

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

DOCKET NO. 9374

PUBLIC

ORDER CONTINUING STAY AND POSTPONING THE EVIDENTIARY HEARING

On May 30, 2017, the Commission issued a Part 3 Administrative Complaint in this proceeding against the Louisiana Real Estate Appraisers Board (“Respondent” or “Board”), alleging that the Board has unreasonably restrained competition, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.¹ The Complaint provides that the administrative hearing in this proceeding should begin on January 30, 2018.² On July 18, 2017, Respondent filed a motion to stay this proceeding for 120 days, arguing that an executive order issued by the Governor of Louisiana that required the Board to take certain actions within 90 days – and the Board’s issuance of a resolution in response to that order – supported staying the proceeding until the required actions had been taken.³ On July 24, Complaint Counsel filed an opposition, arguing, *inter alia*, that even if the Board were to fully implement the executive order and its own resolution, that would not yield an effective supervision regime, and would not eliminate the need for Commission intervention.⁴ On July 28, Chief Administrative Law Judge Chappell issued an order staying this proceeding for 90 days, based on “recent developments in the state law challenged in the Complaint that fundamentally change the factual and legal basis of this proceeding,” and that may “help narrow the claims, defenses, and discovery to those limited issues, and avoid wasteful effort and expense.”⁵ The 90-day stay granted by Judge Chappell will expire on October 30, 2017.⁶

¹ *In the Matter of Louisiana Real Estate Appraisers Board, Docket No. 9374* (hereinafter “LREAB”), Complaint (May 30, 2017).

² *Id.* at 9.

³ *LREAB, Respondent LREAB’s Motion To Stay Part 3 Administrative Proceedings and Memorandum In Support Thereof* at 1-2 (July 18, 2017).

⁴ *LREAB, Complaint Counsel’s Opposition To Respondent’s Motion To Stay* at 3, 6 (July 24, 2017).

⁵ *LREAB, Order Granting In Part Motion To Stay Part 3 Proceedings* at 3 (July 28, 2017).

⁶ As Commission Rule 4.3(a), 16 C.F.R. § 4.3(a), provides, the 90-calendar-day period began on the first business day after the Friday, July 28, 2017 date on which Judge Chappell issued his Order – that is, on Monday, July 31, 2017 – and will therefore end on Monday, October 30, 2017.

Complaint Counsel and Respondent have now filed a Joint Expedited Motion (1) to extend the stay of this proceeding through November 26, 2017; (2) to postpone the commencement of the evidentiary hearing until May 30, 2018; and (3) to adopt the schedule of pretrial proceedings attached to the Joint Expedited Motion.⁷ While Complaint Counsel believe that Board implementation of the Governor's executive order does not "and will not exempt all of the Board's past or future actions from the antitrust laws,"⁸ they nevertheless agree with Respondent "that the state action immunity defense may present significant issues for discovery and hearing in this case."⁹ The parties further advise that the Board "is currently in the process of replacing and re-adopting a customary and reasonable fee rule;" has submitted this "Replacement Rule to the Louisiana Commissioner of Administration for approval, modification, or rejection;" and expects that "this review will be completed in time for the Replacement Rule to be published in the November 20, 2017 Louisiana Register," and that the Replacement Rule will be effective on that date.¹⁰ The parties therefore argue that good cause exists for the Commission to continue the stay of this proceeding until November 26, 2017. The parties also argue that good cause exists for the Commission to postpone the commencement of the evidentiary hearing from January 30, 2018 to May 30, 2018, in order to accommodate both the 90-day stay granted by Judge Chappell and the requested 30-day extension of that stay.

In light of the foregoing, we find that there is good cause to grant the first two requests embodied in the Joint Expedited Motion, while authorizing the Administrative Law Judge to determine the timetable for pretrial proceedings. Accordingly,

IT IS HEREBY ORDERED that this proceeding be, and it hereby is, stayed until November 26, 2017;

IT IS FURTHER ORDERED that the evidentiary hearing in this proceeding shall commence on May 30, 2018; and

IT IS FURTHER ORDERED that the Administrative Law Judge determine the timetable for pretrial proceedings before the commencement of the evidentiary hearing on May 30, 2018.

By the Commission.



Donald S. Clark
Secretary

SEAL:

ISSUED: October 26, 2017

⁷ LREAB, Joint Expedited Motion To Extend the Stay of Part 3 Administrative Proceedings, Move the Evidentiary Hearing Date, and Adopt the Attached Schedule of Pretrial Proceedings (Oct. 16, 2017).

⁸ *Id.* at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.*