

HOLLYWOOD CREDIT CLOTHING CO., INC., ET AL.

Docket 8796. Order, Feb. 24, 1970

Order denying respondents' motions to withdraw proceeding from adjudication and to direct examiner to certify two dismissal motions to the Commission.

ORDER DENYING MOTION TO WITHDRAW FROM ADJUDICATION

This matter is before the Commission upon the hearing examiner's certification, filed February 6, 1970, of respondents' motion for withdrawal of this proceeding from adjudication premised on an assurance of voluntary compliance. The examiner recommends that the motion be denied, and complaint counsel, on February 9, 1970, have filed their answer in opposition to respondents' motion.

The Commission's Rules of Practice, in Section 2.34(d), state that "in exceptional and unusual circumstances, the Commission may, upon request and for good cause shown, withdraw a matter from adjudication for the purpose of negotiating a settlement by the entry of a consent order." The tendering of an assurance of voluntary compliance does not meet these criteria, particularly since the Commission previously rejected an assurance tendered by respondents, and the motion will therefore be denied. This does not, of course, preclude a settlement of the proceeding through the regular adjudicatory process by way of an admission answer or submission of the case to the examiner on a stipulation of facts and an agreed order.

Also before the Commission is respondents' motion, filed February 10, 1970, to direct the examiner to certify to the Commission two motions to dismiss the complaint. The motions were denied by the examiner and respondents contend that all motions to dismiss must be ruled upon by the Commission. In support of this contention respondents refer to interlocutory orders in *Suburban Propane Gas Corp.*, Docket 8672 (May 25, 1967) [71 F.T.C. 1695], and *Drug Research Corp.*, Docket 7179 (October 3, 1963) [63 F.T.C. 998]. In the instant proceeding, reliance on these two orders is misplaced. As stated in *Drug Research*, only in those instances in which the motion to dismiss raises questions of the Commission's administrative judgment or discretion does the examiner lack authority to rule on it and must certify it to the Commission. See also *The Drive-X Company, Inc.*, Docket 8615 (June 10, 1964). Such is not the case in the instant proceeding and the motion will be denied. Accordingly,

It is ordered, That respondents' motion to withdraw this proceeding from adjudication be, and it hereby is, denied.

It is further ordered, That respondents' motion to direct the examiner to certify to the Commission two motions to dismiss the complaint be, and it hereby is, denied.