

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



_____)
In the Matter of)
)
Louisiana Real Estate Appraisers Board,)
)
 Respondent,)
_____)

Docket No. 9374

NON-PARTY MYAMC, LLC’S MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), non-party MyAMC, LLC (“MyAMC”) moves for *in camera* treatment of the attached competitively-sensitive, confidential business documents (the “Confidential Documents”). MyAMC produced the Confidential Documents in response to a third-party subpoena in this matter issued by the Louisiana Real Estate Appraisers Board (“Board”). The Board has notified MyAMC that it intends to introduce the Confidential Documents into evidence at the administrative trial in this matter. *See* Letter from the Board dated June 19, 2019 (attached as Exhibit A).

The material for which MyAMC is seeking *in camera* treatment consists of confidential business documents that contain information current up to January of 2018. If that information were to become part of the public record, MyAMC would suffer a clearly defined, serious injury to its ability to compete in the real estate valuation services provider market. For the reasons set out below, MyAMC requests that the Confidential Documents be afforded *in camera* treatment for ten (10) years. In support of this motion, MyAMC relies on the Declaration of Frank Towery (“Towery Declaration”) attached as Exhibit B, which provides additional details about the documents for which MyAMC is seeking *in camera* treatment.

I. The Documents for Which Protection is Sought

MyAMC seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as Exhibit C.

Exhibit #	Description	Date	Beg Bates	End Bates
RX0611	MyAMC, LLC data spreadsheet in response to Constantine Cannon 1/17/2018 subpoena	2/28/2018	MyAMC00001	MyAMC00038
RX0612	MyAMC, LLC data spreadsheet in response to Constantine Cannon 1/17/2018 subpoena	2/28/2018	MyAMC00040	MyAMC00040

II. The Legal Standard for *In Camera* Treatment.

In camera treatment of material is appropriate when its “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting” such treatment. 16 C.F.R. § 3.45(b). A movant demonstrates serious competitive injury by showing that the documents are secret and material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re DuraLube Corp.*, 1999 F.T.C. LEXIS 255, *5 (1999). In this context, there is generally an attempt “to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

An assessment of whether to grant *in camera* status to documents evaluates their secrecy and materiality by weighing: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977).

MyAMC's status as a non-party also bears on the Commission's treatment of MyAMC's information. Third parties deserve "special solicitude" when requesting *in camera* treatment of confidential business information. See *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984) (noting that granting *in camera* treatment to third parties encourages cooperation with adjudicative discovery requests). *In camera* treatment should be extended to MyAMC's records, as "[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *HP Hood & Sons, Inc.*, 58 F.T.C. at 1188.

II. MyAMC's Documents are Secret and Material Such That Disclosure Would Result in Serious Injury to MyAMC.

Exhibit RX0611 and Exhibit RX0612 contain material, valuable, and closely guarded competitive information of MyAMC. Administrative law judges have broad discretion in determining whether to accord information *in camera* treatment. *General Foods Corp.*, 95 F.T.C. at 355. As set forth below and in the declaration of MyAMC Vice President of Licensing and Compliance Frank Towery, the secrecy of the information within Exhibit RX0611 and Exhibit RX0612 merits the exercise of that discretion to grant *in camera* treatment.

MyAMC is in the business of providing real estate valuation services. Very basically, when contacted to appraise a property, MyAMC assigns an appropriate appraiser, charges a fee for the service, and pays the appraiser for the work done. Exhibit RX0611 and Exhibit RX0612 are a .pdf version and a Microsoft Excel version of a spreadsheet of MyAMC business records that disclose specific information about MyAMC transactions up to January of 2018. Those exhibits set out customer/client names, the appraisal products/services purchased, the property addresses for the appraisal services, the closing date on the property sale, the fees charged by MyAMC, the amount MyAMC paid appraisers and breakouts of such costs, and MyAMC's margins. The information set out in Exhibit RX0611 and Exhibit RX0612 thus sets out

information regarding MyAMC's prices, sales, and financial performance. That information is secret and material to MyAMC's business. *See* Towery Declaration ¶¶ 4-5.

The information set out in Exhibit RX0611 and Exhibit RX0612 as collected and set out in the exhibits is not known outside of MyAMC. And although certain MyAMC employees (e.g., sales and order-placement employees) have access to the fees charged to customers and paid to appraisers for particular transactions, the information collected and set out in the exhibits is not distributed within MyAMC in the collected form. The lack of public availability of the information collected and set out in Exhibit RX0611 and Exhibit RX0612 ensures that competitors and contracted appraisers could not recreate it without access to confidential company records. Additionally, the information required a significant effort and investment of time to create. *See* Towery Declaration ¶ 6.

