

Interlocutory Orders, Etc.

IN THE MATTER OF

**LOUISIANA REAL ESTATE APPRAISERS
BOARD**

Docket No. 9374. Order, January 12, 2018

Order denying Respondent's motion to stay proceeding.

**ORDER DENYING RESPONDENT'S EXPEDITED MOTION TO STAY
PART 3 ADMINISTRATIVE PROCEEDING AND MOVE THE
EVIDENTIARY HEARING DATE**

On January 10, 2018, the Commission issued an order scheduling oral argument on two pending motions in this proceeding – a Motion to Dismiss Complaint, filed by Respondent Louisiana Real Estate Appraisers Board, and a Motion for Partial Summary Decision, filed by Complaint Counsel (“the pending motions”). The Commission's order scheduled oral argument on February 22, 2018, and moved the deadlines for the Commission's rulings on the pending motions to April 9, 2018.

One day later, Respondent moved (1) to stay the administrative proceeding until the Commission renders its decisions on the pending motions and (2) to delay the start of the evidentiary hearing from May 30, 2018, to August 27, 2018. Respondent argues that granting its motion would avoid expenses of pretrial activity, including discovery and the preparation of expert reports, that might prove unnecessary, depending on how the Commission resolves the pending motions. Respondent further asserts that the delay it seeks would not prejudice the public interest. In opposing Respondent's motion, Complaint Counsel argues that Commission rules contemplate proceeding with discovery and other pretrial activities without delay and that Respondent has identified no unusual circumstances that would warrant a stay.

Commission Rule of Practice 3.22(b), 16 C.F.R. § 3.22(b) states in relevant part: “A motion under consideration by the Commission shall not stay proceedings before the Administrative Law Judge unless the Commission so orders” When the

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Commission first adopted this Rule, it explained that the provision's "purpose . . . was to ensure that discovery and other prehearing proceedings continue while the Commission deliberates over the dispositive motions" 16 C.F.R. Parts 3 and 4: Rules of Practice, 74 Fed. Reg. 1804, 1810 (Jan. 13, 2009).¹ The Commission, nonetheless, left itself discretion to order a stay in appropriate cases.

The Commission has determined that a stay of the proceedings pending before Chief Administrative Law Judge D. Michael Chappell is not warranted. Respondent premises its motion on a desire to avoid the cost of discovery and other pretrial activities that might prove unnecessary depending on how the Commission resolves the pending motions. The expenses at issue, however, are normal consequences of litigation, routinely borne by litigants while dispositive motions are pending.

Generally, routine discovery costs do not outweigh the competing public interest in the efficient and expeditious resolution of litigated matters.² In this instance, our concern for expedition is heightened by the fact that, as previously requested by Respondent, the presiding Administrative Law Judge and the Commission have already stayed this proceeding and delayed

¹ See also 16 CFR Parts 3 and 4: Rules of Practice: Proposed Rule Amendments and Request for Public Comment, 73 Fed. Reg. 58832, 58834 (Oct. 7, 2008) ("Rules 3.22 and 3.24 [if amended as proposed] would provide authority to the Commission to decide in the first instance all dispositive prehearing motions, including motions for summary decision, unless it refers the motion to the ALJ, while at the same time ensuring that the underlying proceedings are not stayed pending resolution of the dispositive motion absent a Commission order"); *id.* at 58836 ("The Commission anticipates that new paragraphs [3.22](b) and (e) would expedite cases by providing that proceedings before the ALJ will not be stayed while the Commission considers a motion, unless the Commission orders otherwise . . .").

² See 16 CFR Parts 3 and 4: Rules of Practice, 74 Fed. Reg. 1804, 1805 (Jan. 13, 2009) (explaining that in amending its rules for adjudicative proceedings, the Commission "intended . . . to balance three important interests: the public interest in a high quality decisionmaking process, the interests of justice in an expeditious resolution of litigated matters, and the interest of the parties in litigating matters without unnecessary expense").

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commencement of the evidentiary hearing by four months.³ Further stay and additional delay would not be appropriate. *Cf. North Carolina Bd. of Dental Exam'rs*, 150 F.T.C. 851 (2010) (denying a motion to stay proceedings in order to avoid pretrial expenses, pending the Commission's ruling on a motion to dismiss and a motion for partial summary decision).

Accordingly,

IT IS ORDERED that the Expedited Motion of Respondent Louisiana Real Estate Appraisers Board to Stay Part 3 Administrative Proceedings and Move the Evidentiary Hearing Date is hereby **DENIED**.

By the Commission.

³ The evidentiary hearing was originally scheduled to begin on January 30, 2018. On July 18, 2017, Respondent moved to stay the proceeding and to extend the commencement of trial to May 30, 2018. Complaint Counsel objected. On July 28, 2017, the presiding Administrative Law Judge stayed the proceeding for 90 days. Subsequently, the Commission granted a joint motion by Respondent and Complaint Counsel to stay the proceeding nearly an additional month and to move the commencement of trial to May 30, 2018. Order Continuing Stay and Postponing the Evidentiary Hearing (Oct. 26, 2017).

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IN THE MATTER OF

1-800 CONTACTS, INC.

Docket No. 9372. Order, January 19, 2018

Order staying proceedings and extending deadlines in the event of a lapse in appropriations.

ORDER REGARDING SCHEDULING

In the event that a lapse in appropriations results in a shutdown of most Commission operations, the Commission hereby directs that this proceeding be fully stayed during the duration of the shutdown and for an additional five business days thereafter. The oral argument date will be delayed -- and any pre-oral argument deadlines will be extended -- by the number of calendar days of this stay.

IT IS SO ORDERED.

By the Commission.