
IN RE J.G. WENTWORTH, LLC)
2015-MISC-J.G. Wentworth, LLC-0001)

**DECISION AND ORDER ON PETITION BY J.G. WENTWORTH, LLC
TO MODIFY OR SET ASIDE CIVIL INVESTIGATIVE DEMAND**

J.G. Wentworth, LLC, the recipient of a civil investigative demand (CID) from the Consumer Financial Protection Bureau’s Office of Enforcement, has petitioned for an order to set aside or modify the CID. For the reasons set forth below, the petition is denied.

FACTUAL BACKGROUND

On September 11, 2015 the Bureau issued a CID to J.G. Wentworth, which stated in its “Notification of Purpose” that it had been issued “to determine whether persons involved in advancing funds in exchange for the rights to future payments from structured settlements or annuities have engaged or are engaging in acts or practices that violate sections 1031 and 1036 of the Consumer Financial Protection Act of 2010 [CFPA or Act], 12 U.S.C. §§ 5531, 5536; the Truth in Lending Act [TILA], 15 U.S.C. §§ 1601 et seq., or its implementing regulations; or any other Federal-consumer financial law, and whether Bureau action to obtain legal or equitable relief would be in the public interest.”¹ The CID posed fourteen document requests, seven interrogatories, and two requests for written reports seeking information about structured-settlement transactions and other products and services provided by J.G. Wentworth. The CID required the company to schedule a meeting (meet-and-confer) within ten days of receipt of the CID, and to produce requested documents, written reports, and responses to interrogatories by October 9, 2015.

The Bureau’s enforcement counsel held a meet-and-confer conference call with J.G. Wentworth on September 21, 2015 to discuss the scope of the CID. Another meet-and-confer took place on September 29, 2015, during which the company’s counsel asked the Bureau to retract the CID on the grounds that it lacked jurisdiction. J.G. Wentworth filed its Petition to Modify or Set Aside the CID on October 1, 2015.

¹ The Bureau had previously issued two CIDs to J.G. Wentworth. On March 24, 2014, the Bureau issued a CID seeking, among other information, documents related to the basic structure of J.G. Wentworth’s structured settlement transactions and its consumer-facing practices. On April 20, 2015, the Bureau issued a CID to J.G. Wentworth for testimony regarding its products and services. Although the company complied with both of those CIDs, it has taken issue with the most recent CID that is at issue here.

LEGAL DETERMINATION

J.G. Wentworth raises three arguments in support of its Petition, none of which warrants setting aside or modifying the CID.

First, the company argues that the Bureau lacks jurisdiction to issue the CID because J.G. Wentworth is not a “covered person” under the CFPA, which the Act defines as “any person that engages in offering or providing a consumer financial product or service.” See 12 U.S.C. § 5481(6)(A); see also 12 U.S.C. § 5481(15)(A) (defining “financial product or service”). The company contends that it “does not offer or provide a consumer financial product or service” and so does not qualify as a covered person under this definition. Pet. at 9. Because the CFPA’s prohibition against unfair, deceptive, and abusive acts applies only to “covered persons,” it cannot have violated the CFPA.

This argument is misplaced. The CFPA authorizes the Bureau to issue CIDs to “any person” who may have information “relevant to a violation.” 12 U.S.C. § 5562(c)(1). Because this authority extends to covered persons, service providers, or any other person who may possess relevant information, the company’s argument does not relate to the scope of the Bureau’s investigative authority. Moreover, as discussed further below, the company may well be engaging in conduct that brings it under the definition of covered person. Notwithstanding those points, the company’s argument offers a premature substantive defense against claims the Bureau has yet to assert. As the Bureau has previously explained, an entity’s fact-based arguments about whether it is subject to or has complied with substantive provisions of the CFPA are not defenses to the enforcement of a CID. See *In re Accrediting Council for Indep. Colleges and Schools*, 2015-MISC-ACICS-0001, at 2 (Oct. 8, 2015);² *In re Next Generation Debt Settlement, Inc.*, 2012-MISC-Next Generation Debt Settlement-0001, at 2 (Oct. 5, 2012).³ Courts have agreed with federal agencies that have reached the same conclusion in similar circumstances. See *SEC v. Savage*, 513 F.2d 188, 189 (7th Cir. 1975) (SEC not required to establish that company’s commodities future contracts were “securities” within the meaning of the Securities Act before subpoena would be enforced). The Supreme Court has “consistently reaffirmed” this principle that “courts should not refuse to enforce an administrative subpoena when confronted by a fact-based claim regarding coverage or compliance with the law.” *EEOC v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1076 (9th Cir. 2001) (citing, *inter alia*, *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950)).

J.G. Wentworth also complains that the Bureau has “declined to specify” how the definition of “financial product or service” in § 5481(15)(A) applies to its purchase of structured settlement and annuity payments, and asserts that it “has carefully analyzed these provisions and the authorities interpreting them,” but none “encompasses the conduct that is the subject of the

² Available at http://www.consumerfinance.gov/f/201510_cfpb_decision-on-petition-by-selling-ACICS-to-set-aside-civil-investigative.pdf.

³ Available at http://www.consumerfinance.gov/f/201210_cfpb_2012-MISC-Next-Generation-Debt-Settlement-0001-Order.pdf.

