

It is so ordered.

IN THE MATTER OF
SOUNTRACK CHEVELL INDUSTRIES, INC., ET AL.

Docket 8998. Order, March 4, 1975

Complaint counsel ordered to show cause, within ten days, why complaint should not be dismissed as to individual respondent Tommie Tubb.

Appearances

For the Commission: *Richard H. Gately, Paul W. Turley and John Hemrick.*

For the respondents: *Pro se.*

DISSENTING STATEMENT OF COMMISSIONERS M. ELIZABETH
HANFORD AND STEPHEN NYE

We dissent from the Commission's decision to require complaint counsel to show cause why this complaint should not be dismissed as to respondent Tommie Tubb.

¹ In certifying this matter to the Commission, the ALJ recognized his authority to adopt the "Manual for Complex Litigation" as a guide and, of course, fix a prehearing schedule and date for commencement of trial. However, in view of his lack of authority to grant the other relief requested, he certified all of complaint counsel's requests as they were "so closely related as to warrant certification of the motion as an 'integrated package.'" Order of Certification, Oct. 27, 1974.

In *American Chinchilla Corporation, Inc., et al.*, 76 F.T.C. 1016 (1969), the Commission established that it would not countenance entry of an order against an indigent respondent unrepresented by counsel. To guard against a recurrence of the *American Chinchilla* situation, the Commission on Dec. 15, 1970 issued a policy statement setting forth carefully designed procedures for the appointment of counsel for indigent respondents.¹ Thereafter, thanks to the gracious cooperation of the Antitrust Section of the American Bar Association, those procedures have been used to good effect on several occasions. We see no reason why the same procedures should not be followed² in this matter.

Indeed, the established procedures have been followed, to a degree. On or about Jan. 10, 1975, Mr. Tubb filed the prescribed "Statement of Financial Status," together with certain documents in support of his application for appointment of counsel. At that point, the appropriate procedure would have been for the administrative law judge to make findings on Mr. Tubb's financial ability to retain counsel, and forward those findings to the Commission.³ On Feb. 4, however, the administrative law judge certified the question to the Commission, without having made such findings.

Because the majority provides no explanation for its departure from the 1970 policy statement, widespread confusion is likely to ensue. When it issued its complaint in this matter, the Commission ascertained that the public interest would be served thereby. We see no information which casts doubt on that determination, nor is there any occasion to reexamine it at this juncture. All we have learned is that Mr. Tubb may be in financial difficulty at the present time. Unless we are to conclude that indigence as of the time of trial is a defense to a Section 5 charge, we ought not to disturb our determination to include Mr. Tubb in this complaint. We believe the proper course for us now is to return the matter to the law judge to permit him to make findings pertinent to the respondent's financial ability to hire a lawyer.

CONCURRING OPINION OF COMMISSIONER THOMPSON

BY THOMPSON, *Commissioner*:

Having no desire to play the role of Hugo's relentless detective Javert and pursue some latter day Jean Valjean across a decade or so of troubles for stealing a loaf of bread-or at least for being on the scene when one was stolen-I support this show cause order. The "villain" we

¹ Statement of Policy: Respondents Unable to Afford Counsel, 35 Fed. Reg. 18998 (Dec. 15, 1970).

² See, e.g., *Universe Chemicals, Inc., et al.*, 77 F.T.C. 163 (interlocutory order, 1970).

³ Such findings have been made in other cases. See, e.g., *Steven Rizzi, et al., dba Freight Liquidators*, Dkt. 8937 (Findings on the Financial Inability of Sam Katz to Retain Counsel, Sept. 28, 1973).

407

Order

are now pursuing, a former salesman for these respondents, is now, according to his affidavits, a \$150 a week handyman with no significant assets and hence unable to employ counsel. If he played a substantial role in these alleged deceptions, then I might be prepared to see him brought in with Jean Valjean. If not, I would free them both from the galleys and let the Federal Trade Commission get on with the serious business of trying to help the country's economy.

ORDER TO SHOW CAUSE WHY COMPLAINT SHOULD NOT BE
DISMISSED AS TO RESPONDENT TUBB

By order of Feb. 6, 1975, the administrative law judge has certified to the Commission the request of respondent Tommie Tubb that the Commission appoint counsel to represent him in this matter. Having considered this request, including Mr. Tubb's present employment and financial situation, the Commission believes that it would be in the public interest to consider further the question of whether this individual respondent is a necessary party to this proceeding. Accordingly,

It is ordered, That complaint counsel be, and they hereby are, ordered to show cause, within ten (10) days of this order, why this complaint should not be dismissed as to respondent Tubb.

Commissioners Hanford and Nye dissenting.
