

Order

88 F.T.C.

IN THE MATTER OF
RSR CORPORATION

Docket 8959. Order, July 28, 1976

Order to show cause and order granting temporary *in camera* treatment.

Appearances

For the Commission: K. Keith Thurman, James C. Egan and Annthalia Lingos.

For the respondent: Robert L. Wald, Wald, Harkrader & Ross, Washington, D. C. Merrill L. Hartman, Hewett, Johnson, Swanson & Barbee, Dallas, Tex.

ORDER TO SHOW CAUSE AND ORDER GRANTING TEMPORARY
In Camera TREATMENT

On July 22, 1976, respondent filed a document styled "Motion to Strike Pages 19 through 25 of 'Complaint Counsel's Reply Brief.'" Respondent requested expedited treatment of its motion, alleging that the pages sought to be expunged contained information contained in *in camera* portions of the record in this proceeding.

The Commission has not as yet determined what disposition it will make of respondent's motion. However, pending a determination as to the alleged *in camera* status of the information contained in complaint counsel's brief it will order that this brief be maintained in the *in camera* portion of the docket of this case. The Commission notes, however, that *in camera* treatment should be granted sparingly. If respondent's allegation of *in camera* status is meant seriously as a separate claim from its motion to strike, respondent should specify within 15 days precisely those portions of pp. 19-25 which it believes should be maintained *in camera*, in the event that the motion to strike is not granted.

In addition, the Commission notes that the *in camera* findings of the administrative law judge filed in this matter contain information pertaining to market shares of RSR and Quemetco in 1971 and 1972 (I.D. 246-248, 256-258) and pertaining to the distances to which various plants of RSR and Quemetco shipped lead in those same years. (I.D. 217-218, 223) There is an obvious and substantial public interest in having decisions of the Commission contain, for public inspection and review, all information relevant to the Commission's determination. In light of this public interest, and in light of the fact that the information contained *in camera* is four to five years old, the Commission will order the parties within 15 days to show cause as to why the information

described below, to the extent that the Commission may determine it to be relevant, should not be made available to the public in the opinion of the Commission rendered in this matter. Therefore,

It is ordered, That the parties shall, within 15 days, file memoranda indicating for what reason, if any, the following categories of information may not be included in the opinion of the Commission in this matter and be made available to the public:

(1) *In camera* findings of the administrative law judge Nos. 246-248, 256-258 (whether or not CX 64 is placed on the public record).

(2) *In camera* findings of the administrative law judge 217-218, and 223, as well as other shipping distance figures derivable from CX 69-77, 79, including average plant shipping distance, percentage of plant production shipped to various States, and percentage of plant production shipped various distances.

It is further ordered, That pages 19-25 of complaint counsel's Reply Brief in this matter shall be maintained in the *in camera* portion of the record, pending Commission resolution of respondent's "Motion to Strike."

Order

88 F.T.C.

IN THE MATTER OF
HORIZON CORPORATION

Docket 9017. Order, July 28, 1976

Denial of respondent's motion to quash subpoenas duces tecum.

Appearances

For the Commission: *Eugene Kaplan, Lemuel W. Dowdy, John M. Tifford and Paul L. Chassy.*

For the respondent: *Basil Mezines, Stein, Mitchell & Mezines, Washington, D. C. J. Michael Brennan and Samuel Pruitt, Jr., Gibson, Dunn & Crutcher, Los Angeles, Calif.*

ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES
TECUM

The administrative law judge ("ALJ") has certified to the Commission respondent's motion to quash subpoenas duces tecum issued to Aetna Business Credit, Inc., and FNB Financial Co.,¹ both of which, according to the motion, are respondent's creditors.² The subpoenas were issued by the Assistant Director of Marketing Practices, Bureau of Consumer Protection, in connection with an investigation of Unnamed Promoters and Sellers of Interests in Subdivided Land, File No. 742 3193 under Part II of the Rules of Practice.

Respondent asserts that the subpoenas seek information directly related only to matters involved in the instant adjudicatory proceeding, and that, accordingly, application for the subpoenas should have been made to the ALJ under Section 3.34. Respondent further argues that complaint counsel are attempting to circumvent the Commission's ruling in *Electronic Computer Programming Institute, Inc.*, 3 CCH Trade Reg. Rep. ¶21,039 (November 11, 1975) [86 F.T.C. 109], that the law judges should not permit the discovery or introduction of evidence relevant only to Section 19 of the F.T.C. Act³ and the ALJ's statements to complaint counsel during a May 3, 1976, prehearing conference that any additional subpoenas against respondent would have to be "very specific and very limited and you are going to have to demonstrate relevancy beyond any doubt. My advice is to wait until you get full

¹ An investigational subpoena has also issued to Ford Motor Credit Company. See Opposition and Answer by Complaint Counsel to Respondent's Motion to Quash Subpoenas Duces Tecum Issued to Respondent's Creditors and to Enjoin Complaint Counsel from Obtaining Documents Pursuant to these Subpoenas and Other Relief at 2. According to complaint counsel none of the subpoenaed companies has moved to quash or modify its subpoena. *Id.* at 9.

² The ALJ denied respondent's motion to enjoin complaint counsel from seeking or accepting documents or testimony from Aetna, FNB, or others through any Commission process other than that authorized by the Part III rules.

³ Section 19 authorizes the Commission to bring consumer redress actions in State and Federal courts.