

IN THE MATTER OF

HERBERT R. GIBSON, SR., D/B/A THE GIBSON TRADE
SHOW, ET AL.

Docket 9016. Interlocutory Order, Nov. 2, 1976

Denial of petition for reconsideration of Commission's order denying motion to withdraw matter from adjudication for settlement purposes.

Appearances

For the Commission: *John J. Hemrick* and *Andre Trawick, Jr.*

For the respondents: *Bardwell D. Odum*, Dallas, Tex., *David A. Donohoe*, *Akin, Gump, Strauss, Hauer & Feld*, Wash., D.C., and *John M. Gillis*, *Gillis, Rogers & Taylor*, Dallas, Tex.

ORDER DENYING PETITION FOR RECONSIDERATION

Respondents Herbert R. Gibson, Sr. and Belva Gibson petition for reconsideration of the Commission's order of September 21, 1976, denying their motion to withdraw this matter from adjudication for settlement purposes. They ask that the Commission await a decision by the administrative law judge on their Motion to Recommend Commission Acceptance of the Proposed Consent Order before determining whether there is a sufficient likelihood of settlement to warrant a withdrawal from adjudication.

The instant petition must be denied since it does not set forth "new questions raised by the decision * * * upon which the petitioner had no opportunity to argue before the Commission" as required by Section 3.55 of the Rules of Practice. The Commission has, however, reviewed respondents' Motion to Recommend, the accompanying memorandum, and complaint counsel's answer and adheres to its view that there is not a "likelihood of settlement." Rules of Practice, Section 3.25(b).

In their September 29 answering memorandum, complaint counsel argue that a combination of remedies consisting of "the Gibson Trade Show being required to go out of business or operate non-profit * * * is essential to adequately protect the public interest." The Commission would be willing to consider alternative consensual relief to those remedies, if it can be devised, in view of respondents' representations in their June 24 memorandum that they are willing to agree to "a guarantee (under pain of substantial monetary penalties) that there will be a high, impenetrable wall between the business of respondent

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H.R. Gibson, Sr. and that of the licensor and licensees of Gibson Discount Centers.”¹ We are not satisfied that respondent’s present proposal accomplishes such a separation, however, and as noted by the administrative law judge in his certification, other deficiencies in the proposed agreement make it clear that there is no present likelihood of settlement. Accordingly,

It is ordered, That the aforesaid petition be, and it hereby is, denied. Commissioner Dole did not participate by reason of absence.

¹ For example, the statutory prohibition in Section 2(c) of Robinson-Patman speaks in relevant part of “an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of” the buyer. 15 U.S.C. § 13(c).

IN THE MATTER OF
USLIFE CREDIT CORPORATION, ET AL.

Docket 9057. Interlocutory Order, Nov. 2, 1976

Rejection of ALJ's certification of question whether testimony of certain witnesses should have been stricken on basis of complaint counsel's inability to produce certain interview notes.

Appearances

For the Commission: *Michael E. K. Mpras* and *Robert L. Patterson*.
For the respondents: *Bill Norton* for Uslife, Schaumburg, Illinois; *Tony Davey* for Uslife, New York City; and *Edward W. Keane, Bruce E. Clark, Sullivan & Cromwell*, New York City.

ORDER REJECTING CERTIFICATION

The administrative law judge has certified to the Commission the question whether the testimony of certain witnesses should have been stricken on the basis of complaint counsel's inability to comply with the ALJ's order requiring the production of certain interview notes. The Commission has concluded, however, particularly in the absence of an application for review, that the certification of this issue is unnecessary and is accordingly rejected. The ALJ may proceed to render an initial decision in this matter and the parties are free to raise the question of exclusion of evidence on appeal to the Commission. Since the Commission may consider the ruling on appeal and, if it concludes the ALJ improperly excluded the evidence, make other findings as are appropriate, the certification does not present the type of "controlling question of law or policy" which merits interlocutory consideration under Section 3.23(b) of the Rules of Practice.

It is so ordered.

Commissioner Dole did not participate by reason of absence.