

CROWELL-COLLIER PUBLISHING COMPANY ET AL.

Docket 7751. Order, Oct. 5, 1964

Order denying complaint counsel's motion to overrule hearing examiner's quashing of a subpoena duces tecum and striking other testimony.

ORDER DENYING PETITION

This matter has come on to be heard by the Commission upon a petition designated as a "Request for Interlocutory Appeal From Rulings of Hearing Examiner," filed September 25, 1964, by counsel supporting the complaint.

In part I of said petition, complaint counsel contends that the hearing examiner erred in his ruling sustaining respondents' motion to quash a subpoena ad testificandum directed to David H. Kidd. Complaint counsel's petition in this respect is improperly filed since an objection to a hearing examiner's ruling granting a motion to quash

a subpoena should have been in the form of an appeal to the Commission rather than the subject of a request for permission to file an interlocutory appeal. Nevertheless, the Commission has considered complaint counsel's argument on this point and has concluded that there has been no showing that the ruling complained of involves substantial rights and will materially affect the final decision and that a determination of its correctness before conclusion of the hearing will better serve the interests of justice.

In part II of his petition, complaint counsel requests permission to file an interlocutory appeal from the hearing examiner's ruling striking the testimony of one of complaint counsel's witnesses. It appears that the hearing examiner ordered this testimony stricken while at the same time denying respondents' alternative request for enforcement of a subpoena to obtain the deposition of the witness' husband who was present at the transaction concerning which the witness testified. In substance, it is complaint counsel's contention that respondents did not exercise due diligence to obtain the deposition.

The hearing examiner's ruling on this point was issued on July 15, 1964, and complaint counsel's request is not timely filed. Moreover, the Commission concludes that to permit an interlocutory appeal on this point would result in unnecessary delay and is not warranted in the public interest.

In part III of his request, complaint counsel objects to an order of the hearing examiner which allegedly requires him to produce certain letters for respondents' inspection at a date and place specified. A review of the examiner's order discloses that complaint counsel's objection is premature since the examiner's order is premised on certain conditions which have not been fulfilled. Accordingly,

It is ordered, That complaint counsel's petition, filed September 25, 1964, be, and it hereby is, denied in all particulars.

IN THE MATTER OF

SHREVEPORT MACARONI MANUFACTURING COMPANY,
INC.

Docket 7719. Order, Oct. 8, 1964

Order denying respondent's motion to reopen proceeding for purpose of vacating the cease and desist order against it.