

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*

States, 355 U.S. 339, 349 (1958); *Costello v. United States*, 350 U.S. 359, 363 (1956) (indictment not subject to challenge on the ground that incompetent evidence presented to grand jury).¹

Our ruling is, of course, without prejudice to any attempts by respondents to move the administrative law judge to suppress evidence they claim to have been improperly obtained.

Finally, the Commission rejects respondents' claim that they had a right under Part II of the Commission's Rules of Practice to negotiate a settlement. The rules in effect prior to Apr. 4, 1975, like those presently in effect, afforded the Commission broad discretion to determine whether persons should be afforded an opportunity to have a matter disposed of without resort to Part III adjudicative procedures. There has been no showing that this discretion was abused.

It should be noted that under the amended rules respondents can still seek a settlement by filing a motion before the administrative law judge to withdraw the matter from adjudication. Even if the motion is opposed by complaint counsel, the law judge may certify the matter to the Commission with his recommendation if it appears that there is a "likelihood of settlement" rules of practice, Section 3.25(b). Accordingly,

It is ordered, That the aforesaid motion to dismiss the complaint or, in the alternative, to withdraw the matter from adjudication be, and it hereby is, denied.

Chairman Engman not participating.
