

IN THE MATTER OF
ALEXANDER'S, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING
ACTS

Docket C-2892. Complaint, May 31, 1977 — Decision, May 31, 1977

This consent order, among other things, requires a New York City department store chain to cease failing to notify those individuals denied employment or terminated based on a consumer reporting agency report, the name and address of the reporting agency furnishing the report. Further, the firm must retroactively provide such information to those individuals denied employment or terminated because of adverse consumer reports during the two years preceeding issuance of this order.

Appearances

For the Commission: *Diana M. Kirigin and Ronald F. Stryshak.*
For the respondent: *Peter M. Gilman, Bartel, Engelman & Fishman,* New York City.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Alexander's Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, 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, Alexander's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 500 Seventh Ave., New York, New York.

PAR. 2. Respondent, Alexander's, Inc. has been and is now operating a chain of department stores in the States of New York and New Jersey. In connection with the operation of these stores, respondent employs over 10,000 individuals.

PAR. 3. Respondent, in the course of processing applications for employment, obtains "consumer reports" from a "consumer reporting agency" as these terms are defined in Sections 603(d) and 603(f), respectively, of the Fair Credit Reporting Act.

PAR. 4. In a number of instances, subsequent to April 25, 1971,

respondent has denied consumers employment based in whole or in part on adverse information contained in consumer reports from a consumer reporting agency and has failed to so advise the job applicants against whom such action was taken and supply them with the name and address of the consumer reporting agency making the report.

PAR. 5. The acts and practices set forth in Paragraph Four above were and are in violation of Section 615(a) of the Fair Credit Reporting Act, and pursuant to Section 621(a) of that Act, respondent has thereby engaged in unfair acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Alexander's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 500 Seventh Ave., New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Alexander's, Inc., a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with denial or termination of employment wholly or partly because of information contained in a "consumer report" from a "consumer reporting agency" as these terms are defined in the Fair Credit Reporting Act (15 U.S.C. 1681 (1970)), do forthwith cease and desist from failing to so advise the job applicants against whom such adverse action is taken and to supply them with the name and address of the consumer reporting agency making the report.

It is further ordered, That whenever respondent denies or terminates employment of an individual either wholly or partly because of information contained in a consumer report from a consumer reporting agency, respondent shall advise the individual in written form and shall supply him with the name and address of the consumer reporting agency which furnished the report.

It is further ordered, That respondent shall furnish the written notification referred to in the above paragraph to those individuals who were denied employment or terminated by respondent either wholly or partly because of information contained in a consumer report during the two year period preceding the date upon which this order becomes final.

It is further ordered, That respondent shall preserve evidence of compliance with the requirements imposed under this order for a period of not less than two years after the date each required disclosure is made. Respondent shall upon request permit the Commission through its duly authorized representatives to inspect such records.

It is further ordered, That respondent shall deliver a copy of this order to all present and future employees engaged in processing applications for employment.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, 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 respondent which may affect compliance obligations arising out of this order.

It is further ordered, That respondent herein shall within sixty (60)

days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
NATIONAL MERIDIAN SERVICES, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9027. Complaint, March 25, 1975 — Modifying order, June 1, 1977

Order modifying an earlier order dated March 28, 1977, 89 F.T.C. 192, by deleting the requirement that a Woodbury, N.Y. marketer of a basement waterproofing and termite control process cease failing to disclose to customers that instruments of indebtedness may be negotiable with third parties without the customer being notified of such action.

ORDER MODIFYING FINAL ORDER

Pursuant to Section 3.72(b)(2) of the Commission's Rules of Practice, and after consideration of respondents' petition of March 30, 1977 to reopen and modify Paragraph IA22 of the Final Order to Cease and Desist dated March 28, 1977, and after further consideration of the response of the Bureau of Consumer Protection in support of such petition,¹

It is ordered, That Paragraph IA22 be altered and modified to read as follows:

22. Failing to disclose, orally prior to the time of sale and in writing on any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness executed by the purchaser, with such conspicuousness and clarity as is likely to be observed and read by such purchaser, the disclosures, if any, required by Federal law or the law of the state in which the instrument is executed.

¹ The Commission hereby waives the 30-day limit under Rule 3.72(b)(2) and accepts the Bureau's answer to respondents' petition as being timely filed.

Complaint

89 F.T.C.

IN THE MATTER OF

ASTOR-SCOTT, INC., ET AL.

