



ORDER DENYING MOTIONS TO STAY THE PROCEEDING
OR DISMISS THE COMPLAINT

This matter is before us upon the administrative law judge's certification, dated October 16, 1972, of two motions by several of the respondents herein.¹ The first motion, dated September 11, 1972, seeks a stay in this proceeding pending resolution of certain criminal matters instituted by the States of Michigan and Florida against some of the movants. The second motion, dated September 26, 1972, with an addendum dated September 27, 1972, again requests a stay, or in the alternative, dismissal of the complaint on account of the aforementioned criminal proceedings as well as certain civil actions which are pending against some of the movants.

I

Respondents first contend that we must stay the Commission proceeding until all state criminal proceedings pending against certain respondents have been completed. Any attempt on their part to respond to or defend against the Commission complaint or to testify in the Commission's proceeding, may, they argue, constitute a waiver of their claim of privilege against self incrimination with respect to the pending criminal matters. Further, they claim that issuance by the Commission of an order to cease and desist in the face of respondents' assertion of their Fifth Amendment privilege would amount to a denial of due process of law. We disagree.

Respondents, to support their contentions, have submitted copies of criminal indictments and informations which have been initiated against some of them by the States of Michigan and Florida.² These papers indicate that some respondents are under criminal indictments with respect to programs known as "Dare To Be Great" and "Consumer Research Bureau of America, Inc." Our complaint, on the other hand, concerns respondents' activities with respect to their Koscot Interplanetary marketing program. The Commission's proceeding does not concern

¹ The movants are respondents Koscot Interplanetary, Inc., Glenn W. Turner Enterprises, Inc., Glenn W. Turner, Malcom Julian, Hobart Welder and Michael Delaney.

² Exhibits 3-15, attached to respondents' Motion Requesting Certification of Questions to the Commission, filed September 26, 1972, and Exhibit 17, attached to Addendum to respondents' Motion Requesting Certification of Questions to the Commission, filed September 27, 1972.

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the same transactions as are involved in the criminal matters. We are not aware of any authority, and respondents point to none, which would require us to postpone the Commission proceeding simply because respondents also happen to be defendants in criminal proceedings arising out of activities different from those with which the administrative complaint is concerned. Indeed, the decision on which respondents principally rely, *Silver v. McCamey*, 221 F.2d 873 (D.C. Cir. 1955) indicates that due process is not violated where an administrative action against a defendant is based on charges different from the criminal charges (221 F.2d at 875) :

It does not follow, as the Board contends, that the public must be left without protection against an accused hacker pending his criminal trial. (1) The Board may hold a hearing on other charges and, if it finds them sufficient, revoke his license. * * *

Moreover, the individual respondents may, as they point out, assert their Fifth Amendment privilege against self-incrimination in connection with the Commission's adjudicative proceeding.³ However, the privilege does not impair the obligation of a witness to testify if criminal prosecution against him is barred by statutory enactment. *Reina v. United States*, 364 U.S. 507 (1960). Hence, if, upon assertion of the privilege, by an individual respondent, an appropriate order is issued by the administrative law judge pursuant to the provisions of 18 U.S.C. Section 6002 *et seq.* and Section 3.39 of the Commission's Rules of Practice, the grant of immunity from future criminal prosecution would be coextensive with the witness' constitutional privilege against self-incrimination. *Kastigar v. United States*, 406 U.S. 441 (1972); *Murphy v. Waterfront Commission of New York Harbor*, 378 U.S. 52 (1964); *Mallory v. Hogan*, 378 U.S. 1 (1964); *Adams v. Maryland*, 347 U.S. 179 (1954).

II

Respondents further contend that public interest in the Com-

³ The privilege against self-incrimination guaranteed by the Fifth Amendment is, of course, a personal privilege. It may not be asserted by a corporation, *Wilson v. United States*, 221 U.S. 361 (1911); by an individual as agent of a corporation, *Hale v. Henkel*, 201 U.S. 43 (1906); or on behalf of a corporation by an individual in his capacity as alter ego of the corporation, *United States v. Guterma*, 272 F.2d 344 (2d Cir. 1959); *United States v. Fago*, 319 F.2d 791 (2d Cir. 1963); *United States v. Bell*, 448 F.2d 40 (9th Cir. 1971). It is equally well settled that "[b]ooks and records kept in a representative rather than in a personal capacity cannot be the subject of the personal privilege against self-incrimination, even though production of the papers might tend to incriminate [their keeper] personally." *United States v. White*, 322 U.S. 694, 699 (1944).

mission's proceeding is lacking because of the outstanding criminal actions previously mentioned as well as civil actions which have been instituted by some 34 states and the District of Columbia, the Securities and Exchange Commission and private parties.

It is clear, as we have indicated, that the pending criminal matters are not related to the activities of the respondents with which the Commission's complaint is concerned. Successful prosecution of those actions would not relieve the Commission of its responsibility to proceed against the acts and practices alleged in the complaint.

As for the numerous civil actions which respondents assert have been initiated, there is no indication that these actions have succeeded thus far in halting the acts and practices alleged in the complaint. Indeed, there is no indication from any of the papers filed by respondents that they are presently subject to an injunctive order of any sort with respect to the alleged acts and practices. And we would be remiss in our duties were we to dismiss this complaint on the basis of speculation as to the outcome of outstanding SEC, state or private actions. Accordingly,

It is ordered, That respondents' motions to stay the proceeding or dismiss the complaint certified to the Commission October 16, 1972, be, and they hereby are, denied.

IN THE MATTER OF

LOVE TELEVISION & STEREO RENTAL, INC., ET AL.

Docket C-2245. Interlocutory Order, Jan. 23, 1973.

Order granting in part respondents' petition for modification of consent order conditional upon respondents' submitting a signed agreement containing a consent order setting forth the language set out in the Commission's order ruling on the petition.

ORDER IN RESPONSE TO PETITION FOR MODIFICATION