

amendment of complaint to substitute executor of estate of decedent respondent, (2) filing with California Superior Court a contingent claim for restitution against the estate of decedent respondent; and setting time for filing of answer to complaint counsel's motion.

Appearances

For the Commission: *Joseph S. Brownman* and *Stuart Cameron*.

For the respondents: *Glen A. Mitchell of Stein, Mitchell & Mezines*, Wash., D.C.

ORDER DENYING MOTION TO STRIKE AND SETTING TIME FOR FILING OF ANSWER TO COMPLAINT COUNSEL'S MOTION

Complaint counsel have filed with the Commission a document entitled "Application to Amend Complaint by Substituting Sam Olivo, Executor for the Estate of William Penn Patrick for Decedent Respondent William Penn Patrick," dated Jan. 14, 1974, by which they request that the Commission (1) amend the complaint to substitute Sam Olivo for William Penn Patrick and (2) file with the Superior Court for the State of California for the County of Marin a contingent claim for restitution against the Estate of William Penn Patrick.

Respondents have replied with a "Motion to Strike, or in the Alternative, to Set Time in Which Answer Should be Filed by Counsel for Respondents to the Application to Amend Complaint by Complaint Counsel," dated Jan. 15, 1974.

Respondents ask that complaint counsel's motion be struck because it does not comport with Commission rules. Complaint counsel's motion is properly made to the Commission, since this matter is no longer within the jurisdiction of the administrative law judge. [See Section 3.51(d) (2) of the Rules of Practice.] Section 3.15 of the rules cited by respondents is not meant to *limit* applications for substitution of parties to the time during which a proceeding is before the administrative law judge, but merely to indicate the extent to which the law judge may allow amendments and the extent to which he must certify requests for them to the Commission during that period in which a matter is before him. This matter now being before the Commission, the motion is properly directed to it.

Section 3.22 (c) of the Rules of Practice provides in relevant part that

within ten days after service of any written motion, or within such longer or shorter time may be designated by the Administrative Law Judge or the Commission, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked in the motion.

Respondents request 30 days to reply to complaint counsel's application, which motion is not struck.

Complaint counsel's application raises two issues. Because the con-

tingent claim for restitution which the Commission is requested to file must be filed by Jan. 24, 1974, if it is to be filed, the time by which respondents' answer to this request in the application must be filed shall be set at 9:00 a.m., Jan. 22, 1974. Respondents' answer to the request in the application that the complaint be amended shall, in view of the issues raised by the application, be due on Feb. 5, 1974. Therefore,

It is ordered, That respondents' request to strike the application of complaint counsel be, and it hereby is, denied.

It is further ordered, That respondents answer by 9:00 a.m., Jan. 22, 1974, complaint counsel's request that the aforementioned contingent claim be filed, and that respondents answer by Feb. 5, 1974, all other requests made in the application.

IN THE MATTER OF

FOOD FAIR STORES, INC., ET AL. D. 8786