

Decision

IN THE MATTER OF
MASSACHUSETTS BONDING AND INSURANCE COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6447. Complaint, Nov. 18, 1955—Order, Oct. 6, 1958

Order dismissing, for lack of jurisdiction, following the ruling of the Supreme Court of the United States in *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560, complaint charging an insurance company in Boston, Mass., with false advertising of its health and accident policies.

Mr. John W. Brookfield, Jr. for the Commission.

Gaston, Snow, Motley & Holt, by *Mr. Joseph P. Rooney* and *Mr. John B. Pierce, Jr.*, of Boston, Mass., and *Mr. Robert Watson*, of Washington, D.C., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding is one brought under the Federal Trade Commission Act as affected and amended by the McCarran-Ferguson Act, 15 U.S.C., §§1011–1015 inclusive, the complaint charging the respondent corporation, in substance, with having transmitted in interstate commerce certain alleged false, misleading and deceptive advertising concerning its individual health-and-accident insurance policies. Group health-and-accident insurance is not involved. The complaint is dismissed herein for lack of jurisdiction by the Commission over the subject-matter thereof, pursuant to the recent decision of the Supreme Court of the United States, relating to that subject.

The Supreme Court, in one *per curiam* opinion issued on June 30, 1958, decided two cases, entitled *Federal Trade Commission v. National Casualty Company* (No. 435) and *Federal Trade Commission v. The American Hospital and Life Insurance Company* (No. 436), 357 U.S. 560 (1958). The Supreme Court accepted jurisdiction of these cases on writs of certiorari from the Courts of Appeals for the Sixth and Fifth Circuits, respectively, to review their "interpretation of an important federal statute." It affirmed the judgment of each of such Circuits in setting aside the Commission's cease-and-desist orders against the said respondent insurers. In the course of its opinion, the Supreme Court

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rejected all contentions of the Federal Trade Commission purporting to sustain its jurisdiction, and, in affirming the said judgments of said courts of appeals, held that the Commission is prohibited by the McCarran-Ferguson Act from regulating the practices complained of by it within those states having statutes authorizing the regulation of such practices.

With particular pertinence to the case at bar, the Supreme Court, covering in the one case a casualty-insurance company and in the other a life-insurance company, held:

Respondents, the National Casualty Company in No. 435 and the American Hospital and Life Insurance Company in No. 436, engage in the sale of health and accident insurance. National is licensed to sell policies in all States, as well as the District of Columbia and Hawaii, while American is licensed in fourteen States. Solicitation of business for National is carried on by independent agents who operate on commission. The company's advertising material is prepared by it and shipped in bulk to these agents, who distribute the material locally and assume the expense of such dissemination. Only an insubstantial amount of any advertising goes directly by mail from the company to the public, and there is no use of radio, television, or other means of mass communication by the company. American does not materially differ from National in method of operation.

* * * There is no question but that the States possess ample means to regulate this advertising within their respective boundaries.

* * * Each State in question has enacted prohibitory legislation which proscribes unfair insurance advertising and authorizes enforcement through a scheme of administrative supervision.

In footnote 6 of its opinion, the Supreme Court said:

At the time the complaints were filed thirty-six States had enacted the "Model Unfair Trade Practices Bill for Insurance." Eight others had statutes essentially the same in effect as the "Model Bill."

The opinion of the Supreme Court is sweeping and general in its language. It does not attempt to cite the numerous statutes of the several States which constitute the entire regulatory plan of each of such States. And to do so herein is wholly unnecessary; suffice it to say that official notice is taken that all States, by statute, provide for the licensing and regulation of all types of insurance agents; that all the States now have legislative acts providing more or less specifically for the regulation of life-insurance companies' business of health-and-accident insurance, including the advertising thereof; and that, with respect to the business of casualty-insurance companies, nearly all of the States have specific regulatory statutes, but in each of the remaining few, the general regulatory powers of the Insurance Department are sufficiently broad, when coupled with the criminal and other

statutes of the State, to provide a system of regulation of any unfair advertising by such companies and their agents, which the Supreme Court apparently deems adequate to regulate such business in such States. It holds, in effect, that under the McCarran-Ferguson Act each State is given latitude to enact such laws and provide such regulatory processes as each State deems proper within its own jurisdiction, and that the degree of actual law enforcement, if any, in the several States is wholly immaterial.

In the instant proceeding, the complaint was issued on November 18, 1955. Respondent subsequently joined issue, and, among other pleas, adequately raised the issue of the Commission's jurisdiction over the subject-matter. The record is fairly voluminous, but, in view of the conclusion reached herein, only a few undisputed facts need be stated. While at the conclusion of the proceeding each of the parties submitted extensive and detailed proposed findings of fact as well as conclusions of law, and a proposed order, some of which proposed findings and conclusions are quite proper, for brevity all such proposals have been rejected.

The respondent is a stock casualty insurance company duly organized, existing and doing business under the laws of the Commonwealth of Massachusetts, with its office and principal place of business in Boston, Mass. The respondent and its agents, respectively, were licensed in all of the forty-nine States of the United States (including the newly admitted State of Alaska), the District of Columbia and the Territory of Hawaii. During the time covered by this proceeding respondent casualty company never sent any advertising by mail directly from its home office to the public generally, and did not use radio, television or other mass media of communication to the public. Its advertising activity was confined to the preparation of advertising circulars and their distribution to its agents, who then distributed them locally at their own expense.

This proceeding, therefore, falls squarely within the principles enunciated by the Supreme Court in its said decisions. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed for lack of jurisdiction.

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The date on which the hearing examiner's initial decision would have become the decision of the Commission having been extended by order issued September 10, 1958, until further order of the Commission; and

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The Commission having now determined that said initial decision is adequate and appropriate in all respects:

It is ordered, That the initial decision of the hearing examiner duly providing for dismissal of this proceeding for lack of jurisdiction be, and it hereby is, adopted as the decision of the Commission.

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IN THE MATTER OF
GUARANTEE TRUST LIFE INSURANCE COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6244. Complaint, Oct. 14, 1954—Order, Oct. 7, 1958

Order dismissing, for lack of jurisdiction, following the ruling of the Supreme Court of the United States in *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560, complaint charging a Chicago insurance company with false advertising of its health and accident policies.

Before Mr. Loren T. Laughlin, hearing examiner.

Mr. Frederick McManus for the Commission.

Mr. Zachary D. Ford, Jr. and Walkins & Meyers, of Chicago, Ill., for respondent.

FINAL ORDER

This matter having come on to be heard by the Commission upon respondent's appeal from the hearing examiner's initial decision filed prior to the *per curiam* opinion of the United States Supreme Court in the combined cases of *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560 (decided June 30, 1958); and

The Commission having considered respondent's appeal and the record, and having concluded that this proceeding should be dismissed on jurisdictional grounds upon the authority of said ruling of the Supreme Court:

It is ordered, That the initial decision herein, filed April 26, 1957, be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint herein be, and it hereby is, dismissed.