

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 DENYING MOTION TO QUASH

I.

On December 22, 2017, pursuant to Rule 3.34(c) of the Federal Trade Commission’s Rules of Practice, non-party Real Estate Valuation Partners, LLC (“REVP”) filed a motion to quash or limit the subpoena *duces tecum* served on REVP by Respondent Louisiana Real Estate Appraisers Board (“Respondent” or “LREAB”) (“Motion”).¹ Respondent filed its opposition on January 2, 2018. For the reasons set forth below, REVP’s Motion is DENIED.

II.

Pursuant to Rule 3.22(g) of the Commission’s Rules of Practice, each motion to quash filed pursuant to § 3.34(c) shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. 16 C.F.R. § 3.22(g).

REVP states that REVP and Respondent had discussions regarding the scope of the subpoena and REVP’s objections thereto, but were unable to resolve all differences. REVP further states that it served Respondent with a response to the subpoena, produced some responsive documents, and expects to continue discussions with Respondent to narrow any remaining areas of dispute. REVP states that it filed the Motion in order to preserve its rights to seek to limit the subpoena, should its discussions with Respondent fail to resolve the remaining disputes.

¹ REVP states that on November 9, 2017, it filed a motion requesting an extension of time until December 22, 2017 to file a motion to quash or limit the subpoena. REVP did not file the motion through the Commission’s E-file system and did not provide a copy of the filing to the Office of Administrative Law Judges (“OALJ”). Although REVP’s November 9, 2017 motion was not presented to the OALJ and the OALJ was not notified of the filing, the November 9, 2017 motion will be treated as properly filed and granted.

Respondent states that it has diligently attempted to work with REVP to reach agreement on reasonable production pursuant to the subpoena, but that, with the exception of one telephone conference on November 17, 2017, REVP has been unresponsive to Respondent's attempts to confer and narrow the issues. Specifically, Respondent states that it followed up with counsel for REVP multiple times, including on November 20, November 30, and December 18, 2017, to inquire whether counsel had discussed the production of documents with her client and to propose times to confer regarding the same, but that Respondent received no response regarding the issues discussed on November 17. Furthermore, Respondent states, REVP did not request that the parties meet and confer again. In addition, Respondent asserts that on December 20, REVP counsel represented that REVP would be making a "substantial" production, but did not request that the parties schedule an additional conference and did not inform Respondent that REVP would be filing a motion to quash. Finally, Respondent states that it remains willing to meet and confer to address these issues without intervention of the court.

Pursuant to Rule 3.22, counsel have a duty to make an effort in good faith to confer with opposing counsel before filing a motion to quash. 16 C.F.R. § 3.22(g). REVP does not attach a separate signed statement making such representation, nor does the Motion purport to convey the required statement. The efforts undertaken by REVP do not amount to an effort in good faith to resolve by agreement the disputes raised by REVP's motion. Because REVP failed to comply with Rule 3.22(g), its Motion could be rejected on that basis. *In re Lab Corp.*, 2011 FTC LEXIS 31, at *3-4 (Feb. 28, 2011). As set forth below, the Motion is denied also because REVP failed to demonstrate that the subpoena imposes an undue burden.

III.

Pursuant to Rule 3.31(c) of the Commission's Rules of Practice, unless otherwise limited by order of the Administrative Law Judge, parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent. 16 C.F.R. § 3.31(c). Pursuant to Rule 3.34(c) of the Commission's Rules of Practice, each motion to quash shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits and other supporting documentation. 16 C.F.R. § 3.34(c).

In summary, the Complaint charges that Respondent's enforcement of the payment of "customary and reasonable fees" to appraisers by, primarily, appraisal management companies ("AMCs"), constituted an unreasonable restraint on price competition. Respondent states that REVP is an AMC that does business in Louisiana, is required to comply with Louisiana law regarding the payment of customary and reasonable fees, and was the subject of one of the LREAB investigations that forms the basis of the Complaint. Respondent contends that the discovery it has requested from REVP concerns that investigation and compliance with Board regulations and thus is relevant. Respondent states that it has been working with third parties to narrow its discovery requests to limit the burden on third parties.

A party seeking to quash a subpoena has the burden of demonstrating that the request is unduly burdensome. *FTC v. Dresser Indus., Inc.*, 1977 U.S. Dist. LEXIS 16178 at *12 (D.D.C.

1977); *In re Intel*, 2010 WL 2143904 (May 19, 2010); *In re Polypore Int'l, Inc.*, 2009 FTC LEXIS 41, at *9 (Jan. 15, 2009). “Even where a subpoenaed third party adequately demonstrates that compliance with a subpoena will impose a substantial degree of burden, inconvenience, and cost, that will not excuse producing information that appears generally relevant to the issues in the proceeding.” *In re Polypore Int'l, Inc.*, 2009 FTC LEXIS 41, at *10 (Jan. 15, 2009); *In re Kaiser Alum. & Chem. Co.*, 1976 FTC LEXIS 68 at *19-20 (Nov. 12, 1976).

REVP’s written response to Respondent’s document requests, served on Respondent and attached to the Motion, asserts a general, unsupported objection that each objected to request is “overly broad, ambiguous, burdensome, and vague and calls for information that is confidential, proprietary, and neither relevant nor reasonably likely to lead to the discovery of admissible evidence.” REVP’s Motion does not provide any explanation or support for its objections. A movant’s general allegation that a subpoena is unduly burdensome is insufficient to carry its burden of showing that the requested discovery should be denied. *In re Polypore Int'l, Inc.*, 2009 FTC LEXIS 41, at *10 (Jan. 15, 2009). REVP has failed to meet its burden of demonstrating that the subpoena is unduly burdensome or that the burden or expense of the discovery outweigh its likely benefit.

To the extent that REVP objects to the subpoena on the ground that the requests call for information that is “confidential” or “proprietary,” the Protective Order entered in this case pursuant to Commission Rule 3.31(d) on May 31, 2017 adequately protects discovery material. *In re Lab Corp.*, 2011 FTC LEXIS 5, at *3-4 (Jan. 28, 2011).

IV.

For the above stated reasons, the Motion is DENIED. Respondent and REVP are encouraged to meet and confer to minimize any burden that might result from compliance with the subpoena.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: January 3, 2018

Notice of Electronic Service

I hereby certify that on January 03, 2018, I filed an electronic copy of the foregoing Order Denying Motion to Quash, with:

D. Michael Chappell
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Donald Clark
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I hereby certify that on January 03, 2018, I served via E-Service an electronic copy of the foregoing Order Denying Motion to Quash, upon:

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I hereby certify that on January 03, 2018, I served via other means, as provided in 4.4(b) of the foregoing Order Denying Motion to Quash, upon:

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