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

Docket C-2893. Complaint, June 13, 1977 — Decision, June 13, 1977

This consent order, among other things, requires a Fort Lauderdale, Fla. mail order firm to cease disseminating advertisements which misrepresent the effectiveness of Exogen Vitamin E Oil in improving, treating, relieving or preventing skin, health or obesity problems. The firm must also cease disseminating advertisements which misrepresent the composition and efficacy of Phantom Roach Powder, and other insecticides. The order prescribes the circulation of deceptive or unsubstantiated product claims and requires the firm to maintain competent advertising substantiation files.

Appearances

For the Commission: *Ronald C. Cougill.*

For the respondents: *Milton Bass, Bass, Ullman & Lustigman*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Astor-Scott, Inc., a corporation, and Nelson Torelli, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Astor-Scott, Inc. is a Florida corporation with its office and principal place of business located at 6041 N.E. 14th Ave., Fort Lauderdale, Florida. It advertises and does business under various names geared to specific products, *e.g.*, Elizabeth Astor Division for "Exogen Vitamin E Oil," Super C Division for "Super C" Grapefruit Diet Plan, and Astor-Scott, Inc., for "Phantom Roach Powder."

Respondent Nelson Torelli is an individual and officer of Astor-Scott, Inc. He formulates, directs and controls its policies, acts and practices, including those hereinafter set forth. His business address is the same as that of the corporate respondent.

536

Complaint

COUNT I

Alleging violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended. The allegations of Paragraph One are incorporated by reference as if fully set out herein.

PAR. 2. Respondents, d/b/a Elizabeth Astor Division, have, prior to November 5, 1973, been engaged in the advertising, offering for sale and mail order sale of "Exogen Vitamin E Oil," a skin cream and cosmetic, as the term "cosmetic" is defined in Section 15 of the Federal Trade Commission Act, as amended.

PAR. 3. Respondents cause the said product, when sold, to be transported from their place of business located in the State of Florida to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended. The volume of business in such commerce has been, and is, substantial.

PAR. 4. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said product by the United States mail and by various other means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, including, but not limited to, advertisements inserted in newspapers, magazines and other advertising media for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said product; and have disseminated, and caused the dissemination of, advertisements concerning said product by various means, including, but not limited to, the aforesaid media for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparations in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

1. Thirsty, dry skin virtually drinks up this precious beauty fluid. Exogen Vitamin E Oil penetrates the outer skin layer.

2. Doctors and scientists have spent years and [sic] labor to unlock the hidden volumes of strange, wonderful Vitamin E. Now at last some of its fantastic benefits have been revealed for mankind. For instance, scientists have discovered that Vitamin E acts as an anti-oxidant when applied to the skin. It actually helps prevent the loss of vital moisture through perspiration! In fact, it supplies life-giving oxygen to skin cells!

3. Pure, virgin Vitamin E Oil * * * the *miracle ingredient* of 20th Century Cosmetology * * *

4. Just imagine * * * 28,000 International Units to *each* ounce! * * * truly virginal! Just one ounce equals in potency 28 bottles of diluted Vitamin E lotion.

5. Apply *pure* Vitamin E Oil *direct* to wrinkles, lines, blemishes and a dry, old looking skin! Now * * * capture again that lovely, dewy, younger looking complexion of happy days past * * * or pay nothing!

REVERSE THE PROCESS that makes you look older than your real years. *Think positive!* Wake up your stagnating skin to fresh new beauty. Give it the intense, loving care of this Vitamin E treatment. Then see how this miracle ingredient REVERSES the effects of abuse and neglect * * *

6. Apply in light, *rotating* motions, right on skin faults such as: dry flaky skin, fine lines, surface scars, wind or sunburned tissues, *even stretch marks*.

In just days, this thick, rich oil rewards your complexion with new radiant glamour and beauty * * * A thrilling surprise awaits you in just 5 days.

PAR. 6. By and through the use of said advertisements, respondents have represented, directly or by implication, that:

1. Vitamin E Oil is absorbed into the skin through topical application.

2. Vitamin E, through its anti-oxidant properties, prevents moisture loss and supplies oxygen to skin cells.

3. Vitamin E is a new, different, wonder or miracle ingredient, the inclusion of which yields additional benefits to Exogen Vitamin E Oil beyond the moisturizing effect of any emollient preparation.

4. The purity and strength of the Vitamin E in Exogen Vitamin E Oil have an effect on the performance or efficacy of the product.

5. Topical application of Exogen Vitamin E Oil will make one younger looking, yield a youthful complexion, or reverse the process of aging skin.

6. Topical application of Exogen Vitamin E Oil will prevent or improve skin faults such as dry flaky skin, fine lines, surface scars, wind or sunburned tissues, stretch marks, wrinkles or blemishes.

