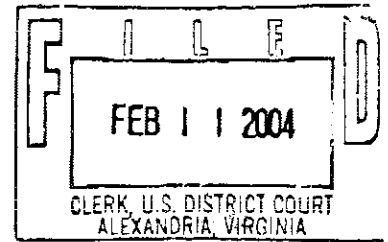


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



UNITED STATES OF AMERICA)
and)
OFFICE OF FEDERAL HOUSING)
ENTERPRISE OVERSIGHT)

Petitioners,)

v.)

Misc. No. 03-MC-57

LELAND BRENDSEL)

Respondent.)

ORDER

Before the Court is Leland Brendsel's Expedited Motion for Stay Pending Appeal or, in the Alternative, for a Temporary Extension. Because Brendsel has waived oral argument, we rely upon the materials before us, which adequately present the facts and legal arguments. For the reasons discussed below, the motion will be denied.

To determine whether to grant a stay pending appeal, we consider four factors: 1) whether the stay applicant has made a strong showing of likelihood of success on the merits; 2) whether the applicant will suffer irreparable harm without a stay; 3) whether issuance of the stay will substantially harm the other parties; and 4) whether the public interest will be served by granting a stay. Long v. Robinson, 432 F.2d 977, 979 (4th Cir. 1970). Brendsel has not satisfied any of these four factors.

Brendsel bases his argument that he is likely to succeed on the merits on the complexity of the issues, the Court ordering

supplemental briefing, and the extensive written opinion of the Court. These arguments have no merit. As the record shows, supplemental briefing was required not by the complexity of the facts and legal arguments, but because Brendsel presented new evidence at oral argument. After supplemental briefing, the Court took just one week to issue our opinion, because the new evidence was ultimately unhelpful to Brendsel's case.

Brendsel argues that he would suffer irreparable harm if compelled to testify, and that the harm cannot be mitigated if he is ultimately successful on appeal. But Brendsel surely cannot claim that the act of testifying in a deposition can cause him irreparable harm, because he does not contest that the OFEHO at one time did have authority to compel his testimony. The real harm that could come to Brendsel, and his true objection, is that his testimony may be used against him in an enforcement proceeding. However, as we stated in our opinion, this argument is premature, and should Brendsel prevail on appeal of our order enforcing the subpoena, relief could include a bar on the use of his testimony in any enforcement proceeding against him.

We further find that the delay in obtaining Brendsel's testimony has hindered the OFEHO in exercising regulatory oversight of Freddie Mac, and that the public interest is also harmed by such delay. For these reasons, we do not find a stay pending appeal to be appropriate.

In the alternative, Brendsel requests a two week extension of the deadline for complying with the subpoena, to allow sufficient time to request a stay from the Fourth Circuit and to accommodate impending deadlines in the OFHEO's enforcement proceeding against Brendsel. Because counsel have already received numerous continuances from the OFHEO, we find no merit to the argument that they need another.¹ There are enough lawyers in the law firm to handle both proceedings. Brendsel's counsel has had ample time to prepare for his deposition, and therefore the request for a temporary extension of time is also denied.

For these reasons, Leland Brendsel's Expedited Motion for Stay Pending Appeal or, in the Alternative, for a Temporary Extension is DENIED, and it is hereby

¹We note that Brendsel's counsel have attempted to rely on the OFHEO's previous accommodations of counsel's schedule as a ground to defeat enforcement of the subpoena in this proceeding. This argument is much like one made by the allegorical defendant who after being found guilty of murdering his parents pleads for mercy because he is now an orphan. Any delays in enforcement of this subpoena are solely attributable to Brendsel, not the OFHEO.

ORDERED that Leland Brendsel comply fully with our Order of February 2, 2004.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 11^{4₂} day of February, 2004.

ORDERED that Leland Brendsel
February 11, 2004
Alexandria, Virginia

Leonie M. Brinkema
Leonie M. Brinkema
United States District Judge