

IN THE MATTER OF
KOSCOT INTERPLANETARY, INC., ET AL.

Docket 8888. Order, Jan. 7, 1975

Order directing general counsel to take necessary and appropriate action to preserve restitutionary or any other consumer redress claim.

Appearances

For the Commission: *Quentin P. McColgin* and *David C. Keehn*.
For the respondents: *Leonard & Cohen*, Wash., D. C.

ORDER DIRECTING GENERAL COUNSEL TO TAKE NECESSARY AND
APPROPRIATE ACTION TO PRESERVE POSSIBLE RESTITUTIONARY
CLAIM

This matter is before us on the administrative law judge's order of Dec. 23, 1974, certifying complaint counsel's "Motion that the General Counsel be Directed to Take Action to Preserve the Commission's Claim Against Respondent Koscot Interplanetary, Inc.," which motion respondents have not answered. Specifically complaint counsel report that respondent Koscot Interplanetary, Inc. is in bankruptcy proceedings wherein a settlement is pending which could foreclose any claim in restitution which might arise out of this action. Such a foreclosure would be contrary to the public interest. Accordingly,

It is ordered, That the General Counsel take such action as is necessary and appropriate for the protection of the public interest in any restitutionary claim or any other claim for consumer redress which may arise out of the above-captioned proceeding.

IN THE MATTER OF
HOLIDAY MAGIC, INC., ET AL.

Docket 8834. Order, Jan. 8, 1975

Denial of respondent Olivo's motion for reconsideration and motion for modification of final order; denial without prejudice to resubmission at appropriate time, of respondent's petition to reopen proceedings concerning adequacy of funds; and denial of respondent's motion for extension of time to file briefs in support of aforementioned motions and petition.

Appearances

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

Order

85 F.T.C.

For the respondents: *Shearer, Lanctot, Thomas & Knorp*, San Francisco, Calif.

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION,
ET AL.

On Oct. 15, 1974 84 F.T.C. 347, the Commission issued its decision and order in this matter. Respondent Olivo has timely filed for reconsideration and modification of the order as it affects him, pursuant to Section 3.55 of the rules of practice, and has petitioned that the matter be reopened for consideration of the ability of respondent Olivo, as executor for the estate of William Penn Patrick, to make restitution as required by the order of the Commission.¹ An extension of time is also sought within which to file briefs in support of the motions for reconsideration and reopening. Complaint counsel have filed an Answer opposing the motions. For the reasons stated below, the motion for reconsideration and modification must be denied with prejudice, while the motion for reopening will be denied but without prejudice to renewal at such time as the order herein (pursuant to which the motion for reopening would appropriately be made) becomes final.

Section 3.55 requires in part that:

Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission.

Respondent's motion for reconsideration and modification entirely fails to meet the requirements of the pertinent rule, inasmuch as respondent Olivo was given ample opportunity subsequent to his substitution as a party in this case to brief the issues now raised. The withdrawal of counsel to which reference is made in the motion apparently occurred well after the time allotted for such briefing.

In addition, the Commission has fully considered in reaching its final decision the arguments raised by counsel in the motion to reconsider. The Commission does not see any conflict or inconsistency between a consent settlement which permits the estate of a wrongdoer to escape primary liability for the violation of one law, and a litigated order which requires the estate to make restitution based on violation of a different law. The reasons for differing treatment of the corporation and executor with respect to restitution are stated in the Commission's decision, and relate to the differing obligations imposed on the two by prior consent settlements. The motion for reconsideration simply confirms the propriety of the distinction that was made. Nor, we

¹ "Motion for Reconsideration and Motion for Modification of Final Order; and Petition to Reopen Proceedings Concerning Adequacy of Funds," filed Dec. 11, 1974. Respondent received an extension of seven days, beyond the 20 allowed by the rules, within which to file a motion for reconsideration, and said motion has been filed within 27 days of the date of service of the final order upon him.

believe, does the fact that the estate is subject for certain purposes to the jurisdiction of the Marin Superior Court in any way affect the authority and duty of the Commission to adjudicate the obligations of the executor under Section 5.

Those points raised by respondent concerning the difficulty of compliance with the order, and the lack of funds with which to comply, may properly be addressed at the compliance stage. Paragraph V(3)(e) of the final order provides that respondent may petition to reopen within 60 days of the effective date of the order upon a claim that respondent lacks sufficient funds to make restitution. If, as respondent implies, he lacks access to the names of distributors which the order provides shall accompany an application for reopening, that fact should be indicated clearly in the petition and this will not be a bar to the reopening. The petition to reopen this matter is at this stage, however, premature, and will therefore be rejected without prejudice to renewal at such time as the order in this matter becomes final. The motion for an extension of time within which to file briefs relating to respondent's motions and petition will also be denied as no valid reason has been given to warrant the delay. Therefore,

It is ordered, That respondent's Motion for Reconsideration and Motion for Modification of Final Order be denied, and that respondent's Petition to Reopen Proceedings Concerning Adequacy of Funds be denied without prejudice to resubmission at an appropriate time; and

It is further ordered, That respondent's Motion for Extension of Time to File Briefs in Support of Motion for Reconsideration and Motion for Modification and Petition to Reopen Proceedings Concerning Adequacy of Funds be denied.

Commissioner Nye not participating.

IN THE MATTER OF

RELIABLE MORTGAGE CORPORATION, ET AL.