7. Topical application of Vitamin E has a salutary effect on the skin.

PAR. 7. In truth and in fact:

1. Vitamin E is not absorbed into the skin through topical application.

2. Vitamin E, through its anti-oxidant properties, does not prevent moisture loss nor supply oxygen to skin cells.

3. Vitamin E is not a new, different, wonder or miracle ingredient. Its inclusion does not yield additional benefits to Exogen Vitamin E Oil beyond the effect of any moisturizing preparation.

4. The purity and strength of the Vitamin E in Exogen Vitamin E Oil have no effect on the performance or efficacy of the product.

5. Topical application of Exogen Vitamin E Oil will not make one younger looking, yield a youthful complexion, or reverse the process of aging skin.

6. Topical application of Exogen Vitamin E Oil will not prevent or

improve skin faults such as dry flaky skin, fine lines, surface scars, wind or sunburned tissues, stretch marks, wrinkles or blemishes.

7. Topical application of Vitamin E has no salutary effect on the skin.

Therefore, the advertisements referred to in Paragraph Six were, and are, misleading in material respects and constituted, and now constitute, "false advertisements," as that term is defined in the Federal Trade Commission Act, as amended, and the statements and representations set forth in Paragraphs Five and Six were, and are, false, misleading and deceptive.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended. The allegations of Paragraph One above are incorporated by reference as if fully set out herein.

PAR. 8. Respondents have, prior to February 28, 1974, engaged in the advertising, offering for sale and sale of products, including, but not limited to, "Phantom Roach Trap and Powder."

PAR. 9. Respondents cause said products, when sold, to be shipped from their place of business in the State of Florida to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 10. In the course and conduct of their business, respondents have made statements and representations in the advertising, offering for sale and sale of their products through advertisements inserted in magazines and newspapers of interstate circulation and other advertising media.

PAR. 11. Among and typical of the statements and representations contained in said advertisements are the following:

1. Wipes out all roach nests in your home fast * * * or you pay nothing!
2. Drives Roaches Crazy. All kinds of roaches go wild over Phantom. They gobble it up and stagger off to die. Then a strange chain reaction takes place. A fatal disease spreads like wildfire, striking one roach after the other until each and every roach nest and egg is killed * * *
3. * * * Its high speed CHAIN REACTION formula was originally designed for professional exterminators. Now it has been released to the general public * * *
4. Just 1 can keeps your house free from roaches *up to 5 full years*.
Giant five year treatment.

PAR. 12. Through the use of statements and representations alleged in Paragraph Eleven hereof, and others of similar import and meaning,

respondents have represented, and are now representing, directly or by implication, that:

1. Respondents' roach powder will quickly wipe out all cockroach nests in an infested household.
2. Respondents' roach powder creates a deadly chain reaction which eliminates and kills roaches and eggs.
3. Respondents' roach powder was originally conceived for use by professional roach exterminators and has only recently been released to the general public for use in homes, factories and farms.
4. Respondents' roach powder, in normal use, will keep a household roach free for five full years.

PAR. 13. In truth and in fact:

1. Respondents' roach powder will not quickly wipe out all cockroach nests in an infested household.
2. Respondents' roach powder does not create a chain reaction which eliminates and kills roaches and eggs. Each cockroach must contact the insecticide to be killed. Respondents' roach powder will not kill roach eggs.
3. Respondents' roach powder was not originally conceived for use by professional exterminators, and products containing the same active ingredient as respondents' products have been available to the public for some time.
4. In normal use, respondents' roach powder will not keep a household roach free for five years.

Therefore, the statements and representations as alleged in Paragraph Eleven were, and are, false, misleading, unfair or deceptive acts or practices.

PAR. 14. By and through the use of statements and representations, including, but not limited to, those alleged in Paragraph Eleven, respondents have represented, directly or by implication, that Phantom Roach Powder retains its killing power for five full years. At the time of the said representations, respondents had no reasonable basis adequate to support such representations. Therefore, the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 15. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and the dissemination of the aforesaid "false advertisements" has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents, including

the dissemination of "false advertisements," as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Astor-Scott, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 6041 N.E. 14th Ave., Fort Lauderdale, Florida.

