COLUMBUS COATED FABRICS CORP., ET AL.

Docket 6677. Order and Opinion, Dec. 23, 1957

Interlocutory order upholding hearing examiner's rulings limiting request for production of certain statements of witnesses, quashing certain specifications in subpenas, and denying motion to strike testimony of witness; and denying request for oral argument.

OPINION OF THE COMMISSION

By the COMMISSION:

This matter is before the Commission upon the interlocutory appeal of respondent Philan, Inc., from several rulings of the hearing examiner made in the course of hearings conducted in New York City from September 9 through September 12, 1957, as follows:

(1) Ruling of September 9, 1957, which, in response to Philan's motion in part requesting an order to require counsel supporting the complaint to produce for examination documents in his possession containing statements of certain named witnesses "to any investigator or other representative of the Federal Trade Commission prior to their testimony in this proceeding," ordered the production of only certain interview report documents with some deletions;

(2) Ruling of September 10, 1957, quashing certain specifications in two subpoenas duces tecum served upon Oscar Siperstein; and

(3) Ruling of September 12, 1957, denying Philan's motion to strike the testimony of Oscar Siperstein.

In connection with the ruling granting limited examination of certain documents in possession of counsel supporting the complaint, Philan argues first that, while the examiner ordered the turning over of interview reports with certain witnesses, he did not order the turning over of other prior statements of the *same witnesses* in forms other than interview reports. The hearing examiner considered the motion as "sort of a blunderbuss motion" and refused to grant the request to the extent that examination, direct or cross, brought out no indication of any report, statement, or interview of a witness. The result was to confine the requested production to interview reports only, and, in addition, to only the reports of this kind relating to the several witnesses in which cases it was apparent from the testimony that such reports were in existence; excluded were reports relating to other witnesses, as well as other prior statements of any of the witnesses. In other words, the request which involved an excursion to see what documentary material, if any, might be uncovered was limited to reasonable dimensions; it was limited to those documents immediately related to the testimony of the witnesses. Under the circumstances,

we do not believe that the hearing examiner abused his discretion in such ruling.

Philan additionally argues, relative to the September 9th ruling, that it was error for the examiner to excise those portions of the reports which he considered to be privileged and irrelevant or simply irrelevant. The deletions included portions which make reference to an applicant in this proceeding; information which we believe was properly withheld. For one thing, the identification of one who has complained to the Commission is irrelevant, since Commission action is taken only in the public interest. No applicant is a party to this proceeding. Furthermore, the status of a complainant is such that a strict policy of protecting his identity is warranted.[1] We have examined all of the parts deleted and conclude, as the examiner did, that they contain nothing relevant to this proceeding; consequently, we are in accord with the examiner's action.

Philan argues that it was denied the right to be heard relative to the excisions. It appears, however, that to be heard in the matter, Philan would have to be shown the deleted material. This would defeat the purpose of the action taken. Under all the circumstances, we cannot find that Philan was in any way prejudiced by the deletion of irrelevant parts of the reports in question.

In reference to the ruling quashing certain specifications in the subpoenas served upon Oscar Siperstein, Philan argues that quashing item 14 in the one and item 6 in the other was in error. These items are substantially similar, differing only with respect to the company involved and the period of time covered. The request is for any and all correspondence, or copies thereof, by or between N. Siperstein, Inc. [St. George Paint & Wallpaper Supply in the other] (or any officer or agent thereof) and any agency or department in the U.S. Government in the specified periods, containing statements which relate to or describe the purpose or sale of Wall-Tex or any difficulties in connection with such sale or purchase. The examiner construed this as reasonably calling for complaints to the Federal Trade Commission. He concluded that section 10 of the Federal Trade Commission Act made any such records absolutely privileged. This section prohibits any officer or employee of the Commission from making public any information obtained by the Commission without its authority.

We are of the opinion that in an administrative proceeding, such as this, statements in writing to the Commission by applicants or complaining parties should be strictly protected from disclosure, as a general rule. Philan concedes that the specifications in question call

[1] Even under criminal procedure, it has been held where a court concludes that material obtained by the Government from third persons ought to be produced, the court should be solicitous to protect against disclosure of the identity of informants. *Bourman Dairy Co. v. United States*, 341 U.S. 214.

for complaints by the parties named made to the Federal Trade Commission. It asserts, however, that such production is necessary for Philan to be accorded the right of cross-examination. The question here is not dissimilar from that presented with respect to the request for documents in the possession of counsel supporting the complaint, and should be resolved on a similar basis. Not only has there been no use of any such statement in this proceeding, nor any reference thereto in the witness' testimony, the record fails to disclose that any written statement was ever made by the parties to the Commission. Under circumstances where confidential documents of this character might be revealed, we believe that some stronger relationship to the witness' testimony or to the proceeding in general is needed than is here shown to warrant the production requested.

Moreover, this question should not be viewed merely with respect to the specifications quashed. Philan has requested and has been granted by the examiner subpoenas to witness Oscar Siperstein covering a wide range of data and documentation adjudged to be relevant to this proceeding and concerning matters testified to, against which the witness' credibility might be tested. Furthermore, Philan has been given access to all interview reports with the witness, except so far as there has been some deletions of irrelevant matter. In short, access has been broadly granted to relevant matter requested having a bearing on the testimony of the witness. Under such circumstances, we do not believe Philan has suffered prejudice by way of any denial of its right to cross-examine.

The final question on this appeal is whether it was error for the examiner, having denied in part the requests for production, to deny Philan's motion to strike the testimony of witness Oscar Siperstein. Since we have already concluded that Philan has not been denied its right to cross-examination with respect to this witness, it follows that it was proper to deny the motion to strike.

Philan, Inc., has made a request for oral argument, but it appears that the briefs are entirely adequate to fully advise the Commission as to the matters in issue and that no useful purpose would be served thereby.

The interlocutory appeal and request for oral argument of Philan, Inc., are denied.

ORDER DENYING INTERLOCUTORY APPEAL AND REQUEST FOR ORAL ARGUMENT

This matter having come on to be heard upon the interlocutory appeal of respondent Philan, Inc., from certain rulings of the hearing examiner denying or limiting its request for production of certain records by motion and by subpoena duces tecum and denying its

motion to strike the testimony of a witness and upon said respondent's request for oral argument; and