

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



_____))
In the Matter of))

Louisiana Real Estate Appraisers Board,))

Respondent.))
_____)

DOCKET NO. 9374

**ORDER DENYING RESPONDENT'S EXPEDITED
MOTION FOR *IN CAMERA* REVIEW**

I.

On March 6, 2018, Respondent Louisiana Real Estate Appraisers Board (“Respondent” or “Board”) filed an Expedited Motion for *In Camera* Review. Pursuant to the March 7, 2018 Order requiring an expedited response, Federal Trade Commission (“FTC”) Complaint Counsel filed its opposition on March 9, 2018 (“Opposition”). Also on March 9, 2018, Complaint Counsel filed a Motion for Leave to Exceed 2,500 Word Limit on Opposition to the Motion (“Motion to Exceed”). The Motion to Exceed is GRANTED and Complaint Counsel’s Opposition is accepted.

For the reasons set forth below, Respondent’s Motion is DENIED.

II.

Respondent asks the Court to review *in camera* eight documents being withheld by Complaint Counsel, and to determine the validity of Complaint Counsel’s claims of privilege over the withheld documents. Respondent argues that Complaint Counsel has improperly withheld these documents from production to Respondent. Of these eight documents, one document has been produced to Respondent’s counsel by a third party and subsequently produced to Respondent by Complaint Counsel. Therefore, of the eight documents, only seven remain at issue.

Of the remaining seven documents, Complaint Counsel states that, with regard to at least

¹ Although the parties designated much of the information in their pleadings as “confidential material,” none of the information contained in this Order constitutes “confidential material” as defined by the Protective Order issued in this case on May 31, 2017 and FTC Rule 3.31A.

five of the seven documents, Respondent's Motion is not timely because it was filed significantly after the parties reached an impasse on the production of documents.

The following is a chronology of relevant events, as demonstrated by the Motion, Opposition, and declarations and exhibits submitted in support.

On December 11, 2017, Complaint Counsel submitted to Respondent a privilege log asserting privilege for eight documents.

On December 21, 2017, Complaint Counsel and Respondent met and conferred regarding Complaint Counsel's assertions of privilege.

On December 29, 2017, Respondent sent a letter to Complaint Counsel reiterating its request that Complaint Counsel produce the eight documents.

On January 5, 2018, Complaint Counsel sent a letter to Respondent reaffirming its position that it was withholding the documents as privileged.

On January 17, 2018, Respondent sent a letter requesting a redacted version of two of the documents (FTC-INFO-00000222 and FTC-INFO-00000289).

On January 31, 2018, Complaint Counsel and Respondent met and conferred on this issue.

On February 1, 2018, Complaint Counsel provided a revised privilege log to Respondent, on which all eight documents were still listed as being withheld based on privilege.

On February 6, 2018, Complaint Counsel confirmed that the privilege log it provided on February 1, 2018 was the final version of its privilege log and that it would not be producing the eight documents.

On February 23, 2018, Respondent sent an email to Complaint Counsel confirming that the parties were "at an impasse concerning Complaint Counsel's claims of privilege" over the withheld documents. In that same email, Respondent asked Complaint Counsel to join Respondent in filing a joint motion for *in camera* review of two of the withheld documents (FTC-INFO-00000222 and FTC-INFO-00000289).

On March 2, 2018, Complaint Counsel informed Respondent that Complaint Counsel would not join Respondent's motion for *in camera* review of the two documents.

On March 6, 2018, Respondent filed the present Motion.

III.

The Scheduling Order issued in this case sets forth: "where the parties have been engaging in negotiations over a discovery dispute, the deadline for the motion to compel shall be within 5 days of reaching an impasse." Scheduling Order Additional Provisions, ¶ 10. Based on the chronology of events set forth above, the parties' negotiations as to the validity of Complaint

Counsel's privilege claims ended in an impasse at the very latest on February 23, 2018. Complaint Counsel repeatedly maintained that the documents were privileged and that it would not produce them, in written communications to Respondent's counsel on January 5, 2018, February 1, 2018, and February 6, 2018. Respondent confirmed that the parties were at an impasse with respect to all the documents on February 23, 2018.

Respondent argues that its Motion was timely because it was not until March 2, 2018 that Complaint Counsel informed Respondent that Complaint Counsel would not agree to file a joint motion for *in camera* review of two documents, FTC-INFO-00000222 and FTC-INFO-00000289. The March 2, 2018 communication related only to whether Complaint Counsel would join Respondent's proposed motion relating to those two documents; it did not relate to Complaint Counsel's position that it would not produce the documents it withheld on the grounds of privilege.

The deadline for a motion to compel or for *in camera* review was within 5 days of February 23, 2018, which was March 2, 2018. Because Respondent failed to file its Motion by this deadline, its Motion is untimely. *See 1-800 Contacts, Inc.*, 2017 FTC LEXIS 15, at *3-4 (Jan. 12, 2017). Accordingly, the Motion is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: March 13, 2018

Notice of Electronic Service

I hereby certify that on March 13, 2018, I filed an electronic copy of the foregoing Order Denying Respondent's Expedited Motion for In Camera Review, with:

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I hereby certify that on March 13, 2018, I served via E-Service an electronic copy of the foregoing Order Denying Respondent's Expedited Motion for In Camera Review, upon:

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