

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 GRANTING MOTION FOR SETTLEMENT CONFERENCE

I.

On September 25, 2017, Respondent Louisiana Real Estate Appraisers Board (“Respondent” or the “Board”) filed a Motion for Conference to Facilitate Settlement, pursuant to Rules 3.22 and 3.25 of the Federal Trade Commission (“FTC”) Rules of Practice (“Motion”). On September 25, 2017, an Order was issued directing an expedited response from FTC Complaint Counsel (“Complaint Counsel”). On September 26, 2017, Complaint Counsel filed an opposition to the Motion (“Opposition”).

As explained below, the Motion is GRANTED.

II.

The Administrative Complaint in this matter (“Complaint”) was issued on May 31, 2017. The Complaint alleges that the Board, a state agency allegedly controlled by licensed real estate appraisers, has unreasonably restrained price competition for real estate appraisal services provided to appraisal management companies (“AMCs”). Complaint ¶¶ 1-3. Specifically, the Complaint challenges the Board’s promulgation and enforcement of a regulation regarding “customary and reasonable” fees, known as Rule 33101 (the “C&R Rule”), which purports to implement a state law requiring AMCs to “compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the presumptions of compliance under federal law.” *Id.* ¶¶ 28, 30 (the “AMC law”). The Complaint alleges that the Board has enforced Rule 33101 in a manner that effectively sets appraisal fees, thereby precluding negotiation, restraining price competition, and harming consumers, including through higher prices. *Id.* ¶¶ 31-32, 44-45, 50, 55. Respondent’s Answer, filed June 19, 2017, denied the material allegations of the Complaint and asserted certain affirmative defenses, including state action immunity.

On July 18, 2017, Respondent filed a Motion to Stay Part 3 Proceedings (“Motion to Stay”). The Motion to Stay showed that, on July 11, 2017, the Governor of Louisiana issued Executive Order 17-16, titled Supervision of the Louisiana Real Estate Appraisers Board Regulation of Appraisal Management Companies (“July 11 Executive Order”). *See* Respondent’s Motion to Stay, Exhibit A. The July 11 Executive Order requires the Board and state agencies to undertake and complete, within ninety (90) days, actions that reinforce State active supervision over the Board’s rulemaking and enforcement pertaining to “customary and reasonable” fee requirements. In addition, on July 17, 2017, the Board issued a resolution to implement the July 11 Executive Order and to address past and pending investigations and allegations of violations of the C&R Rule (“July 17 Resolution”). *See* Respondent’s Motion to Stay, Exhibit B.

On July 28, 2017, an Order was issued granting Respondent’s Motion to Stay in part and staying proceedings for ninety days (“Stay Order”). Respondent asserts that since the Stay Order, the Board has been implementing the July 11 Executive Order and the July 17 Resolution.

III.

Since the stay order, according to Respondent, the parties have exchanged and continue to exchange proposals in an effort to resolve the case. Respondent argues that because the stay of Part 3 proceedings is due to expire on October 26, 2017, and the Board must take additional actions to complete implementation of the July 11 Executive Order and the July 17 Resolution, an in-person settlement conference before the Administrative Law Judge is necessary and appropriate at this time. Respondent asserts that such a conference could facilitate a full or partial resolution of the case.

Complaint Counsel states that Respondent has rejected proposed consent orders provided by Complaint Counsel, and Respondent instead suggests that Complaint Counsel should dismiss the case. In addition, Complaint Counsel states that it is presently waiting for Respondent’s response to a revised consent order that Complaint Counsel provided on September 22, 2017. Therefore, according to Complaint Counsel, because there have not been any substantive settlement negotiations, a settlement conference at this time is premature.

IV.

Rule 3.25 of the FTC’s Rules of Practice states in pertinent part:


- (a) The Administrative Law Judge may, in his or her discretion and without suspension of prehearing procedures, hold conferences for the purpose of supervising negotiations for the settlement of the case, in whole or in part, by way of consent agreement.

16 C.F.R. § 3.25(a).

Respondent’s Application for an in-person settlement conference is GRANTED. The date and time of the settlement conference will provided to the parties. The settlement conference will not be on the record and will be closed to the public.

No later than October 2, 2017, each party shall submit to the Administrative Law Judge, via email to OALJ@FTC.gov, a written statement, not to exceed 10 single-spaced typed pages, describing its settlement position, which will be kept confidential. The written statement shall not be filed with the Office of the Secretary.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: September 26, 2017

Notice of Electronic Service

I hereby certify that on September 26, 2017, I filed an electronic copy of the foregoing Order Granting Motion for Settlement Conference, with:

D. Michael Chappell
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I hereby certify that on September 26, 2017, I served via E-Service an electronic copy of the foregoing Order Granting Motion for Settlement Conference, upon:

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