

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

**Louisiana Real Estate Appraisers Board,
Respondent**

DOCKET NO. 9374

PUBLIC

ORDER LIFTING STAY AND RESUMING ADMINISTRATIVE PROCEEDINGS

On April 19, 2018, Respondent Louisiana Real Estate Appraisers Board filed a petition with the U.S. Court of Appeals for the Fifth Circuit, seeking review of the Commission's Opinion and Order¹ denying Respondent's motion to dismiss the complaint in this proceeding and dismissing Respondent's third and ninth affirmative defenses. The Commission denied Respondent's request for a stay pending appeal,² but the court of appeals subsequently issued a stay. The Commission then issued its own order, staying this proceeding pending appellate review and a further order from the Commission.³ On February 28, 2019, the Fifth Circuit found that Respondent's petition was premature and dismissed its petition for lack of jurisdiction, thereby lifting its stay.⁴

Respondent has moved the Commission to continue its stay pending a decision by the Fifth Circuit on Respondent's petition for review *en banc*, and Complaint Counsel have opposed that motion.⁵ The Commission's June 6, 2018 order denying a stay pending appeal ruled that

¹ *In the Matter of Louisiana Real Estate Appraisers Board*, Docket No. 9374, Opinion and Order of the Commission, at 21 (April 10, 2018), https://www.ftc.gov/system/files/documents/cases/d09374_opinion_and_order_of_the_commission_04102018_redacted_public_version.pdf.

² *In the Matter of Louisiana Real Estate Appraisers Board*, Docket No. 9374, Commission Order Denying Stay Pending Appellate Review (June 6, 2018).

³ *In the Matter of Louisiana Real Estate Appraisers Board*, Docket No. 9374, Commission Order Staying Administrative Proceeding at 2 (July 19, 2018), https://www.ftc.gov/system/files/documents/cases/d09374_commission_ord_staying_administrative_proceeding.pdf.

⁴ *Louisiana Real Estate Appraisers Board v. Federal Trade Commission*, No. 18-60291, Order, at 1 (5th Cir., Feb. 28, 2019).

⁵ This is the sixth time that Respondent has requested a stay or continued stay of this proceeding. Respondent has also moved for expedited review of its motion for continued stay. Complaint Counsel's prompt filing of their opposition to Respondent's motion and the Commission's issuance of this order render Respondent's motion for expedited review moot. Complaint Counsel's opposition to a continued stay also included a cross-motion for an

(1) Respondent had failed to identify failures in the findings or reasoning of the Commission's underlying opinion and order that would justify a stay pending appellate review; (2) pretrial proceedings have almost finished, their expenses have already been borne, and the routine expenses of litigation are insufficient grounds for staying proceedings; and (3) granting a stay could undermine the public interest in maintaining competition, expeditiously resolving the Commission's complaints, and promptly providing guidance to Respondents and to third parties in similar circumstances. All of these considerations continue to apply,⁶ and the Fifth Circuit panel's unanimous ruling that the court lacks jurisdiction to hear Respondent's petition for review further reduces Respondent's likelihood of success on appeal and undermines its case for a continued stay.

As our June 6, 2018 order noted, Commission rules provide that the "pendency of a collateral federal court action that relates to the administrative adjudication shall not stay the proceeding: (i) [u]nless a court of competent jurisdiction, or the Commission for good cause, so directs" For the reasons stated above, the Commission does not find good cause to continue to stay this proceeding. Accordingly,

IT IS HEREBY ORDERED, that the stay of these proceedings is hereby lifted;

IT IS FURTHER ORDERED that the Commission's deadline for ruling on Complaint Counsel's Motion for Partial Summary Decision Dismissing Respondent's Fourth Affirmative Defense⁷ is extended to May 7, 2019;

IT IS FURTHER ORDERED that the evidentiary hearing in this proceeding before the Administrative Law Judge of the Federal Trade Commission is rescheduled to commence on September 17, 2019, at 10:00 a.m.; and

IT IS FURTHER ORDERED that the Administrative Law Judge shall establish a revised prehearing schedule that will permit the evidentiary hearing to commence on the date set by the Commission.

By the Commission.

April J. Tabor
Acting Secretary

SEAL:

ISSUED: March 21, 2019

order establishing a schedule for future proceedings. This order sets such a schedule.

⁶ Respondent's assertion that it "has halted all enforcement of Rule 31101 until this issue [on appeal] is resolved," Motion for Continuance of Stay at 5, does not preclude the possibility of anticompetitive harm from the ongoing effects of Respondent's known regulatory policies.

⁷ At the time the stay was entered, Complaint Counsel's motion was pending before the Commission, and oral argument on that motion was scheduled to occur on August 27, 2018. The Commission declines to reschedule the oral argument on Complaint Counsel's Motion for Partial Summary Decision at this time. Complaint Counsel's Motion Regarding Scheduling, filed July 12, 2018, regarding the date of oral argument, is denied as moot.