Bureau's CIDs." *Id.*⁴ Yet the Bureau need not provide a detailed narrative when it issues a CID. Rather, a CID only must state "the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation." 12 U.S.C. § 5562; *see also* 12 C.F.R. § 1080.5. The CID's Notification of Purpose identifies this specific conduct as acts and practices related to "advancing funds in exchange for the rights to future payments from structured settlements or annuities." It also identifies the relevant provisions of law as sections 1031 and 1036 of the CFPA, TILA or its implementing regulations, or any other Federal consumer financial law. The Bureau is not required to go further in specifying the provisions it may be investigating, as it is "well settled that the boundaries of an [agency] investigation may be drawn 'quite generally,' in large part because at the investigative stage of a proceeding, the [agency] need only have a 'suspicion that the law is being violated in some way.'" *FTC v. O'Connell Associates, Inc.*, 828 F. Supp. 165, 171 (E.D.N.Y. 1993) (emphasis added by the court) (quoting *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992)). Where, as here, the Notification of Purpose in a CID identifies the conduct under investigation and the relevant provisions of law, the Bureau has found that the CID satisfies statutory and regulatory requirements. *See, e.g., In re Accrediting Council for Indep. Colleges and Schools*, at 3; *In re PHH Corp.*, 2012-MISC-PHH Corp-0001, at 5-6 (Sept. 20, 2012).⁵

The Notification of Purpose in this matter adequately informs J.G. Wentworth of the conduct at issue in this investigation. However, for purposes of this decision it bears noting that the company is incorrect in claiming that nothing in the definition of "financial product or service" under § 5481(15)(A) might be relevant to the Bureau's investigation. By way of example, one such financial product or service may have been provided as part of the company's efforts to obtain favorable tax treatment. As the Petition notes, J.G. Wentworth is exempt from federal tax on the purchase of structured settlement payments if a state court determines that the transaction "is in the best interest of the payee, taking into account the welfare and support of the payee's dependents." Pet. at 4 (citing 26 U.S.C. § 5891(b)(2)); *see also* 26 C.F.R. § 157.5891-1. In accordance with this provision, the company may be providing consumers with financial advisory services to assist in determining whether a structured settlement transaction is in their best interest. As J.G. Wentworth acknowledges, the definition of "financial product or service" under the CFPA includes "providing financial advisory services . . . to consumers on individual financial matters." *See* Pet. at 9; 12 U.S.C. § 5481(15)(A)(viii). The Bureau therefore has authority to determine, without limitation, whether J.G. Wentworth or any other person or entity has provided such services to consumers in conformity with Federal consumer financial law.

Second, J.G. Wentworth argues that the Bureau lacks jurisdiction to issue the CID because the purchase of structured settlement and annuity payments does not constitute an extension of credit subject to TILA. *See* Pet. at 10-12. As with its first argument, this is a substantive defense that does not address the scope of the Bureau's investigative authority. Accordingly, I need not reach the merits of this question at this stage. As noted above, the Bureau has authority to investigate whether persons involved in the purchase of structured

⁴ J.G. Wentworth neither offers its "careful[] analy[sis]" of these provisions nor cites the interpretive authorities that purportedly support its conclusion. *See* Pet. at 9.

⁵ Available at http://www.consumerfinance.gov/f/201209_cfpb_setaside_phhcorp_0001.pdf.

settlement and annuity payments violated the CFPB, including through the provision of financial advisory services or other financial products or services. Even on that basis alone, the Bureau has authority to issue the CID. Whether J.G. Wentworth's structured settlement transactions are subject to TILA or any other Federal consumer financial law need not be determined in order to resolve its petition.

Third, the company argues that the Bureau has previously conducted discovery sufficient to determine that it lacks jurisdiction to issue the CID. *See* Pet. at 12-13.⁶ Because I have already concluded that the Bureau does not lack jurisdiction to issue the CID, this point is moot. Moreover, the Bureau is authorized to proceed with an investigation so long as "there is some plausible ground for jurisdiction, or to phrase it another way, unless jurisdiction is plainly lacking." *Karuk Tribe Hous. Auth.*, 260 F.3d at 1077 (quotations omitted); *accord EEOC v. Randstad*, 685 F.3d 433, 442 (4th Cir. 2012). The Bureau's authority to determine the scope of its authority when issuing a CID is consistent with the broad latitude the Supreme Court grants agencies in the course of their investigations. *See In re PHH Corp.*, at 4-5; *see also FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001) ("[C]ourts of appeals have consistently deferred to agency determinations of their own investigative authority, and have generally refused to entertain challenges to agency authority in proceedings to enforce compulsory process.").

CONCLUSION

For the foregoing reasons, J.G. Wentworth's petition to modify or set aside the CID is denied. Within 21 calendar days of this Decision and Order, J.G. Wentworth is directed to produce all responsive documents, items, and information within its possession, custody, or control that are covered by the CID. The company is welcome to engage in further discussions with the Bureau's enforcement team about any further suggestions for modifying the CID, which may be adopted by the Assistant Director for Enforcement or his Deputy as appropriate.



Richard Cordray, Director

February 11, 2016

⁶ J.G. Wentworth briefly cites two cases to support this argument. Neither is relevant. First, it cites a case about agency jurisdiction over Indian tribes, which is inapposite because it turned on a pure "question of law" – whether Congress intended the Fair Labor Standards Act to abrogate treaty rights of tribal nations – not on "factual issues on which discovery is necessary," unlike the situation here. *See Martin v. Great Lakes Indian Fish & Wildlife Comm'n*, 1992 WL 300841, at *5-10 (W.D. Wis. Oct. 7, 1992), *aff'd sub nom. Reich v. Great Lakes Indian Fish & Wildlife Comm'n*, 4 F.3d 490 (7th Cir. 1993). The other case merely states the truism that an agency lacks the power to act "unless and until Congress confers power upon it," *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986), yet here Congress expressly authorized the Bureau to investigate suspected violations of federal consumer financial laws. *See* 12 U.S.C. § 5562.