

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

03 09 2018  
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In the Matter of )  
)  
)

Louisiana Real Estate Appraisers Board, )  
Respondent )  
\_\_\_\_\_ )

Docket No. 9374

ORIGINAL

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MEMORANDUM OF RESPONDENT LOUISIANA REAL ESTATE APPRAISERS  
BOARD IN OPPOSITION TO COMPLA-4(UI)-3i 937 A-4(UI -0I)-5(n)-IgA0I

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Upon discovering the inadvertent production last month, undersigned counsel promptly took “reasonable steps to rectify the error” by identifying the documents and requesting their return. 16 C.F.R. § 3.31(g). Complaint Counsel’s motion contravenes the “maximum legal protection” accorded to attorney-client privilege. *In re Piedmont Health Alliance*, FTC Dkt. No. 9314, 2004 WL 390646, at \*2 (Feb. 20, 2004) (allowing clawback to preserve privilege) (quoting *Haines v. Liggett Group, Inc.*, 975 F.2d 81, 90 (3d Cir. 1992)). The motion should be denied.

**BACKGROUND AND PROCEDURAL HISTORY**

LREAB is a state governmental board mandated to license and regulate real estate appraisers and the appraisal management companies that procure residential real estate appraisals as agents for lenders. The Board is supported by legislatively-prescribed license fees. Unangst Aff. ¶ 5. The Board has a limited staff and budget and no in-house legal counsel. *Id.* ¶¶ 4-5.<sup>2</sup>

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. }

<sup>2</sup> During the Part 2 investigative and Part 3 adjudicative proceedings, LREAB has endeavored to conserve Board resources. As a result, LREAB and its counsel have attempted to minimize expenses during stays of discovery, and to resolve the case quickly via settlement and a Motion to Dismiss. Cannon Aff. ¶ 11; *see generally* Dkt. 9374.

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].} <sup>3</sup>

{ [REDACTED]

[REDACTED]

[REDACTED].} At no point did Mr. Unangst indicate an intent to waive any privilege of the Board. *Id.* { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].} Edwards Aff. ¶ 10; Cannon Aff. ¶ 4.

<sup>3</sup> [REDACTED] } See Cannon Aff. ¶ 4; Ex. 1 (Email chain between { [REDACTED] } and L. Kopchik).

When the Part 2 investigation did not end the FTC's interest in the Board's activities, the Board retained Constantine Cannon LLP in March 2017. Cannon Aff. ¶ 1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED].}

LREAB and Board members have produced additional documents in response to discovery requests issued by Complaint Counsel in the Part 3 proceeding. As part of these productions, the Board has withheld privileged documents and submitted privilege logs to Complaint Counsel in a timely fashion. Cannon Aff. ¶ 12.

[REDACTED]

[REDACTED]

[REDACTED].} Had LREAB or Ms. Edwards or Constantine Cannon known of the inadvertent production of privileged documents, they would have brought the matter to the attention of Complaint Counsel sooner. *Id.*; Unangst Aff. ¶ 6; Edwards Aff. ¶ 11. And had LREAB or Ms. Edwards or Constantine Cannon previously known that Complaint Counsel believed attorney-client privilege to have been waived, Constantine Cannon would have brought this matter to the attention of the LREAB and, if necessary, this Court.

Upon learning of the inadvertent disclosure, LREAB notified Complaint Counsel with a list of documents initially identified as attorney-client privileged. Cannon Aff. ¶ 13. LREAB

[REDACTED]

[REDACTED]

[REDACTED].}

did not then provide

intended to convey only that he believed LREAB had acted lawfully at all times and that the truth, when known, would terminate the investigation – not that he intended to knowingly and voluntarily waive LREAB’s right to assert privilege over any produced documents. Unangst Aff. ¶¶ 13-14; Cannon Aff. ¶ 14. To the contrary, Mr. Unangst took proactive steps to prevent disclosure. Unangst Aff. ¶ 6; Cannon Aff. 14. {

.} *Id.* The

Board’s production therefore meets the ordinary definition of “inadvertent disclosure” under *see* 16 C.F.R. § 3.31(g)(A) – an “accidental revelation of confidential information” – and does not meet the standard of a knowing and intentional waiver. *Inadvertent Disclosure*, Black’s Law Dictionary (10th ed. 2014).

## **II. LREAB Took Reasonable Steps to Prevent Disclosure.**

{ ,} LREAB implemented “reasonable steps to prevent disclosure” under the circumstances. 16 C.F.R. § 3.31(g)(B); Cannon Aff. ¶ 14. {

} was reasonable under the circumstances, particularly given that the Board is a small state agency with limited resources. *Id.* ¶ 9; Unangst Aff. ¶ 5. The Board had no inside counsel, and its outside counsel had no experience with FTC investigations {

.} Unangst Aff. ¶ 4; Edwards Aff. ¶ 7.

Undersigned counsel have maintained the Board’s privileges over documents produced in Part 3

withheld, and given the Board's limited financial resources to conduct a second review, the Board and its counsel did not discover until recently the prior inadvertent disclosure. *Id.* ¶ 13.