Because Exhibit RX0611 and Exhibit RX0612 set out information regarding MyAMC's prices, sales, and financial performance, the exhibits contain information that is highly commercially valuable to MyAMC's competitors, customers (e.g., lenders), and contractors (i.e., appraisers). *See* Towery Declaration ¶ 7.

The Commission has previously recognized that this kind of information warrants *in camera* treatment because of the unearned advantages its disclosure would confer on others, such as competitors. *See In re McWane, Inc.*, No. 9351, 2012 WL 3862131 at *3-4 (F.T.C. Aug. 17, 2012) (finding that customer data, pricing, and cost information was appropriate for *in camera* treatment); *General Foods Corp.*, 96 F.T.C. at 169 n.4 (holding that sales and profit data generally are both secret and material to the producing company). If MyAMC's confidential information were to be publicly released, its competitors and others would obtain valuable information enabling them to unfairly compete with MyAMC.

Moreover, MyAMC has taken measures to guard the secrecy of the information set out in the exhibits. MyAMC produced Exhibit RX0611 and Exhibit RX0612 only after communications with Respondent's Counsel regarding confidentiality and examination of the Protective Order entered in this proceeding. MyAMC also marked the documents "Confidential – Attorneys Eyes Only – Subject to Protective Order." See Towery Declaration ¶ 8.

As a non-party, there is no public right to information that will be impinged by the Commission granting Exhibit RX0611 and Exhibit RX0612 *in camera* treatment. The public's "understanding of this proceeding does not depend on access to these data." *Kaiser Aluminum*, 103 F.T.C. at 500.

For these reasons, the information MyAMC provided within Exhibit RX0611 and Exhibit RX0612 is reflective of the business advantage it enjoys in its industry. Public disclosure of this information will likely result in the loss of MyAMC's business advantage within that market, and cause it to suffer a "clearly defined, serious injury." See *Dura Lube Corp.*, 1999 F.T.C. LEXIS 255 at *7 (Dec. 23, 1999) (finding loss of business advantage to be an example of clearly defined, serious injury). If this information were to become public, MyAMC's competitors and others would have knowledge otherwise unavailable about MyAMC's confidential business activities and allow them to unfairly compete against MyAMC. It is therefore both appropriate and proper for the Commission to grant *in camera* treatment of Exhibit RX0611 and Exhibit RX0612.

Finally, MyAMC requests that *in camera* treatment be granted for a period of ten (10) years. The real estate valuation services provider market is a relatively mature, stable market. The core information contained in Exhibit RX0611 and Exhibit RX0612 regarding prices MyAMC has charged and rates MyAMC has paid contracted appraisers have not changed that

significantly over the past few years. *See* Towery Declaration ¶ 9. MyAMC thus requests that Exhibit RX0611 and Exhibit RX0612 receive in camera treatment for a period of 10 years.

IV. Conclusion

For the reasons set forth above and in the Towery Declaration, MyAMC requests that *in camera* treatment be granted for the Confidential Documents for a period 10 years.

Dated: August 2, 2019.

Respectfully submitted,

/s/ Scott M. McElhaney

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ATTORNEYS FOR MYAMC, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of August, 2019, I filed the foregoing document electronically using the FTC's E-Filing System and served the following via email:

April Tabor
Acting Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document to:

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Lisa B. Kopchik
J. Alexander Ansaldo
Wesley G. Carson
Nathaniel M. Hopkin
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Dated: August 2, 2019

/s/ Scott M. McElhaney

Exhibit A

James J. Kovacs
Attorney
202-204-3518
jkovacs@constantinecannon.com

June 19, 2019

Via E-Mail and Mail

Frank Towery
Vice President Licensing and Compliance
MyAMC, LLC
14881 Quorum Drive, Suite 925
Dallas, TX 75254

Re: *In the Matter of Louisiana Real Estate Appraisers Board*, FTC Dkt. 9374

Dear Mr. Towery,

This letter will constitute notice to the MyAMC, LLC, pursuant to 16 C.F.R. § 3.45(b) and paragraph 7 of the July 6, 2017 Scheduling Order in the above-captioned matter, that Respondent Louisiana Real Estate Appraisers Board (“LREAB”) intends to use the materials referenced on the attached Exhibit A as evidence at the administrative trial scheduled to begin on September 17, 2019. All exhibits admitted into evidence become part of the public record unless *in camera* treatment is granted by Administrative Law Judge D. Michael Chappell.

