

IN THE MATTER OF

HARBOR BANANA DISTRIBUTORS, INC.

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket 8795. Complaint, Jan. 12, 1973 — Modifying Order, Dec. 17, 1976

Order modifying a previous order issued January 3, 1975, 40 F.R. 14304, 85 F.T.C. 7 (which modified the original order dated January 12, 1973, 38 F.R. 5160, 82 F.T.C. 53), by dismissing Counts I, II, and III of the complaint, eliminating the divestiture requirements regarding Charles C. McCann Company and Tradewinds Produce, Inc.

Appearances

For the Commission: *James T. Halverson.*

For the respondent: *Bernard Marcus, Deutsch, Kerrigan & Stiles,*
New Orleans, La.

ORDER REOPENING PROCEEDING AND MODIFYING CEASE AND
DESIST ORDER

On January 3, 1975, the Federal Trade Commission, pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued its modified Cease and Desist Order requiring in Paragraph II divestiture of all assets of Charles C. McCann and Tradewinds Produce, Inc. acquired by Harbor Banana Distributors, Inc.

Section 5(b) of the Federal Trade Commission Act provides that the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by it, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

On September 21, 1976, the Commission issued its order to respondent to show cause why the Commission should not alter and modify the modified Cease and Desist Order issued on January 3, 1975 so as to eliminate the divestiture requirement thereof. On September 30, 1976, the Commission issued its Order Correcting Order To Show Cause. Service of both of these orders on the respondent was completed on October 4, 1976.

Respondent has not filed an answer to the Order To Show Cause during the thirty (30) day period after service thereof. In this connection, Section 3.72(b)(1) of the Commission's Procedures and Rules of Practice provides that any person not responding to the Order

Order

88 F.T.C.

To Show Cause within the time allowed may be deemed to have consented to the proposed changes.

Accordingly, *it is ordered* that the matter be reopened, and that the modified Cease and Desist Order of January 3, 1975 be altered and modified to read as follows:

I

It is ordered, That Counts I, II and III of the complaint be dismissed.

II

It is further ordered, That respondent Harbor Banana Distributors, Inc. shall not, for a period of ten (10) years from January 28, 1975, acquire, directly or indirectly, through subsidiaries, joint ventures, or otherwise, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets of any concern engaged in the processing, sale or distribution of bananas.

III

It is further ordered, That respondent Harbor Banana Distributors, Inc. shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate organization, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.

IV

It is further ordered, That Harbor Banana Distributors, Inc. shall, each year, on the anniversary of the date of service of this order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it is complying and/or has complied with Paragraph II of this order.

IN THE MATTER OF
SOUNDTRACK CHEVELL INDUSTRIES, INC., ET AL.

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

Docket 8998. Complaint, Nov. 5, 1974 — Order, Dec. 17, 1976

Order dismissing complaint issued against two individual respondents, Lonnie and Gene Temple, in a case involving alleged deceptive acts and practices in the talent promotion business. The complaint was dismissed for lack of public interest.

Appearances

For the Commission: *John J. Hemrick* and *Jim B. Brookshire*.

For the respondents: *Jerry L. Buchmeyer* and *Schuyler B. Marshall*,
Thompson, Knight, Simmons & Bullion, Dallas, Texas.

ORDER DISMISSING COMPLAINT

This matter is before the Commission on the certification by the administrative law judge of a request by respondent Gene Temple that counsel be appointed to represent him in this matter. This request comes after completion of complaint counsel's case-in-chief, a similar request filed shortly before the hearing began having been denied as untimely. The administrative law judge recommends that the renewed request be granted.

Upon review of the present papers and those submitted on the numerous prior occasions since issuance of the complaint that this case had been before us, we are of the view that continuation of these proceedings would not be in the public interest. Accordingly, on our own motion, we direct that the complaint be dismissed as against the two remaining respondents, Lonnie and Gene Temple.

Commissioner Dole dissenting.

DISSENTING STATEMENT OF COMMISSIONER DOLE

I dissent from the dismissal of the complaint. I believe that further proceedings are in the public interest for the reasons indicated in the Commission's Order Denying Motions to Dismiss the Complaint as to Lonnie Temple and Gene Temple, May 11, 1976 [87 F.T.C. 1249]. Instead of dismissing the complaint, I would have granted respondent Gene Temple's request for appointed counsel.