### **III. LREAB Promptly Has**

In addition, fairness and the protection of privilege strongly favor LREAB.



[REDACTED] .} Unangst Aff. ¶ 14; Cannon Aff.

¶ 3. Having detrimentally relied on misrepresentations by Complaint Counsel, it would be patently unfair under these facts to find a waiver by Mr. Unangst of the Board's privileges, or to unfairly prejudice LREAB's defense by throwing its well-taken privileges into jeopardy.

### CONCLUSION

LREAB's assertion of attorney-client privilege meets all requirements of asserting privilege pursuant to FTC Rule 3.3(g). This Court therefore should deny Complaint Counsel's Motion, and allow the Board three business days to submit a privilege log for the documents.

Dated: March 6, 2018

Respectfully submitted,

/s/ W. Stephen Cannon

W. Stephen Cannon  
Seth D. Greenstein  
Richard O. Levine  
James J. Kovacs  
Allison F. Sheedy  
J. Wyatt Fore  
**Constantine Cannon LLP**  
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Washington, DC 20004  
Phone: 202-204-3500  
scannon@constantinecannon.com

*Counsel for Respondent, Louisiana Real  
Estate Appraisers Board*

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

**COMMISSIONERS:       Maureen K. Ohlhausen, Acting Chairman  
                                  Terrell McSweeney**

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**In the Matter of**

**Louisiana Real Estate Appraisers Board,  
Respondent**

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**Docket No. 9374**

**AFFIDAVIT OF BRUCE UNANGST**

I, Bruce Unangst, in support of the Opposition of Respondent Louisiana Real Estate Appraisers Board to Complaint Counsel’s Motion for Expedited Motion for an Order that Respondent has Waived Privilege (“Motion”), do hereby declare as follows:

1.       The facts stated in thisC7fh1(ponde)4(Evi)-2(l)5f ON

meetings, and asks her to prepare correspondence and reports that require legal input. Ms. Edwards also assists the Board with respect to enforcement actions by the Board, including enforcement actions with the two appraisal management companies (“AMCs”) identified in the Complaint, Coester VMS and iMortgage Services. Ms. Edwards represented the Board in the enforcement hearing involving iMortgage, and represents the Board in iMortgage’s appeal of the Board’s Order

[REDACTED]

[REDACTED].}

8. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].}

9. { [REDACTED]

[REDACTED].}

10. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].}

11. { [REDACTED]

[REDACTED].}

12. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].}

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];

14. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

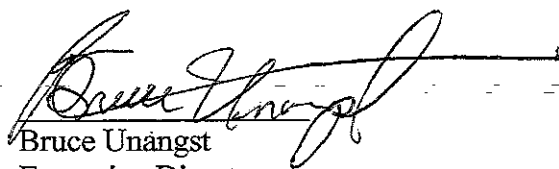
[REDACTED]

[REDACTED]

[REDACTED];

**VERIFICATION OF AFFIDAVIT OF BRUCE UNANGST**

I certify under penalty of perjury that the foregoing is true and correct.



Bruce Unangst  
Executive Director  
Louisiana Real Estate Appraisers Board

March 5, 2018

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

MEMORANDUM FOR THE DIRECTOR

DATE: 10/10/54

TO: SAC, NEW YORK

FROM: SAC, NEW YORK

SUBJECT: [Illegible]

RE: [Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

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[Illegible]

[Illegible]

5. I also have assisted the Board in various enforcement matters. I was the lead

in the case of the Department's investigation of a complaint that in fact, the services had failed to comply with the requirements of the Act regarding payment of primary and reasonable fees to appraisers. I also assisted the Board in resolving the complaint regarding violation of the same requirements by Coester V. MS. I provide the Board with advice in a variety of ways. Some advice is given in writing and other advice is given orally and may be reflected in minutes or memoranda.

6.

I

response to ema







[REDACTED]  
[REDACTED]  
[REDACTED].}

4. { [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].}

5. In a telephone call with Ms. Kopchik on or around March 31, 2017, { [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].}

6. On April 6, 2017, { [REDACTED]  
[REDACTED]}.

7. { [REDACTED]  
[REDACTED]  
[REDACTED].}



13. { [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].}

14. { [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].}

I certify under penalty of perjury under the laws of the United States that the facts set forth in the foregoing Affidavit are true and correct to the best of my knowledge.

Dated: March 6, 2018

/s/ W. Stephen Cannon  
W. Stephen Cannon

# Confidential Exhibit 1

Notice of Electronic Service

**I hereby certify that on March 09, 2018, I filed an electronic copy of the foregoing Respondent's Opposition to Complaint Counsel's Motion That Respondent Has Waived Privilege - PUBLIC, with:**

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

**I hereby certify that on March 09, 2018, I served via E-Service an electronic copy of the foregoing Respondent's Opposition to Complaint Counsel's Motion That Respondent Has Waived Privilege - PUBLIC, upon:**

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