Respondent Nelson Torelli is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

COUNT 1

It is ordered, That respondents, Astor-Scott, Inc., a corporation, its successors and assigns, and its officers, and Nelson Torelli, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of Exogen Vitamin E Oil, or any food, drug, device, or cosmetic, do forthwith cease and desist from:

A. Disseminating, or causing to be disseminated, by means of the United States mail or by any means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said product, which advertisement:

1. Represents in writing, orally, visually or in any other manner, directly or by implication, that:

(a) Vitamin E is absorbed into the skin through topical application to the extent and degree that such absorption would result in cosmetic or rejuvenative benefit;

(b) Vitamin E, through its anti-oxidant properties, prevents moisture loss or supplies oxygen to skin cells;

(c) Vitamin E is a new, different, wonder or miracle ingredient, the inclusion of which yields additional benefits to Exogen Vitamin E Oil beyond the effect of any moisturizing preparation;

(d) The purity and strength of the Vitamin E in Exogen Vitamin E Oil will have an effect on the performance or efficacy of the product;

(e) Topical application of Exogen Vitamin E Oil will make one younger looking, yield a youthful complexion or reverse the process of aging skin;

(f) Topical application of Exogen Vitamin E Oil will prevent and improve skin faults, including, but not limited to, dry flaky skin, fine lines, surface scars, wind or sunburned tissues, stretch marks, wrinkles and blemishes;

(g) Topical application of Vitamin E will have any salutary effect on the skin.

2. Contains any representation for any drug, cosmetic, food or dietary product, as being effective in the prevention, improvement, treatment or relief of skin faults or conditions, obesity or other appearance or health problems unless such representations are supported and substantiated by competent scientific data or tests. Such scientific data or tests shall be available in written form for inspection

by authorized representatives of the Federal Trade Commission during the period of time the representation is being made and for at least three years following the final use of the representation.

B. Disseminating, or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, of Exogen Vitamin E Oil or any food, drug, device or cosmetic, which advertisement contains any representation prohibited by Count I of this order.

COUNT II

It is further ordered, That respondents Astor-Scott, Inc., a corporation, its successors and assigns, and its officers, and Nelson Torelli, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Phantom Roach Powder, or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing in writing, orally, visually or in any other manner, directly or by implication, that:

1. Product use will result in total pest extermination in an infested household unless respondents can establish that such is the fact.

2. A progressive chain reaction or other functional characteristic will occur during or after product use unless respondents can establish that such is the fact.

3. The period of time during which the use or results of use will remain effective unless respondents can establish that such is the fact.

B. Representing, orally, visually, in writing or any other manner, directly or by implication, the efficacy, results of use, quality features, performance characteristics or composition of any product or service unless they are supported and substantiated fully by competent data or tests. Such data or tests shall be available in written form for inspection by authorized representatives of the Federal Trade Commission during the period of time the representation is being made and for at least three years following the final use of the representation.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in the corporation which may affect compliance obligations arising out of the

order. If it is demonstrably impossible to furnish such notice at least thirty (30) days prior to such event, notice shall be delivered to the Commission as soon as possible prior to consummation of any such occurrence.

It is further ordered, That the individual respondent shall notify the Commission at least thirty (30) days prior to the discontinuance of his present business and at least thirty (30) days prior to his affiliation with a new business or trade. If it is demonstrably impossible to furnish such notice at least thirty (30) days prior to such event, notice shall be delivered to the Commission as soon as possible prior to consummation of any such occurrence. Such notice shall include the respondents' current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

545

Memorandum of Commissioner Collier

IN THE MATTER OF

AMERICAN GENERAL INSURANCE CO.

Docket 8847. Interlocutory Order, June 14, 1977

Denial of respondent's motion to disqualify Commissioner Collier.

ORDER DENYING MOTION TO DISQUALIFY

Respondent has moved to disqualify Commissioner Collier from participation in the Commission's decision of the instant appeal. Respondent contends that Commissioner Collier's participation in this matter would, by virtue of his participation in prior court litigation, violate the Administrative Procedure Act¹ and the Due Process Clause.

In response to the motion, Commissioner Collier filed a memorandum stating that he declined to disqualify himself from participation and setting forth his reasons therefor. Upon consideration of respondent's motion, complaint counsel's answer and Commissioner Collier's memorandum, the Commission has determined that no grounds exist for granting the requested disqualification. The Commission does not believe that Commissioner Collier, as General Counsel, performed any investigative or prosecuting functions in this matter or that his prior participation raises a question about his ability to render a dispassionate judgment. Therefore,

It is ordered, That the aforesaid motion be, and it hereby is, denied.

Commissioner Collier did not participate in the Commission's determination of this matter.

MEMORANDUM OF CALVIN J. COLLIER, COMMISSIONER, IN
RESPONSE TO MOTION THAT HE BE DISQUALIFIED FROM
PARTICIPATION IN THIS PROCEEDING

MAY 25, 1977

On July 19, 1976, American General and Fidelity & Deposit (hereafter "American General") moved that I be disqualified from participating in this proceeding because, during my tenure as the Commission's General Counsel,¹ I was "of counsel" on a brief filed on behalf of the

¹ An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to Section 557 of this title • • • 5 U.S.C. 554(d).

¹ From July 1973, through April 1975.