

## [Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—Bureau’s action against Integrity Advance moves forward with new ALJ, \(Jun. 4, 2019\)](#)

Banking and Finance Law Daily Wrap Up

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By [Lisa M. Goolik, J.D.](#)

CFPB Director Kathleen L. Kraninger has ordered that the Bureau’s longstanding action against lender Integrity Advance, LLC, and its CEO be remanded to a new ALJ without requiring a new notice of charges.

In an ongoing action stemming from a Consumer Financial Protection Bureau administrative proceeding against online short-term lender Integrity Advance, LLC, and its CEO, James R. Carnes, CFPB Director Kathleen L. Kraninger has [ordered](#) that the matter be remanded to a new Administrative Law Judge without requiring that the Bureau file a new notice of charges. As a result, the ALJ appointed by Kraninger to preside over the rehearing [has ordered](#) the parties to provide input on the issues to be resolved in the rehearing. The parties have until June 21, 2019, to respond.

**Original suit.** According to the Bureau’s original suit against the online lender, Integrity Advance allegedly deceived consumers about the cost of short-term loans (see [Banking and Finance Law Daily](#), Nov. 19, 2015). In 2016, an ALJ recommended restitution in the amount of \$38 million. According to the ALJ, the lender violated: the Truth in Lending Act, by disclosing incorrect finance fees and annual percentage rates in its loan agreements; the Electronic Funds Transfer Act, by conditioning its loans on repayment by electronic means; and the Consumer Financial Protection Act, by violating its prohibition against deceptive acts or practices. Furthermore, the judge found that the company and Carnes violated the CFPB’s prohibition on deceptive conduct by using a loan agreement that was likely to mislead consumers, and the CFPB’s prohibition on unfairness by using remotely created checks to obtain funds from consumers’ accounts after those consumers blocked authorization for electronic debits (see [Banking and Finance Law Daily](#), Oct. 3, 2016).

However, Integrity and Carnes appealed the decision to former CFPB Director Richard Cordray, relying on a panel opinion of the D.C. Circuit in *PHH Corp. v. CFPB*, relying on a statute of limitations issue. Integrity and Carnes also raised the issue of whether the ALJ was properly appointed in accordance with the Appointments Clause of the U.S. Constitution. Cordray later ordered that the resolution of the case be stayed pending a full panel decision in *PHH Corp.* While the full panel did not resolve the appointment issue, the U.S. Supreme Court granted certiorari to hear the issue in *SEC v. Lucia*.

In June 2018, the Supreme Court held that the SEC’s ALJ was an officer and not an employee and had been improperly appointment. As a result, the CFPB’s Acting Director Mick Mulvaney ordered the parties in the current action to file briefs on the issues of whether the Bureau’s ALJ had been properly appointed and whether a new notice of charges would need to be filed.

**Kraninger’s decision.** After considering their arguments, Kraninger has now concluded that the action should be remanded to a new ALJ without issuing a new notice of charges. Kraninger reasoned that the Bureau’s rules provide that an action is commenced by the filing of a notice of charges. The Bureau, not the ALJ, files the notice of charges. Further, a requirement that the administrative hearing be completed within 300 days did not bar the action, Kraninger concluded. The rule is intended to promote expeditious resolution and does not create any rights for respondents. Kraninger also noted that the delay was a result of the appeals process and in no way prejudiced Integrity or Carney.

**New proceedings.** In order to determine how best to proceed, the newly appointed ALJ has ordered the parties to submit a joint statement addressing the following:

1. What are the current charges against Integrity and Carney, and is the Bureau still pursuing all of the charges in the original action?
2. Is settlement a possibility?
3. If a settlement is not possible, what preliminary issues need to be decided before a hearing? Are the statute of limitations and authority issues still relevant?

Once the issues are agreed to, the ALJ will set a schedule for the rehearing.

Companies: Integrity Advance, LLC; PHH Corp.

LitigationEnforcement: CFPB ChecksElectronicTransfers CreditDebitGiftCards DoddFrankAct  
EnforcementActions Loans TruthInLending UDAAP