

Order

89 F.T.C.

IN THE MATTER OF
CENTURY 21 COMMODORE PLAZA, INC., ET AL.

Docket 9088. Interlocutory Order, Feb. 1, 1977

Commission affirms ALJ's ruling that he has authority to issue an access order.

Appearances

For the Commission: *Sandra M. Wilmore, June S. Katz, Donna H. Greenfield, W. Randolph Smith and Anne E. Dewey.*

For the respondents: *G. F. Richman, Frates, Floyd, Pearson, Stewart, Richman & Greer, Miami, Fla.; W. L. Miller, Stein, Halpert & Miller, Washington, D.C.; Jerome S. Richman, Miami, Fla.; Joel Bennett, Washington D.C.; and Joseph S. Paglino, Intervenor for Commodore Plaza, Miami, Fla.*

ORDER

Respondents have applied for review of the administrative law judge's order of December 28, 1976, granting complaint counsel's motion for an order compelling the granting of access to Morgan's Bay, a body of water contiguous to the beach area leased to owners at respondents' condominium project. Pursuant to Section 3.23(b) of the Commission's Rules of Practice, the ALJ determined that his ruling that he has authority to issue an access order was appropriate for immediate review. Confining ourselves to the question of the law judge's authority to issue such an order, we affirm.¹

We would add to the law judge's treatment of the issues that respondents' application does not challenge the Commission's statutory authority to issue such an order. Sections 6(a) and 6(g) of the Federal Trade Commission Act authorize the Commission "[t]o gather and compile information concerning, and to investigate from time to time the * * * business, conduct, [and] practices * * * of any corporation engaged in or whose business affects commerce * * *" and "to make rules and regulations for the purpose of carrying out the provisions" of the FTC Act. The latter provision is to be construed in a manner that will "render the statutory design effective in terms of the policies behind its enactment and to avoid an interpretation which would make such policies more difficult of fulfillment, particularly where * * * that interpretation is consistent with the plain language of the statute." *National Petroleum Refiners Ass'n v.*

¹ We, therefore, have not considered respondents' various arguments going to the relevancy of the requested discovery or their suggestion that an access order would be unlawful because a portion of the lake bottom is owned by other private parties.

FTC, 482 F.2d 672, 689 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974). Orders requiring access to tangible, as well as documentary, evidence are well-established. *See* Fed. R. Civ. P. 34. We, therefore, can discern no reason why the language of Sections 6(a) and 6(g) is not sufficiently broad to authorize such relief, provided that "the inquiry is within the authority of the agency, the demand is not too indefinite and the information is reasonably relevant." *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). Accordingly,

It is ordered, That the aforesaid ruling of the administrative law judge that he has authority to issue an access order be, and it hereby is, affirmed.

Complaint

89 F.T.C.

IN THE MATTER OF

EVERSEAL WATERPROOFING CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT.*Docket C-2865. Complaint, Feb. 4, 1977 --- Decision, Feb. 4, 1977*

Consent order requiring a Newton, Mass., seller and distributor of waterproofing products and services, and its subsidiaries, among other things, to cease misrepresenting their guarantees; the nature, efficacy, and performance characteristics of their products; and the size and volume of their business. Further, the order requires respondents to maintain specified records; make prescribed disclosures; and respond to requests for service within seven days. Additionally, respondents must provide a three-day cooling-off period during which customers may cancel transactions and receive prompt refunds; maintain a responsible customer relations department; and institute a surveillance program designed to ensure compliance with the order.

Appearances

For the Commission: *William F. Connolly* and *Lois M. Woocher*.

For the respondents: *Harry J. Greenblatt, Kaplan & Arnoldy*,
Boston, Mass.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Everseal Waterproofing Corporation, a corporation, Everseal Waterproofing of New Hampshire, Inc., a corporation, Everseal Corporation of Maine, a corporation, and Irving Silverstein, individually, and William A. Epner, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Everseal Waterproofing Corporation, hereinafter referred to as Everseal, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 958 Watertown St., Newton, Massachusetts.

Respondent Everseal Waterproofing of New Hampshire, Inc., hereinafter referred to as Everseal of New Hampshire, is a corporation organized, existing and doing business under and by virtue of the