

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.

IN THE MATTER OF
AMWAY CORPORATION, INC., ET AL.

Docket 9023. Order, Sept. 16, 1975

Denial of respondents' motion to dismiss the complaint or in alternative to withdraw matter from adjudication for settlement purposes.

Appearances

For the Commission: *Joseph S. Brownman and D. Stuart Cameron.*
For the respondents: *Lee Leovinger, Hogan & Hartson, Wash., D.C.*

ORDER DENYING RESPONDENTS' MOTION TO DISMISS THE
COMPLAINT OR, IN THE ALTERNATIVE, TO WITHDRAW FROM
ADJUDICATION

Respondents move to dismiss the complaint, or in alternative, to withdraw the matter from adjudication until the Commission has afforded respondents an opportunity "fully to exercise their rights" to negotiate a settlement. Their motion was certified to the Commission by the administrative law judge pursuant to Section 3.22(a) of the rules of practice.

Respondents claim that (1) evidence was obtained by staff during the course of the pre-complaint investigation in an improper fashion and (2) respondents were not afforded an opportunity to negotiate a settlement prior to the issuance of the Part III complaint.

The first claim must be rejected. Respondents contend that during the course of the pre-complaint investigation Commission staff sent letters seeking information from individual Amway distributors which falsely purported to be compulsory process and which misrepresented that Amway distributors were not under investigation.

We have, however, previously rejected challenges to the sufficiency and propriety of pre-complaint investigations. E.g., *Food Fair Stores, Inc.*, Docket No. 8935, order denying motion for reconsideration, Apr. 23, 1974 [83 F.T.C. 1578]; *All-State Industries of North Carolina*, supplemental clarifying opinion of the Commission, 74 F.T.C. 1591, 1592 (1968).

If a complaint were to be open to challenge on the ground that there was inadequate or incompetent evidence before the Commission or the staff prior to issuance of the complaint, "* * * the resulting delay would be great indeed. The result of such a rule would be that before trial on the merits a [respondent] could always insist on a kind of preliminary trial to determine the competency and adequacy of the evidence" presented by the staff to the Commission. *Lawn v. United*