

Order

87 F.T.C.

IN THE MATTER OF

WEAVER AIRLINE PERSONNEL SCHOOL, INC., ET AL.

Docket C-2638. Decision, Feb. 13, 1976—Order, May 18, 1976*

Order requiring respondents to show cause why order to cease and desist should not be altered and modified; reopening the proceeding; and staying and suspending until further order of the Commission the enforcement of and respondents' duty to comply with Paragraph 12 of the order.

Appearances

For the Commission: *Keith Q. Hayes* and *Charles B. Wesonig*.

For the respondents: *Cahill, Gordon and Reindel*, New York City.

ORDER TO SHOW CAUSE AND ORDER MODIFYING ORDER

On February 24, 1976, the Commission issued an order to show cause why the Order to Cease and Desist, issued February 13, 1975 [85 F.T.C. 237], in this proceeding, should not be reopened and Paragraph 12 of said order modified and altered. Paragraph 12 requires the creation of an escrow account from which partial restitution to certain students is to be made. Complaint counsel represented to the Commission, and respondents do not deny, that Federal tax liens in the amount of \$564,611 may attach to such escrow account, just as they have attached to the accounts receivable of respondent Weaver Airline Personnel School, Inc.

Paragraph 12 further requires respondent Weaver to notify former students who had made partial payments towards tuition on the date the order became final of their right to partial restitution if they make affirmations as set out in the order. Since one of the affirmations is that a student has paid his tuition in full, the notifying letter would encourage former students to pay their outstanding accounts in the expectation of receiving partial restitution. The satisfaction of the Federal tax liens out of the escrow account could eliminate or substantially diminish the funds in the escrow account. Therefore, to avoid the possibility that respondents' compliance with Paragraph 12 would encourage student funding of an escrow account that would not benefit the students, our Order to Show Cause proposed to modify Paragraph 12 by staying and suspending respondents' duty to comply with Paragraph 12 until further order of the Commission.

It is now clear, however, that the necessity for a permanent stay is obviated by Paragraph 13 of the order, which provides that respondent General Educational Services Corporation (GESC) will guarantee the

* See 85 F.T.C. 237.

restitution requirements imposed upon respondent Weaver Airlines under the order. Respondent GESC, in its letter of March 3, 1976, to Eric Rubin, Assistant Director for Compliance, Bureau of Consumer Protection, agrees that Paragraph 13 applies "to the eligible Weaver students described in Paragraph 12 of the order pursuant to the terms and conditions of such order." Complaint counsel suggest, however, a possible ambiguity as to the application of Paragraph 13 to Paragraph 12, believing that it is possible to read Paragraph 12 so that "respondents' obligation to pay restitution could * * * be construed as requiring the distribution of only the amount of money left in the escrow account after levy on the tax lien," and not requiring distribution by GESC on the date specified by Paragraph 12 if a payout from the escrow account is prevented by a tax lien.

We disagree with this interpretation. We recognize, however, that we are not the final arbiter in the interpretation of Commission orders, and that if a court should disagree with us as to the application of Paragraph 13 to Paragraph 12, students making payment to the escrow account might ultimately be harmed. We, therefore, find it necessary to clarify the order. Accordingly,

It is ordered, pursuant to Section 5(b) of the Federal Trade Commission Act and Section 3.72 of the Commission's Procedures and Rules of Practice, that on or before the thirtieth (30th) day after service of the Order to Show Cause upon them, respondents show cause, if any there be, why the Commission should not alter and modify said order by issuing the following order:

It is ordered, That the following language be added to Paragraph 12(2)(c) of the order:

Provided, however, that if any of the sums required to be deposited into the Escrow Funds have been removed at any time or for any other reason cannot be distributed within thirty (30) days after the final date established for submission of student requests for restitution under this Paragraph, respondent General Educational Services Corporation, as guarantor, shall assure that the total sum paid in restitution under this Paragraph includes funds that have been removed, and that the total sums required to be deposited into the Escrow Fund for restitution are paid no later than sixty (60) days after the final date established for submission of student requests for restitution under this Order.

* * * * *

Because the obligation of GESC has not been finally resolved, it is

Order

87 F.T.C.

necessary to continue the stay of respondents' compliance with Paragraph 12. Accordingly,

It is ordered, That the proceeding be, and it hereby is reopened.

It is further ordered, That the enforcement of the notification requirement of Paragraph 12 of the order of February 13, 1975, and the respondents' duty to comply therewith be, and they hereby are, stayed and suspended until further order of the Commission.

IN THE MATTER OF

McCRORY CORPORATION, ET AL.

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2676. Order, June 18, 1975—Modifying order, May 18, 1976

Order modifying an earlier order dated June 18, 1975, 40 F.R. 30477, 85 F.T.C. 1106, by changing Paragraph 2 of the order to permit language on billing statements sent to respondents' charge account customers whose accounts reflect credit balance, that respondents' store at a specified address may be contacted for a cash refund, or respondents will send a check in six months or less.

Appearances

For the Commission: *Alan D. Reffkin, Justin Dingfelder, and Howard F. Daniel.*

For the respondents: *Max Wild, Rubin, Wachtel, Baum & Levin, New York City.*

ORDER MODIFYING ORDER TO CEASE AND DESIST

On March 23, 1976, respondent Lerner Stores Corporation (Lerner) by a paper entitled Motion to Modify an Order Dated June 18, 1975, which will be treated as a petition to reopen this proceeding, has requested that Paragraph 2 of the order be modified to permit language on billing statements sent to Lerner charge account customers whose accounts reflect a credit balance that a Lerner store at a specified address may be contacted for a cash refund, or Lerner will send a check in six (or a smaller number of) months. The Bureau of Consumer Protection has filed an answer wherein it advises that it does not oppose Lerner's request.

Since the requested language accurately describes Lerner's obligation under the order, the Commission has determined that the request should be granted.

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist be, and it hereby is, modified by substituting the following provision as the last full paragraph of Paragraph 2:

Such disclosure need not be made by any store in the event it is that store's policy to refund automatically and without request all credit balances regardless of amount. In such case, one of the following disclosures must be made: