

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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In the Matter of

Louisiana Real Estate Appraisers Board,  
Respondent

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Docket No. 18172

**ORIGINAL**

**EXPEDITED MOTION OF RESPONDENT LOUISIANA REAL ESTATE APPRAISERS  
BOARD TO STAY PART 3 ADMINISTRATIVE PROCEEDINGS  
AND MOVE THE EVIDENTIARY HEARING DATE**

In light of the January 10, 2018 Order Scheduling Consolidated Oral Argument and Extending Deadlines for Commission Rulings, Respondent Louisiana Real Estate Appraisers Board (“LREAB” or the “Board”), pursuant to the Federal Trade Commission’s (“Commission”) Rules of Practice 3.22 and 3.41, respectfully requests the Commission issue an order: (1) staying these Part 3 administrative proceedings until the Commission renders its decision on Respondent’s Motion to Dismiss the Complaint and Complaint Counsel’s Motion for Partial Summary Decision; and (2) moving the starting date for the evidentiary hearing to August 27, 2018.

Respondent respectfully requests that the Commission rule on this Motion on January 12, 2018. Expedited consideration of this motion is necessary to avoid unnecessary expense, in particular, five depositions scheduled by Complaint Counsel in Baton Rouge during the week of January 15, 2018. Complaint Counsel has represented that they will endeavor to file an opposition to this Motion by close of business January 11.

A stay through April 9, 2018, or until the Commission renders a decision on the pending dispositive motions, would alleviate significant discovery burden and expense on parties and

non-parties. The Commission's ruling on either motion could resolve the case in its entirety or, at minimum, substantially reduce the scope and expense of discovery in this case. Either outcome, in the absence of a stay, would waste hundreds of thousands of dollars and weeks of effort for each side, as well as expense and inconvenience to third parties. To the extent issues in this case remain after April 9, 2018, moving the hearing date to August 27, 2018 will not burden either party, but allow the parties to resume discovery with the same amount of time to prepare for the hearing as under the current schedule.

### **BACKGROUND**

On May 30, 2017, the Commission issued a Complaint against the Board alleging that the Board had violated Section 5 of the FTC Act by unreasonably restraining price competition for real estate appraisal services in Louisiana. On June 16, 2017, Respondent filed its Answer denying any violation of Section 5 and raising numerous affirmative defenses, including a defense of state action immunity. On July 11, 2017, the Governor of Louisiana, John Bel Edwards, signed Executive Order 17-16 imposing additional supervision by the State of Louisiana over the Board's promulgation and enforcement of any regulation concerning customary and reasonable fees to residential real estate appraisers. *See* Memorandum in Support of Respondent's Motion to Dismiss the Complaint, Ex. 1. On July 17, 2017, the Board issued a Resolution to implement the Governor's Executive Order, ensure active supervision over its future conduct, propose a new rule concerning customary and reasonable fees, and address any past or pending investigations under the previous regulation.

Following the Governor's Executive Order and the Board's Resolution, both Judge Chappell and the Commission stayed proceedings for an aggregate 120 days. The Commission also moved the final hearing date from January 30, 2018 to May 30, 2018. These stays allowed

Louisiana fully to implement its Executive Order and the Board to promulgate a new rule, under the Governor's supervision.

On November 27, 2017, the stay lifted. That day, the Board filed a Motion to Dismiss and Complaint Counsel filed a Motion for Partial Summary Decision. The Board sought oral argument on both motions. On January 10, 2017, the Commission granted the Board's request for oral argument and specifically requested that the parties focus their arguments on the following question:

Since the issuance of the Complaint, has the State of Louisiana taken sufficient steps to establish active supervision over the conduct of the Respondent at issue in this matter?

The Commission scheduled oral argument for February 22, 2018, and may not rule on either motion until April 9, 2018, a month after the close of fact discovery and following exchange of expert reports under the current schedule.

### **ARGUMENT**

The Commission will stay Part 3 administrative proceedings upon a showing of "good cause." Order Granting Respondent Unopposed Motion for Temporary Stay, *In the Matter of Phoebe Putney Health Sys., Inc. et al.*, Dkt. No. 9348, Oct. 30, 2014 (granting stay to determine if Georgia's Certificate of Need laws would effectively preclude the Commission's preferred remedy); *see also* Order Granting Respondent's Unopposed Motion to Stay Discovery, *In the Matter of South Carolina State Board of Dentistry*, Dkt. No. 9311, Oct. 23, 2003 (granting stay of discovery pending resolution of defendant's motion to dismiss under the state action doctrine).

Good cause exists to stay these proceedings until the Commission has resolved the pending dispositive motions. First, the stay will help prevent "avoidable and certain waste of resources." *See* Order Certifying Unopposed Motion for Stay, *In Matter of Phoebe Putney Health Sys., Inc. et al.*, Dkt. No. 9348 at 3, July 7, 2011. Currently, both Respondent and

Complaint Counsel are actively pursuing discovery, including from numerous party and third-party witnesses. The Board is a self-funded governmental entity with limited financial resources. Prior to a decision on either motion, the parties collectively may need to take (or defend) 30 or more depositions, and will incur substantial costs for travel, court reporting services, and attorneys' fees. Because of the scope of the Complaint allegations regarding impact on the real estate appraisal market in Louisiana, additional third party document subpoenas will need to be issued, beyond the more than 60 subpoenas already issued. Under the current schedule, Respondent will incur substantial expert witness costs to meet expert report deadlines set for late March and early April. A Commission ruling on either or both motions could significantly impact whether any or all of this extensive effort and expense in fact and expert discovery is necessary. *See* Order Granting In Part Motion to Stay Part 3 Proceedings at 3 (“[E]ven if, at the end of the stay, some element of the requested relief remains unresolved, a stay will help narrow the claims, defenses, and discovery to those limited issues, and *avoid wasteful effort and expense.*”) (emphasis added).

Second, neither party will be prejudiced by the stay. The proposed rescheduled hearing date will provide the parties the same amount of time to complete discovery as they would under the current schedule.

Third, there is no prejudice to the public interest arising from the proposed stay. The Complaint alleges that the Board “effectively” restrained prices by allowing a few Appraisal Management Companies to resolve enforcement actions brought by the Board by using a survey conducted (at Board expense) by an academic institution. *See* Complaint ¶¶ 4-5, 40-42. At a public meeting November 20, 2017, when Replacement Rule 31101 was published in the Louisiana Register and became effective, the Board issued a policy declaring that the Board no

longer would fund that survey, and that the survey could not be used for any purpose after December 31, 2017. *See* LREAB Mem. in Support of Motion to Dismiss, at 2, 24 and Ex. 10; <http://www.reab.state.la.us/forms/11-20-17LREABPolicyStatement.pdf>. Moreover, should the stay be granted, the Board will agree not to commence an enforcement action under Replacement Rule 31101 pending a decision by the Commission.

**CONCLUSION**

For good cause shown and the reasons stated above, Respondent respectfully requests that the Commission (1) stay proceedings until either April 9, 2018 or until the Commission renders a decision on both Respondent's Motion to Dismiss and Complaint Counsel's Motion for Partial Summary Decision and (2) move the administrative hearing date to August 27, 2018.

Respondent requests expedited consideration, and a decision on its Motion by January 12, 2018.

Dated: January 11, 2018

Respectfully submitted,

/s/ W. Stephen Cannon

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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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In the Matter of

Louisiana Real Estate Appraisers Board,  
Respondent

Docket No. 9374

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**[PROPOSED] ORDER ON RESPONDENT'S EXPEDITED MOTION TO  
STAY PART 3 ADMINISTRATIVE PROCEEDINGS AND  
MOVE THE EVIDENTIARY HEARING DATE**

On January 11, 2018, Respondent filed an expedited motion to stay the Part 3 administrative proceedings and move the evidentiary hearing date. Upon consideration of that motion and good cause being shown, it is hereby ordered that:

- 1) The proceeding is stayed through the date when the Commission renders its decision on Respondent's Motion to Dismiss and Complaint Counsel's Motion for Partial Summary Decision; and,
- 2) Commencement of the evidentiary hearing in this matter is moved from May 30, 2018 to August 27, 2018.

By the Commission.

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Donald S. Clark  
Secretary

ISSUED:

Notice of Electronic Service

**I hereby certify that on January 11, 2018, I filed an electronic copy of the foregoing Respondent's Expedited Motion to Stay Proceedings, with:**

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Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
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**I hereby certify that on January 11, 2018, I served via E-Service an electronic copy of the foregoing Respondent's Expedited Motion to Stay Proceedings, upon:**

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