

IN THE MATTER OF
KELLOGG COMPANY, ET AL.

Docket 8883. Order Sept. 16, 1975

Denial of respondents' joint application for review of administrative law judge's order of July 15, 1975, denying their joint motion to nullify his order of June 19, 1975, granting complaint counsel's application for taking of depositions. Administrative law judge directed, after consultation with parties, promptly to establish schedule for trial with certification to Commission of report on status of matter in 30 days.

Appearances

For the Commission: *Catherine A. Winer, Anthony L. Joseph, David M. Malone, Lawrence B. Bernard, Edward M. Shumsky, Richard F. Silvestri, Noel W. Kane and Robert W. Doyle, Jr.*

For the respondents: *Edwin Rockefeller, Bierbower & Rockefeller, Wash., D.C., A.R. Connelly and Robert D. Jaffe, Cravath, Swaine & Moore, New York City, for Kellogg Company. Edward F. Howrey, David Murchison and Ralph Savarese, Howrey, Simon, Baker & Murchison, Wash., D.C., R.R. Heer and J.F. Finn, C.L. Whitehill & J.J. Jenko, Minneapolis, Minn., Robert L. Fulgency, Minneapolis, Minn., for General Mills. R. MacCrate and Jeffrey I. Zuckerman, Sullivan & Cromwell, New York City, Clifford, Warnke, Glass, McIlwain & Finney, Wash., D.C., Peter J. DeLuca and Bruce L. Bozeman, White Plains, N.Y. for General Foods. L.C. McKinney, Mark M. Fefatwole and Peter Sonderby, Chadwell, Kayser, Ruggles, McGee & Hastings, Chicago, Ill., and Barnett P. Rutenberg, Chicago, Ill., for Quaker Oats. J. Robert O'Brian, Battle Creek, Mich.*

ORDER DENYING JOINT APPLICATION FOR REVIEW

The administrative law judge, by order dated July 15, 1975, denied respondents' joint motion to nullify his order of June 19, 1975, granting

complaint counsel's application for the taking of depositions. On July 25, 1975, the Commission denied an application by General Mills, Inc., for a stay of the commencement of complaint counsel's deposition program pending respondents' appeal from the discovery order of July 15, 1975. On Aug. 1, 1975, the law judge denied respondents' joint request for a determination that the order raised issues which met the criteria for interlocutory review set forth in Section 3.23(b) of the rules of practice.

Respondents claim that the law judge's refusal to grant their request for a determination under Section 3.23(b) was an abuse of discretion and that the Commission has the inherent power to review any ruling by an administrative law judge. However, as the Commission has already ruled in this case, "the Administrative Law Judge has broad discretion in controlling the conduct of adjudicative proceedings, and his rulings will be reviewed only in cases of clear abuse." Order Denying Applications for Review, May 29, 1974, p. 3. Respondents have not made such a showing.

Complaint counsel's deposition schedule is undoubtedly extensive, but the law judge has found that the information sought is "highly relevant" to the allegations in the complaint and that the depositions may facilitate the trial of this matter. He has also found that "[d]iscovery of the information known to individual employees of respondents is available only through personal confrontation with these individuals," and that the discovery could not be accomplished by voluntary methods order denying respondents' joint motion to nullify the order of June 19, 1975, for the taking of depositions requested by complaint counsel, July 15, 1975, p. 3. We cannot find that the law judge abused his discretion in making these determinations.

However we do not overlook respondents' unanswered assertion that at initial pretrial hearings in August 1972 complaint counsel indicated a need for only limited further discovery. We are concerned that more than three years have elapsed since the complaint issued in this matter. Under these circumstances, measures must be taken to assure that any remaining discovery is completed as expeditiously as possible.

It is ordered, That respondents' joint application for review of the order of the administrative law judge, dated July 15, 1975, be, and it hereby is, denied;

It is further ordered, That the administrative law judge, after consultation with the parties, promptly establish a schedule for trial and that he certify to the Commission a report on the status of this matter in 30 days.

Order

86 F.T.C.

IN THE MATTER OF

RETAIL CREDIT COMPANY

Docket 8954. Order, Sept. 16, 1975

Directions issued to administrative law judge on disposition of *ex parte* communication.

Appearances

For the Commission: *Virginia M. Conway, Robert W. Russell and David G. Grimes, Jr.*

For the respondent: *E. D. DeVaney, Jr., Atlanta, Ga., and Sutherland, Asbill & Brennan, Wash., D.C.*

ORDER TO ADMINISTRATIVE LAW JUDGE DIRECTING
DISPOSITION OF EX PARTE COMMUNICATION

The administrative law judge has certified to the Commission pursuant to Section 4.7(c) of the rules of practice, a letter he received on July 14, 1975, addressed to "Administrative Law Judge, Federal Trade Commission, Washington, D.C."

The letter clearly constitutes an *ex parte* communication under Section 4.7(a) and, ordinarily, should be placed on the public record rules of practice, Section 4.7(c). However, although the letter is unsigned, the writer, an employee of respondent, apparently fearing that details are revealed in the letter which would disclose his identity, states his belief that, unless the letter's confidentiality is preserved, he will lose his job.¹ Accordingly,

It is ordered, That the administrative law judge advise counsel of the substance of the communication and that, upon request, counsel be permitted to examine the communication, with instructions that they not disclose any identifying details to respondent or others;

It is further ordered, That the communication not be considered by the administrative law judge in the decision of this case.

¹ The Commission does not lightly assume that adverse action would be taken against an employee who presented information in connection with an adjudicative proceeding.