

IN THE MATTER OF
ELECTRONIC COMPUTER PROGRAMMING INSTITUTE,
INC., ET AL.

Docket 8952. Order, Nov. 11, 1975

Administrative law judge's order denying complaint counsel's application for subpoena duces tecum remanded for reconsideration in accordance with guidelines on Section 19 evidence set forth in the interlocutory order.

Appearances

For the Commission: *Deirdre E. Shanahan* and *D. McCarty, IV*.
For the respondents: *Robert E. Fischer, Lowenthal, Landau & Fischer*, New York City.

IN THE MATTER OF
LAFAYETTE UNITED CORPORATION, ET AL.

Docket 8963. Order, Nov. 11, 1975

Denial of motion for stay of further proceedings.

Appearances

For the Commission: *Raymond J. McNulty, David W. DiNardi, Charles M. LaDue*, and *Alice C. Kelleher*.
For the respondents: *Peter J. Mansback, Kronish, Lieb, Shainswit, Wiener & Hellman*, New York City.

Order

86 F.T.C.

IN THE MATTER OF
CONTROL DATA CORPORATION, ET AL.

Docket 8940. Order, Nov. 11, 1975

Affirmation of administrative law judge's order denying motion by Control Data Corporation to strike Paragraph Eleven of the complaint.

Appearances

For the Commission: *Sharon S. Feather, Peter E. Greene and Edward D. Steinman.*

For the respondents: *Oppenheimer, Wolff, Foster, Shepard & Donnelly, St. Paul, Minn. and James F. Hogg, Bloomington, Minn.*

INTERLOCUTORY ORDER

These matters are before us upon two applications for review and a certification by an administrative law judge. In *Electronic Computer Programming Institute, Inc.*, the administrative law judge denied complaint counsel's application for a subpoena duces tecum seeking, in part, evidence needed to support restitutionary relief and granted complaint counsel the right to appeal pursuant to Section 3.23(b) of the rules of practice. Respondents had argued that the subpoena sought information which was irrelevant in view of *Heater v. F.T.C.*, 503 F.2d 321 (9th Cir. 1974), which held that the Commission lacks authority under Section 5 to order restitution for deceptive practices that occurred prior to the issuance of a final cease and desist order ("retroactive restitution."). The law judge, without deciding the relevancy of the subpoena's specifications, suggested that the Commission might consider whether further proceedings in this matter should be deferred pending final review of *Heater* in the Supreme Court.¹

In *Lafayette United Corporation*, the administrative law judge issued an order denying respondents' motion to strike the notice order provision providing that consumer redress might be sought, granted in part and denied in part respondents' motion to quash a subpoena duces tecum, and granted respondents' motion for a protective order. The law judge certified to the Commission the limited question whether further proceedings should be stayed, in whole or in part, pending the Commission's decision whether it would be in the public interest to allow complaint counsel to continue to seek restitutionary relief.

Finally, in *Control Data Corporation*, respondent Control Data filed a motion to strike Paragraph Eleven of the complaint which alleges in part that Control Data's retention of funds obtained for "virtually

¹ The Commission subsequently decided not to seek review in the Supreme Court.