Docket 8463. Order, Sept. 24, 1963

Order denying respondent's appeals from hearing examiner's denials of applications for certain subpoenas and depositions.

Order Disposing of Appeals From Hearing Examiner's Orders of August 29, 1963.

The Commission now has before it the following appeals from certain orders of the hearing examiner entered August 29, 1963, concerning the taking of depositions in this proceeding: (1) respondent's appeal from the hearing examiner's denial of certain of its applica-

tions for subpoenas and depositions; (2) complaint counsel's request for permission to appeal from the examiner's granting of certain other of respondent's applications for subpoenas and depositions; and (3) an appeal by Salada Foods, Inc., from the examiner's order permitting respondent to take the deposition of that company.

It does not appear that the rulings appealed from involve substantial rights and will materially affect the final decision or that a determination of their correctness before conclusion of the hearing will better serve the interests of justice—the requirements for an interlocutory appeal under Section 3.17(f) of the Commission's Rules of Practice. The Commission notes, however, the following statement in the examiner's memorandum:

> that under the rules presently in effect governing the taking of depositions, (a) there must be a showing that the deposition will constitute or contain evidence relevant to this issue, (b) that there is a definite risk that the witness to be deposed will not be available at the hearing, (c) that exceptional circumstances exist within the meaning of Part V of Section 3.10(e)(2) of the rules, or within the probable utilization under Section 3.10(e)(1).

This erroneously confuses the requirements for the taking of depositions, set out in Section 3.10(a) of the Commission's Rules, with the requirements, set out in Section 3.10(e), for their use at the hearing. Since the examiner's denial of certain of respondent's applications for depositions may possibly be based in part upon this erroneous interpretation of the Commission's Rules, the examiner is directed to reconsider the matter. Accordingly,

It is ordered, That the appeals and the request for permission to file an interlocutory appeal from the examiner's rulings be, and they hereby are, denied.

It is further ordered, That the examiner be, and he hereby is, directed to reconsider respondent's applications for subpoenas and depositions in the light of this order.

Commissioner Anderson not participating for the reason he is of the opinion there should not have been a complaint.

FRED ASTAIRE DANCE STUDIOS, WASHINGTON, D.C., INC., ET AL.

Docket 8560. Order, Oct. 7, 1963

Order denying respondent's motion to dismiss the complaint or suspend the proceeding pending a trade-practice hearing.

ORDER DENYING REQUEST TO FILE INTERLOCUTORY APPEAL, AND DENYING MOTION TO DISMISS COMPLAINT OR SUSPEND PROCEEDING