

Commission Rule of Practice 3.41(f)(1), 16 C.F.R. § 3.41(f)(1), states, in relevant part:

The pendency of a collateral federal court action that relates to the administrative adjudication shall not stay the proceeding: (i) Unless a court of competent jurisdiction, or the Commission for good cause, so directs

For the reasons explained below, the Commission does not find good cause to stay this proceeding.

Respondent's briefing in support of its Motion to Stay offers no good cause to stay this proceeding, and no reason why the Commission's April 10 Order should be overturned.² Respondent has not argued the state action issues – upon which its claim of immunity from suit relies – were wrongly decided. The Commission's April 10 Order comprehensively addressed applicability of the state action doctrine to this proceeding. That Order rejected Respondent's state action defenses as well as a mootness claim predicated on the state action doctrine. The Commission found that, to satisfy the state action defense, Respondent needed to demonstrate the State of Louisiana actively supervised its allegedly anticompetitive conduct. The Commission held there was no genuine dispute of fact that the Board's allegedly anticompetitive conduct was not actively supervised prior to revocation of its governing rule in 2017. Further, the Commission found the evidence the Board proffered was insufficient to show that the State of Louisiana actively supervised reissuance of that rule in 2017 or that it would actively supervise enforcement proceedings under the rule in the future. Respondent's briefing does not identify purported failures in the Commission's findings or reasoning.

Respondent's other contention – that a stay would avoid potentially unnecessary litigation expenses – is not persuasive. As noted above, discovery and other pretrial proceedings have almost finished, and their expenses have already been borne. A stay would stop the progress of this litigation just before it reaches its culmination. Under these circumstances, the general maxim – that routine expenses of litigation are insufficient grounds for staying proceedings³ – applies.

The public interest supports denying a stay to avoid what may be ongoing anticompetitive conduct. The Complaint alleges that, through issuance and enforcement of its Rule 31101, the Board has prohibited appraisal management companies from arriving at real estate appraisal fees through the operation of the free market and that it has enforced the Rule in

² Beyond this, the Commission has long taken the position that the state action defense does not confer immunity from suit and that rulings denying the state action defense do not give rise to an immediate right to interlocutory appeal. *See, e.g., S. C. State Bd. of Dentistry v. FTC*, 455 F.3d 436 (4th Cir. 2006); Brief for the United States and the Federal Trade Commission as Amici Curiae, *Teladoc, Inc. v. Texas Med. Bd.*, No 16-50017 (5th Cir. Sept. 9, 2016).

³ *Cf.* Order Denying Respondent's Expedited Motion to Stay Part 3 Administrative Proceeding and Move the Evidentiary Hearing Date (Jan 12, 2018) (“Generally, routine discovery costs do not outweigh the competing public interest in the efficient and expeditious resolution of litigated matters.”). The Commission's January 12 Order addressed Respondent's third request to stay this proceeding. The current Motion to Stay is Respondent's fifth such request.

a way that tends to raise prices paid by appraisal management companies for real estate appraisal services. Complaint ¶¶ 3, 44. In the April 10 Order, the Commission found a controlling number of Board members were Board-licensed real estate appraisers. If the Complaint's allegations are substantiated, a Board controlled by real estate appraisers has been regulating appraisals in a manner that tends to raise appraisal fees. Until these allegations are resolved, the Board could continue to act in a manner that may be found anticompetitive. Accordingly, granting a stay could undermine the public interest in maintaining competition.

The public interest also favors the expeditious resolution of the Commission's complaints. *Cf.* Commission Rule of Practice 3.1, 16 C.F.R. § 3.1 (stating the Commission's policy to conduct its adjudicatory proceedings expeditiously). Commission opinions resolving competition issues provide valuable guidance not only to respondents, but also to third parties in similar circumstances. Here, resolving the Complaint's allegations may have particular utility for other states considering mechanisms to ensure that lenders and their agents compensate appraisers at "customary and reasonable" rates, given the backdrop of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 15 U.S.C. § 1639e(i)(1). A stay could delay substantially such guidance.

Accordingly,

IT IS ORDERED that the Motion of Louisiana Real Estate Appraisers Board to Stay Proceedings Pending Appellate Review is hereby **DENIED**.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: June 6, 2018