Pursuant to 16 C.F.R. § 3.45, for documents or testimony that you believe include sensitive or confidential information that you do not want on the public record, you must file a motion for *in camera* status with Judge Chappell. As indicated in paragraph 7 of the July 6, 2017 Scheduling Order, motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45, explained in *In re I-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re I-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

June 19, 2019
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Under the Fourth Revised Scheduling Order dated March 26, 2019, the deadline for filing motions seeking in camera status is **August 2, 2019**.

Please contact me via email or at (202) 204-3518 if you have any questions regarding the foregoing.

Best regards,

/s/ James J. Kovacs
James J. Kovacs

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EXHIBIT A

CONSTANTINE CANNON LLP

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Exhibit #	Description	Date	Beg Bates	End Bates
RX0610	Letter from Frank Towery to Allison Sheedy re: Response to Subpoena Duces Tecum - Federal Trade Commission v. Louisiana Real Estate Appraiser Board - Docket No. 9374	2/28/2018	MyAMC00039	MyAMC00039
RX0611	MyAMC, LLC data spreadsheet in response to Constantine Cannon 1/17/2018 subpoena	2/28/2018	MyAMC00001	MyAMC00038
RX0612	MyAMC, LLC data spreadsheet in response to Constantine Cannon 1/17/2018 subpoena	2/28/2018	MyAMC00040	MyAMC00040

Exhibit B

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

)	
In the Matter of)	
)	
Louisiana Real Estate Appraisers Board,)	Docket No. 9374
)	
Respondent,)	
)	

DECLARATION OF FRANK TOWERY

I, Frank Towery, declare:

1. My name is Frank Towery. I am over 21 years of age, and I am of sound mind and fully competent to make this Declaration. All of the facts contained in this Declaration are within my personal knowledge, unless otherwise stated, and are true and correct.

2. I am the Vice President of Licensing and Compliance for MyAMC, LLC (“MyAMC”). On that basis, I have personal knowledge of the facts set forth in this Declaration.

3. I have reviewed the documents referenced in Exhibit C to the motion for *in camera* treatment that this declaration supports, and which are identified as Exhibit RX0611 and Exhibit RX0612 by Respondent’s Counsel.

4. MyAMC is in the business of providing real estate valuation services. Very basically, when contacted to appraise a property, MyAMC assigns an appropriate appraiser, charges a fee for the service, and pays the appraiser for the work done.

5. Exhibit RX0611 and Exhibit RX0612 are a .pdf version and a Microsoft Excel version of a spreadsheet of MyAMC business records that disclose specific information about MyAMC transactions up to January of 2018. Those exhibits set out customer/client names, the appraisal products/services purchased, the property addresses for the appraisal services, the closing date on the property sale, the fees charged by MyAMC, the amount MyAMC paid appraisers and breakouts of such costs, and MyAMC’s margins. The information set out in Exhibit RX0611 and Exhibit RX0612 thus sets out information regarding MyAMC’s prices, sales, and financial performance. That information is secret and material to MyAMC’s business.

6. The information set out in Exhibit RX0611 and Exhibit RX0612 as collected and set out in the exhibits is not known outside of MyAMC. And although certain MyAMC employees (e.g., sales and order-placement employees) have access to the fees charged to customers and paid to appraisers for particular transactions, the information collected and set out in the exhibits is not distributed within MyAMC in the collected form. The lack of public availability of the information collected and set out in Exhibit RX0611 and Exhibit RX0612 ensures that competitors and contracted appraisers could not recreate it without access to confidential company records. Additionally, the information required a significant effort and investment of time to create.

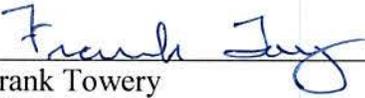
7. Because Exhibit RX0611 and Exhibit RX0612 set out information regarding MyAMC's prices, sales, and financial performance, the exhibits contain information that is highly commercially valuable to MyAMC's competitors, customers (e.g., lenders), and contractors (i.e., appraisers).

8. MyAMC has taken measures to guard the secrecy of the information set out in the exhibits. MyAMC produced Exhibit RX0611 and Exhibit RX0612 only after communications with Respondent's Counsel regarding confidentiality and examination of the Protective Order entered in this proceeding. MyAMC also marked the documents "Confidential – Attorneys Eyes Only – Subject to Protective Order."

9. The real estate valuation services provider market is a relatively mature, stable market. The core information contained in Exhibit RX0611 and Exhibit RX0612 regarding prices MyAMC has charged and rates MyAMC has paid contracted appraisers have not changed that significantly over the past few years.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 25, 2019, in Dallas, Texas.



Frank Towery

Exhibit C

REDACTED – CONFIDENTIAL INFORMATION