring such motions, except in circumstances where the moving party makes a strong showing that the denial of the motion would substantially prejudice its case. The rule sets forth five factors to consider, in addition to any other relevant factors:

1. The length of the proceeding to date;
2. The number of postponements, adjournments or extensions already granted;
3. The stage of the proceedings at the time of the motion;
4. The impact of the motion on the hearing officer's ability to complete the proceeding in the time specified by § 1081.400(a); and
5. Any other matters as justice may require.

Analysis

The *pro se* Respondent in this case has admitted to negligence in failing to calendar and thus to submit an answer to the *Notice of Charges* in a timely manner. While I find that this failure does demonstrate a lack of diligence, I do not find as Enforcement counsel asserts, an attempt to mislead this tribunal or to needlessly delay these proceedings. While I do admonish Respondent to carefully read the Rules of Practice and adhere to all future deadlines, I do not find, after considering the factors listed above, that the extreme remedy sought by Enforcement is warranted. This proceeding is in its initial stages. No other extensions have been sought or granted. The delay requested will not affect my ability to complete this proceeding in a timely manner. Furthermore, Respondent has indicated that it has compiled information to submit an Answer as well as to explore the possibility of a settlement. Accordingly, I grant Respondent's *Motion to File Response Beyond the Deadline*.

ORDER

1. Respondent's *Motion to File Response Beyond Deadline* is **GRANTED**. Respondent will submit an Answer to the Notice of Charges no later than **November 18, 2016**.
2. A scheduling conference will be set by separate order.

SO ORDERED

Christine Kirby
Digitally signed by Christine Kirby
Date: 2016.11.04 17:00:54 -04'00'

HON. CHRISTINE L. KIRBY
Administrative Law Judge
Consumer Financial Protection Bureau

Signed and dated on this 4th day of November 2016 at Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the *Order Granting Respondent's Motion to File Response Beyond Deadline* upon the following parties and entities in this proceeding as indicated in the manner described below:

Via Electronic Mail to Representatives for Consumer Financial Protection Bureau

Rebecca Coleman

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Via Electronic Mail to Representatives for Respondent

William "Max" Kidwell

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Jameelah
Morgan

Digitally signed by
Jameelah Morgan
Date: 2016.11.04 17:05:21
-04'00'

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

Signed and dated on this 4th day of November 2016 at
Washington, D.C.