

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.

compliance [with the subpoenas already issued] and give me one more subpoena.”

Complaint counsel respond that the purpose of the aforesaid subpoenas is to determine whether any of respondent’s lenders have themselves violated Section 5 and not to obtain “backdoor discovery” against Horizon. Complaint counsel note that respondent has tentatively offered to supply complaint counsel with information bearing on Section 19 relief.

The Commission “* * * may conduct such investigations as it deems necessary even though such investigations may cover ground which is already the subject of an adjudicative proceeding.” *FTC v. Waltham Watch Co.*, 169 F. Supp. 614, 620 (S.D.N.Y. 1959). Of course, investigational subpoenas should not be used to circumvent safeguards designed to ensure fair and expeditious trials. We have already held that it is not in the public interest to delay Part III proceedings by the discovery and reception of evidence relevant only to Section 19 issues. *Electronic Computer Programming Institute, supra*. However, the ALJ has the means of preventing the introduction of irrelevant evidence, or evidence obtained in violation of any orders he issues relating to the timing and scope of discovery.⁴

No showing having been made that the investigational subpoenas will deprive respondent of a prompt and fair trial⁵ the Commission has determined to deny the aforesaid motion to quash.

It is so ordered.

⁴ We do not mean to suggest that relevant evidence which happens to be obtained pursuant to the investigational subpoenas will necessarily be inadmissible. See Rules of Practice, Section 3.43(c).

⁵ We disagree with complaint counsel that respondent lacks standing to move to quash the instant subpoenas. While a party may not ask for an order to protect the rights of another party or a witness if that party or witness does not claim protection for himself, see *Commercial Laundry v. Linen Supply Assn.*, 90 F. Supp. 470 (S.D.N.Y. 1950); 8 C. Wright & A. Miller, *Federal Practice and Procedure* §2035 at 261 (1970), he may seek an order if he believes his own interest is jeopardized. *Id.* Respondent, as the subject of an adjudicative proceeding, was entitled to raise its claim that the investigational subpoenas would jeopardize its procedural rights.

Modifying Order

88 F.T.C.

IN THE MATTER OF

CROWN CENTRAL PETROLEUM CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8851. Complaint, July 14, 1971 — Modifying order, Aug. 3, 1976*

Order modifying an earlier order dated Nov. 26, 1974, 40 F.R. 12775, 84 F.T.C. 1493, by entering the modifying words "performance" before the words "quality" and "characteristic" in order provision 7(d) of the order.

Appearances

For the Commission: *Fauster J. Vittone* and *Jean F. Greene*.

For the respondent: *James H. Kelley* and *Leonard A. Tokus*, *Bergson, Borkland, Margolis & Adler*, Washington, D.C. and *Morton H. Sacks, Cable, McDaniel, Bowie & Bond*, Baltimore, Md.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent having filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and that Court having issued, on March 4, 1976, its order affirming the Commission's order to cease and desist entered November 26, 1974 [84 F.T.C. 1493], with the insertion of modifying words in one provision thereof:

It is ordered, That the Commission's order issued in this matter on November 26, 1974, be modified in accordance with the decision and judgment of the Court so as to read in full as follows:

It is ordered, That respondent Crown Central Petroleum Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of Crown gasolines, or the additive CA-101, or any other product in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that any such product:

(a) Will produce or result in motor vehicle exhaust which is pollution free or generally pollution free; or

(b) Will eliminate or reduce air pollution caused by motor vehicles; or