

Order

89 F.T.C.

IN THE MATTER OF

SPIEGEL, INC.

Docket 8990. Interlocutory Order, Mar. 22, 1977

Denial of respondent's petition for modification of the modified final order.

ORDER DENYING PETITION FOR RECONSIDERATION

Respondent has filed a petition dated Jan. 31, 1977, which asks the Commission to reconsider its order entered Dec. 26, 1976, pursuant to the opinion of the Seventh Circuit Court of Appeals. The Court of Appeals affirmed and enforced "as modified" the Commission's original order to cease and desist entered on Aug. 18, 1975.¹

This proceeding has not been remanded to the Commission. The Court of Appeals enforced the Commission's order "as modified", and in modifying its order the Commission acted ministerially pursuant to the mandate of the Court of Appeals. The Commission's original order prohibited Spiegel from suing a defaulting consumer debtor in a court located elsewhere than in the debtor's home county or in the county wherein the contract sued upon was executed. The court believed this order provision was overly broad, and in its opinion the court stated:

Therefore, we are of the opinion that the Commission's order should not be enforced insofar as it relates to Illinois consumers who are sued in a county courthouse which is a reasonable distance from their place of residence.

In accordance with this explicit instruction, the Commission modified its order to permit suits by Spiegel against Illinois residents in an Illinois county courthouse which is not an unreasonable distance from the consumer's place of residence.

Spiegel now contends that the foregoing language notwithstanding, it was the intention of the Court of Appeals to modify the

¹ Complaint counsel argue that pursuant to Section 5(i) of the FTC Act, 15 U.S.C. 45, the "order of the Commission rendered in accordance with the mandate of the Court of Appeals" shall become final within 30 days from the time such order was rendered, unless either party has "instituted proceedings to have such order corrected." * * * Since more than 30 days have elapsed from the time the Commission's order was rendered, (and had elapsed when Spiegel's petition was filed) counsel argue that the order is final and Spiegel's petition can at best be construed as a petition for reopening. Spiegel purports to petition pursuant to Section 3.55 of the Rules of Practice, which allows petitions for reconsideration of Commission "decisions" to be filed within 20 days of completion of service. We agree that it is desirable that parties apply first to the Commission for modification of what they construe to be an improper implementation of an appellate court mandate. On the other hand, we do not believe that such application for modification constitutes the "institution of a proceeding to have the order corrected," such as would stay finality of the order. In our view Section 5(i) is most fairly read to render modified orders final within 30 days from date of service, unless respondent seeks review in the Court of Appeals, or the order is stayed, and our own rules are best read to allow a petition for reconsideration of a modified order within 20 days, pursuant to Rule 3.55, with the proviso, as the rule notes, that such petition does not stay the effective date of the order. Accordingly we believe the order in this matter has become final, but we shall nonetheless address the substance of petitioner's request.

Commission's order to eliminate all restraints upon suits against Illinois residents filed by Spiegel in Illinois. Spiegel bases its contention upon a footnote to the above-quoted portion of the court's opinion, in which the court notes that by failing to allege violations based upon suits within Illinois, the Commission did not lay an adequate predicate for the "blanket order" it originally entered.

As we read this footnote, however, it is hardly dispositive with respect to the appropriate remedy, and can provide no basis for the Commission to ignore the explicit textual instruction upon which it originally relied. The court was clearly troubled by the fact that the Commission's order would have prohibited suits in Cook County against consumers in a neighboring county, *e.g.*, Du Page County. After noting this example the court stated that

Since the complaint did not allege any venue problems with suits against Illinois residents we see no reason for the FTC to abridge Spiegel's right to bring suit *wherever the law allows*.

Immediately thereafter, however, the court observes that suits in Cook County against a consumer living in Cairo, hundreds of miles away, would run afoul of the law, *i.e.*, Section Five of the FTC Act. Thus, while the Commission's blanket order respecting intra-Illinois suits was not considered justified by the court, a restriction against intra-Illinois suits at "unreasonable" distances can be readily justified as "fencing in" against violations of Section Five relating to abuse of venue similar to those proven at trial.² In any event, under the circumstances we do not believe we are at liberty to ignore language which is in form an express and absolute mandate to the Commission in favor of respondent's interpretation of surrounding dictum. Therefore,

It is ordered, That petitioner's request to modify the modified final order in this matter be, and it hereby is, denied.

² It is also to be observed that the "notice order" served with the complaint in this matter, did give notice of the Commission's intention to forbid, without distinction as to state, "[i]nstituting suits except in the county where defendant resides at the commencement of the action, or in the county where the defendant signed the contract sued upon" . . .

Complaint

89 F.T.C.

IN THE MATTER OF
BRYSON IMPLEMENT COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket C-2874. Complaint, Mar. 22, 1977 — Decision, Mar. 22, 1977

Consent order requiring a Sampson, Ala., marketer of farming equipment, among other things, to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *H. Robert Ronick.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, as amended, and the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Acts, as amended, the Federal Trade Commission, having reason to believe that Bryson Implement Company, Inc., a corporation, and Herbert M. Bryson, Jr., individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and implementing regulation, as amended, 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 Bryson Implement Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at Main Street, Samson, Alabama.

Respondent Herbert M. Bryson, Jr., is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of farming implements and equipment to members of the public.

PAR. 3. In the regular course and conduct of their business as