

IN THE MATTER OF
CAVANAGH COMMUNITIES CORPORATION, ET AL.

Docket 9055. Interlocutory Order, July 26, 1977

Denial of respondents' motion to withdraw matter from adjudication.

ORDER DENYING RESPONDENTS' MOTION TO WITHDRAW
MATTER FROM ADJUDICATION

The administrative law judge has certified to the Commission respondents' motion to withdraw this matter from adjudication for settlement purposes, together with his recommendation that the motion be granted. The motion is opposed by complaint counsel.

Although we agree with the ALJ that progress has been made in drafting an order that would obviate the need for litigation, we cannot now find that there is a sufficient "likelihood of settlement," Rules of Practice, Section 3.25(c), to warrant a further delay of the trial. Instead, we urge the parties to continue their negotiations. In the event negotiations are unsuccessful and respondents choose to renew their motion to withdraw, respondents should include in their submission a revised consent agreement that reflects any changes in their position since the original proffered consent was filed. If the ALJ certifies the motion, we would expect to receive more substantial justification in support of the proffered order. In assessing the adequacy of remedial provisions, for example, it would be helpful if any future submission included the appraisal and absorption study now being conducted and respondents' substantiation of the reasonableness of their proposed default limitation.¹

Respondents' motion is accordingly denied.

It is so ordered.

¹ We do not mean to suggest that there would be a "likelihood of settlement" if the two issues to which these materials relate were satisfactorily resolved.

IN THE MATTER OF
LINDAL CEDAR HOMES, INC., ET AL.

Docket C-2774. Interlocutory Order, July 26, 1977

Denial of corporate respondent's petition for modification of order to cease and desist to provide a waiver of the requirement of furnishing prospective franchisees with extensive, specified information and a copy of the franchise agreement prior to the running of fifteen business days.

ORDER DENYING PETITION FOR MODIFICATION OF ORDER

Respondent, Lindal Cedar Homes, Inc., a firm engaged in the sale of franchises, has filed a petition to modify those portions of an order to cease and desist, issued on January 5, 1976, which requires it to furnish prospective franchisees extensive, specified information concerning its franchises and a copy of the franchise agreement "at least fifteen days prior to the execution by the prospective franchisee of any franchise agreement or any other binding obligation or the payment by the prospective franchisee of any consideration in connection with the sale or proposed sale of a franchise." Respondent requests that the order provisions imposing these requirements be modified by adding thereto the words "unless, however, the prospective franchisee and its attorney execute a written waiver of the fifteen business days requirement." The Bureau of Consumer Protection has filed an answer opposing the requested modification.

As grounds for its petition, respondent contends that there have been "a number of occasions when a prospective franchisee, represented by counsel, has requested a formal franchise agreement be executed prior to the running of fifteen business days" and that it believes that the prospective franchisee's rights will be fully protected since the prospective franchisee will be represented by an attorney who must sign the waiver.

We agree with the Bureau of Consumer Protection that the petition should be denied. Respondent does not allege that changed conditions of fact or law require the proposed modification nor has it made a showing that public interest considerations require such a modification. There is no indication that the order has or will cause undue hardship on respondent or prospective franchisees, and the Commission is not persuaded that legal representation is in all respects an adequate substitute for the required fifteen day waiting period.

Accordingly, *It is ordered*, That respondent's petition for modification of the order to cease and desist be, and it hereby is, denied.