

Order

IN THE MATTERS OF

CHRYSLER MOTORS CORPORATION, ET AL. D. 9072
 FORD MOTOR COMPANY, ET AL. D. 9073
 GENERAL MOTORS CORPORATION, ET AL. D. 9074

Dockets 9072, 9073, 9074. Orders, July 13, 1976

Affirmance of administrative law judge's orders granting limited intervention on issue of relief but denying leave to intervene on issues relating to liability.

Appearances

For the Commission: *Sharon S. Armstrong, Randall H. Brook, Gregory L. Colvin, Ronald G. Sims and Sarah J. Hughes.*

For the respondents Chrysler Motors Corp., et al.: *J. D. Owens and A. L. Ronquillo, Troy, Mich., H. Raymond Cairncross, Seattle, Wash., Clifford L. Johnson and Walter B. Maher, Detroit, Mich., Robert Ehrenbard, Keller, Drye & Warren, New York City and Stein, Mitchell & Mezines, Washington, D.C.*

For the respondents Ford Motor Company, et al.: *Wald, Harkrader & Ross and Stein, Mitchell & Mezines, both of Washington, D.C., Hoessler, Stamer & Esler, Portland, Oreg., David R. Larrouy and Jerry D. Bringard, both of Dearborn, Mich.*

For the respondents General Motors Corp., et al.: *John J. Higgins and James P. Melican, Jr., Weil, Gotshal & Manges, New York City.*

ORDER AFFIRMING ORDERS OF ADMINISTRATIVE LAW JUDGE
 GRANTING LIMITED INTERVENTION

The complaints in these matters challenge the automobile repossession practices of the respondent automobile manufacturing corporations, their credit subsidiaries and a named dealer of each manufacturer. On May 12, 1976, the administrative law judge ("ALJ") issued orders granting the National Automobile Dealers Association ("NADA")¹ a limited right of intervention on the issue of relief but denying NADA leave to intervene on issues relating to liability. Pursuant to Section 3.23(a) of the Rules of Practice, NADA applies for review of the portions of the ALJ's rulings denying it permission to intervene on liability issues.

"The determination of whether or not justification exists to warrant intervention requires a delicate balancing process in which the interests of the applicant and the applicant's potential contribution to the proceeding must be weighed against the detriment to the public

¹ According to NADA, the association has a total of approximately 20,000 automobile dealers, of which 2,723 are Chrysler dealers, 8,690 are General Motors dealers, and 4,388 are Ford dealers.

interest resulting from unduly complicating and prolonging the proceedings." *Heublein, Inc.*, 82 F.T.C. 1826, 1829 (1973). In assessing the applicant's potential contribution, the Commission has required a demonstration that the person seeking intervention desires to raise "substantial issues of law or fact which would not otherwise be properly raised or argued. * * *" *Firestone Tire & Rubber Co.*, 77 F.T.C. 1666, 1669 (1970).

There can be little question that many members of NADA have a significant interest in the outcome of these proceedings. What is less clear is whether NADA would be likely to raise significant legal or factual issues which would not otherwise be properly raised or argued. The ALJ concluded that at least one respondent, the named dealer, in each of these proceedings would defend against all substantial legal and factual issues which might be relevant to the alleged illegal acts of unnamed dealers who might be adversely affected by any final orders that issue. He also noted that the automobile manufacturers and credit subsidiaries had an interest "in contesting each substantial legal or factual issue which the complaint alleges as a basis" for liability.²

NADA responds that the manufacturers and credit subsidiaries may not defend the practices of dealers but, instead, defend on the ground that they are not liable for the dealers' practices. The association also argues that the three named dealers are likely to defend their own practices and not those of other unnamed dealers.

NADA is correct, to the extent that complaint counsel attempt to establish the conduct of unnamed dealers as a basis for liability of the manufacturers or their credit subsidiaries, and to the further extent that this liability (if established) were deemed adequate to support an order requiring the alteration of important contractual relationships between these unnamed dealers and their suppliers (of cars or credit). *Cf. Heublein, Inc., supra*, 82 F.T.C. at 1829. NADA's intervention would only extend, of course, to legal and factual issues bearing on unnamed dealer conduct, and not to any other issues (*e.g.*, the conduct of named respondents).

