

EXXON CORPORATION, ET AL.

Docket 8934. Interlocutory Order, June 4, 1974

Order denying respondents' motions for reconsideration of Commission's prior denial of respondents' motions to dismiss complaint.

Appearances

For the Commission: *Robert E. Liedquist.*

For the respondents: *William Simon*, Wash., D.C., *J. Wallace Adair*, Wash., D.C., *William Weitzel*, New York, N.Y. *Jesse P. Luton*, Houston, Texas, *John H. Chiles*, Houston, Texas, *Wickes, Riddell, Bloomer, Jacobi & McGuire*, New York, N.Y., *Oliver L. Stone*, Houston, Texas, *Frank R. O'Hara*, Pittsburgh, Pa., *Benjamin T. Richards*, New York N.Y., *Kaye, Scholer, Fierman, Hays & Handler*, New York N.Y.

ORDER DENYING RECONSIDERATION

By order dated February 1, 1974, the administrative law judge properly certified to the Commission certain oral and written motions to dismiss the complaint in this matter on the grounds that (1) the Commission lacked reason to believe respondents had violated the law at the time it issued the complaint and (2) the proceeding is not in the public interest. The Commission denied these motions by order of February 12, 1974, and respondents now urge reconsideration on those same grounds and, in addition, on an alleged denial of due process and the fact that complaint counsel are pursuing additional post-complaint investiga-

tion. Complaint counsel urge the Commission to grant the request for reconsideration and clarify its policy in the area of post-complaint investigations.

Respondents' argument that Congressional interest rather than the public interest prompted the issuance of this complaint is misplaced. None of the communications received by this agency from any member of Congress is even remotely of the character deemed improper by the courts. *Pillsbury v. FTC*, 354 F. 2d 952 (5th Cir. 1966); *D.C. Federation of Civic Associations v. Volpe*, 459 F. 2d 1231 (D.C. Cir. 1971). And it has long been settled that the adequacy of the Commission's "reason to believe" a violation of law has occurred and its belief that a proceeding to stop it would be in the "public interest" are matters that go to the mental processes of the Commissioners and will not be reviewed by the courts. Once the Commission has resolved these questions and issued a complaint, the issue to be litigated is not the adequacy of the Commission's pre-complaint information or the diligence of its study of the material in question but whether the alleged violation has in fact occurred. That is the posture of the instant matter.

Nor is there any merit in respondents' argument on the issue of post-complaint investigation. As we have said many times before and reiterated most recently in *Food Fair Stores, Inc.*, Docket 8935, Order of April 23, 1974 [p. 1578 herein], the division of the Commission's total investigative effort between the pre-complaint and post-complaint stages is entirely a housekeeping matter between the Commission and its staff, not one that can be used to challenge a post-complaint subpoena or the sufficiency of the Commission's pre-complaint investigation and hence of its "reason to believe" a violation has occurred. Post-complaint discovery by complaint counsel is entirely proper and the sole limits on its proper scope are the requirements of due process that govern in any judicial proceeding, *e.g.*, definiteness of the demand, relevance of the data sought to the issues raised in the pleadings, etc. *United States v. Morton Salt Co.*, 338 U.S. 632, 641 (1950). Nothing in the papers before us suggest that complaint counsel in this proceeding have exceeded these bounds in their discovery efforts.

The Commission finds no grounds here for reconsidering its prior denial of respondents' motions to dismiss the complaint in this matter. Accordingly,

It is ordered, That respondents' motions for reconsideration be, and they hereby are, denied.

Commissioner Nye did not participate.

IN THE MATTER OF

BEAUTY-STYLE MODERNIZERS, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
THE TRUTH IN LENDING AND FEDERAL TRADE COMMISSION ACTS*Docket 8898. Complaint, Sept. 18, 1972 — Decision, June 11, 1974*

Order requiring a Newark, N.J., seller of home improvement materials, supplies and installation services, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *James Manos.*

For the respondents: *Martin Gelber, Newark, N.J.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Beauty-Style Modernizers, Inc., a corporation, and Morris Jakel and Saul Jakel, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and regulations, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Beauty-Style Modernizers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 432 Central Avenue, Newark, N.J.

Respondents Morris Jakel and Saul Jakel are the president and general manager respectively, of said corporation. They formulate, direct and control the consumer credit policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale of home improvement materials, supplies and installation services to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit, as "consumer credit" and "arrange for the extension of consumer