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

The Commission having determined, for the reasons appearing in the accompanying opinion, that the appeal and the request for oral argument should be denied:

It is ordered, That the interlocutory appeal and request for oral argument of respondent Philan, Inc., be, and they hereby are, denied.

COLUMBUS COATED FABRICS CORP., ET AL.

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

Interlocutory order upholding hearing examiner's ruling denying in part respondents' motion to quash subpenas duces tecum served upon one of them as involving trade secrets.

OPINION OF THE COMMISSION

By the COMMISSION:

This matter is before the Commission upon the interlocutory appeal of Oscar Siperstein, a witness in this proceeding, N. Siperstein, Inc., and St. George Paint & Wallpaper Supply, from the ruling of the hearing examiner which denied in part their motion to quash two subpoenas duces tecum served at the request of respondent Philan, Inc., upon said Siperstein, in the one instance as an officer of N. Siperstein, Inc., and in the other as an officer of St. George Paint & Wallpaper Supply. Brief has been filed in support of the appeal by counsel supporting the complaint. Respondent Philan, Inc., has filed briefs in opposition to the appeal and in answer to the brief of counsel supporting the complaint.

The requested documents, relative to which the motion to quash was denied, include, for various specified periods of time, the following:

(a) Records relative to the returns of Wall-Tex by N. Siperstein, Inc., to any vendor other than Philan, Inc.

(b) Records showing the names and addresses of all customers who purchased Wall-Tex from N. Siperstein, Inc., who returned Wall-Tex to N. Siperstein, Inc., as damaged or defective, for which return was made by N. Siperstein, Inc., to Philan, Inc., in the regular course of business, as well as the amount of credit extended or cash refunded to each such customer.

(c) Records showing the volume of Wall-Tex purchased by N. Siperstein, Inc., and St. George Paint & Wallpaper Supply, with the names of the vendors, and the volumes of sales of the product by N. Siperstein, Inc., and St. George Paint & Wallpaper Supply.

(d) Tear sheets of advertisements of Wall-Tex placed by N. Siperstein, Inc., and other related memoranda.

(e) Minutes of meetings of directors and stockholders showing the election of officers of the respective companies, as well as records relating to the identification of officers and employees.

The argument of the appellants seems to be principally that the subpoenas violate their right to privacy of records, particularly where allegedly little or no relevance has been shown. It is also strongly urged that the hearing examiner erred in allegedly delegating authority to counsel for respondent Philan, Inc., to decide whether or not the records should be produced.

Counsel supporting the complaint argues primarily that the records ordered to be produced contain trade secrets and thus are privileged from disclosure, citing authorities such as *E. B. Muller & Co., et al.* v. *Federal Trade Commission*, 142 F. 2d 511.

There does not appear to be any question here as to the general relevance and reasonable scope of the records ordered to be produced. The hearing examiner carefully and specifically considered the relevant nature of the documents in each instance. He also considered the reasonableness of the several requests, as evidenced by the fact that some specifications were stricken entirely or limited in their coverage. We find no reason to overrule his judgment in these respects.

The contention that the examiner delegated authority to decide whether or not the records should be produced is without foundation. The questions directed to counsel for Philan, Inc., were simply for the purpose of determining if said counsel had a reasonable basis for requesting various documents covered by the subpoenas. From the answers the examiner was better informed to decide the appropriateness of the requests. Such a procedure is proper and does not constitute a delegation of authority.

The argument that the documents ordered produced involve trade secrets apparently is most directly in point in connection with the request for records intended to identify certain customers of N. Siperstein, Inc. A customers list has been held to be a valuable property right, entitled to protection, and in general privileged against disclosure. *E. B. Muller & Co., et al.* v. *Federal Trade Commission, supra.* One of the subpoenas in this instance calls for the names of certain customers, but not an exhaustive listing by any means. The request is limited so that it calls for the names of only those customers who purchased Wall-Tex from N. Siperstein, Inc., and returned it as damaged or defective, and for which returns were made by N. Siperstein, Inc., to Philan, Inc. It does not appear that this would in any way involve a wholesale disclosure of the names of customers of N. Siperstein, Inc. We do not believe that the names of the several customers which might be revealed fall in the category of trade information protected by privilege. Moreover, there is no absolute privi-

lege against disclosure of trade secrets. If there are such secrets contained in the documents here involved, it is further believed that the circumstances of this proceeding justify an order requiring production.

The interlocutory appeal of Oscar Siperstein, N. Siperstein, Inc., and St. George Paint & Wallpaper Supply is denied.

ORDER DENYING INTERLOCUTORY APPEAL

This matter having come on to be heard upon the interlocutory appeal of Oscar Siperstein, a witness in this proceeding, N. Siperstein, Inc., and St. George Paint & Wallpaper Supply, from the ruling of the hearing examiner denying in part their motion to quash subpenas duces tecum served upon said Oscar Siperstein as an officer of N. Siperstein, Inc., and as an officer of St. George Paint & Wallpaper Supply; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that the appeal should be denied:

It is ordered, That the interlocutory appeal of Oscar Siperstein, N. Siperstein, Inc., and St. George Paint & Wallpaper Supply be, and it hereby is, denied.

FIDELITY STORM SASH CO. OF D.C., INC., ET AL.