In the present posture of these cases, however, it is impossible to determine with sufficient certainty the extent to which unnamed dealer conduct will figure in this case, and whether, with respect to those issues, NADA will raise substantial issues "which would not otherwise be properly raised or argued * * * ." *Firestone, supra*, 77 F.T.C. at 1669. We will, therefore, affirm the ALJ's order with the observation that we will be favorably disposed toward a renewal of NADA's

² On motion of Ford and Ford Credit, the law judge subsequently noted that Ford Credit would not necessarily be required to defend all of the repossession practices of Ford dealers. Clarification of Order Granting Limited Intervention to the National Automobile Dealers Association, May 25, 1976.

application to intervene on liability issues upon a showing that significant issues in which NADA's members have an interest will not be adequately presented by the parties.³ (It should be noted, of course, that this order in no way affects NADA's intervention on relief, since that aspect of the ALJ's order has not been appealed.) Accordingly,

It is ordered, That the aforesaid orders granting limited intervention be, and they hereby are, affirmed.

³ An appropriate time for reconsideration might be at a prehearing conference convened prior to the commencement of respondents' discovery. Respondents could be asked to indicate the extent of discovery they contemplated on the various liability issues:

Intervention might then be permitted on any substantial, material issues as to which respondents planned to undertake insufficient discovery to permit an adequate presentation.

Order

88 F.T.C.

IN THE MATTER OF
NATIONAL COMMISSION ON EGG NUTRITION, ET AL.

Docket 8987. Order, July 16, 1976

Order denying respondents' request that Chairman Collier not participate in the decision of this case.

MEMORANDUM OF CHAIRMAN COLLIER IN RESPONSE TO
THE REQUEST OF RESPONDENT NATIONAL COMMISSION
ON EGG NUTRITION THAT HE WITHDRAW FROM THIS
PROCEEDING

On April 28, 1976, at oral argument before the Commission, respondents requested that I recuse myself from further participation in this proceeding because, during my tenure as the Commission's General Counsel,¹ I represented the Commission in Federal court proceedings collateral to this proceeding. Respondents were allowed 30 days after oral argument within which to submit a brief on the question of my disqualification.²

In a letter addressed to me on May 24, 1976, respondent National Commission on Egg Nutrition (NCEN) suggested that:

recusal is required in such circumstances by Canon 9 of the Code of Professional Responsibility of the American Bar Association: "A lawyer should avoid even the appearance of professional impropriety." Cf. Canon 2 of the Code of Judicial Conduct: "A judge should avoid impropriety and the appearance of impropriety in all his activities."

By this memorandum, I deny respondent's request for recusal.

Respondent has not made the more familiar allegation of "prejudgment" or "bias" sometimes raised in other contexts.³ Such an allegation would have no factual basis. No statements or representations made by or attributable to me have been cited by NCEN, nor do I know of any, which would demonstrate prejudgment or bias.

The collateral litigation mentioned by NCEN consisted of two actions which I supervised for a time. In the first, *Federal Trade Commission v. L. A. Wilhelm and National Commission on Egg Nutrition*, Misc. No. 74-73 (D.D.C.), the Office of the General Counsel, at the Commission's request and on its behalf, requested the Attorney

¹ From July 1973, through April 1975.

² Transcript of oral argument, April 28, 1976, at 3.

³ See, e.g., Davis, *Administrative Law Treatise*, Secs. 12.01-12.03 (1970); *FTC v. Cement Institute*, 333 U.S. 683 (1948); *American Cyanamid Co. v. FTC*, 363 F.2d 757, 763-768 (6th Cir. 1966); *Amos Treat & Co. v. SEC*, 306 F.2d 260 (D.C. Cir. 1962); *Cinderella Career and Finishing Schools, Inc. v. FTC*, 425 F.2d 583 (D.C. Cir. 1970); *Kennecott Copper Corp. v. FTC*, 467 F.2d 67, 79-80 (10th Cir. 1972); *NLRB v. Richard W. Kaase Co.*, 346 F.2d 24, 28 (6th Cir. 1965); *Safeway Stores v. FTC*, 366 F.2d 795, 802 (9th Cir. 1966); *Texaco v. FTC*, 336 F.2d 754, 759-760 (D.C. Cir. 1964), *rev'd on other grounds*, 381 U.S. 739 (1965).