

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 13172

MOTION FOR CONFERENCE TO FACILITATE SETTLEMENT

Pursuant to Rules 3.22 and 3.25 of the Commission Rules of Practice, Respondent Louisiana Real Estate Appraisers Board (“LREAB” or the “Board”), through undersigned counsel, respectfully requests the Administrative Law Judge (“ALJ”) to convene an in-person conference to facilitate ongoing settlement discussions. LREAB and Complaint Counsel have continued to exchange proposals to resolve this case, but have not reached an agreement. The Board believes the process would benefit from the ALJ’s assistance, and that such a conference would be most effective if held sufficiently in advance of the expiration of the granted stay. Complaint Counsel declined to join this Motion.

The Complaint in this proceeding, filed by the Commission on May 31, 2017, alleges that LREAB, through its rulemaking and enforcement of the “customary and reasonable” (“C&R”) fee requirement of the Dodd-Frank Act and Louisiana law, unreasonably restrained price competition for residential real estate appraisal services. LREAB’s Answer of June 19, 2017, denied the allegation and asserted affirmative defenses including state action immunity. On July 18, 2017, LREAB moved to stay the Part 3 Administrative Proceedings based on fundamental changes in the factual and legal underpinnings of the Complaint. As detailed in that motion, on July 11, 2017, the Governor of Louisiana issued Executive Order 17-16 requiring the State

Commissioner of Administration and the Division of Administrative Law to exercise active supervision over LREAB's rulemaking and enforcement, respectively, of the C&R fee requirement. To implement the Governor's Executive Order, the Board passed a Resolution ("Board Resolution") on July 17, 2017, mandating specific actions to address past conduct under the LREAB's prior C&R rule and to ensure active supervision of promulgation and enforcement of a replacement C&R rule.

In its Motion to Stay, the Board noted that the State needed time to implement the Governor's and Board's directives, and that the parties needed time to consider the impact of these new requirements. Motion To Stay Part 3 Administrative Proceedings, at p. 2. On July 28, 2017, the ALJ granted the Board's motion noting that the Executive Order and the Board Resolution "fundamentally change the factual and legal basis of this proceeding." Order Granting In Part Motion To Stay Part 3 Proceedings ("Stay Order"), at p. 3.

Since the Stay Order, the LREAB has continued to implement the Executive Order and Board Resolution. Complaint Counsel sent a proposed Consent and Decision and Order to LREAB on July 27, 2017, which did not account for the changed circumstances pursuant to the Executive Order. On August 23, 2017, the Board sent Complaint Counsel a confidential settlement proposal reflecting both actions already taken pursuant to these changed circumstances and additional proposed actions that, the Board believed, would address all Contemplated Relief sought in the Commission's Complaint.¹ At a September 13, 2017 meeting of the parties, Complaint Counsel rejected the Board's stipulation proposal as a matter of

¹ LREAB styled its proposal as a dismissal upon stipulated facts, in accordance with Rule 3.25(g), in light of the analogous posture of this case to *In the Matter of Cabell Huntington Hospital, Inc.*, Docket No. 9366 (2016). Notwithstanding, LREAB repeatedly has confirmed its willingness to enter into a consent agreement upon acceptable terms, inasmuch as LREAB considers the substantive terms more important than the means of resolution.

procedure, and declined to comment as to the substance of the proposed terms. LREAB counsel asked Complaint Counsel to offer a counter-proposal that would take into account the changed factual and legal basis of the proceeding. Between September 19 and September 21, 2017, the parties exchanged correspondence, including a September 20 request that Complaint Counsel join this motion. On September 22, 2017, Complaint Counsel provided the Board a modified proposed consent order. On September 25, 2017, the Board notified Complaint Counsel that it cannot accept that proposal, but that it intends to respond with a counter-proposal by September 26, 2017. LREAB again asked Complaint Counsel to join this motion, which they declined.

The challenge facing the Board is time. The stay in this case is scheduled to expire on October 26, 2017, and the Board must take actions to complete implementation of the Executive Order and Board Resolution within the next few weeks. LREAB therefore believes an in-person conference before the ALJ is necessary and appropriate at this time. As the ALJ noted during the July 6, 2017 scheduling conference, while he expected the parties to “negotiate in good faith and attempt to settle,” if necessary he would “get involved” and hold “a hearing off the record regarding settlement.” Transcript of Initial Scheduling Conference, at 6:3-7. While the goal of the conference would be to assist the parties in resolving the case in its entirety, to the extent issues remain, the parties also could benefit from the conference to “narrow the claims, defenses, and discovery... [to] avoid wasteful effort and expense.” Stay Order, at p. 3.

Therefore, LREAB respectfully requests the ALJ to convene an off-the-record conference with the parties, and proposes the following schedule:

- By October 2, each party shall submit to the ALJ a confidential statement of its settlement position, not to exceed 10 pages single spaced

- On October 6, or as soon as practicable under the ALJ's schedule, the ALJ would convene a conference to discuss settlement

LREAB submits that this proposal could facilitate either a full or partial resolution of the case.

CONCLUSION

LREAB respectfully asks the ALJ to grant this Motion. A proposed Order is appended.

Dated: September 25, 2017

Respectfully submitted,

/s/ W. Stephen Cannon

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

**[PROPOSED] ORDER ON RESPONDENT’S MOTION FOR CONFERENCE
TO FACILITATE SETTLEMENT**

On September 25, 2017, Respondent filed a *Motion For Conference To Facilitate Settlement*. Pursuant to Commission Rule 3.25, the Administrative Law Judge (“ALJ”) grants Respondent’s motion. By October 2, 2017, each party shall submit to the ALJ a confidential statement of its settlement position, not to exceed 10 pages singled spaced. On October 6, 2017, the ALJ will convene a conference to facilitate settlement.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

Notice of Electronic Service

I hereby certify that on September 25, 2017, I filed an electronic copy of the foregoing Motion for Conference to Facilitate Settlement, with:

D. Michael Chappell
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Washington, DC, 20580

Donald Clark
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I hereby certify that on September 25, 2017, I served via E-Service an electronic copy of the foregoing Motion for Conference to Facilitate Settlement, upon:

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I hereby certify that on September 25, 2017, I served via other means, as provided in 4.4(b) of the foregoing Motion for Conference to Facilitate Settlement, upon:

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