

IN THE MATTER OF
HERBERT R. GIBSON, SR., ET AL.

Docket 9016. Interlocutory Order, Oct. 12, 1977

Denial of respondents' motion to dismiss for lack of public interest.

ORDER GRANTING RESPONDENTS' APPEAL OF ADMINISTRATIVE
LAW JUDGE'S REFUSAL TO CERTIFY MOTION TO DISMISS FOR
LACK OF PUBLIC INTEREST, AND DENYING AFORESAID MOTION

On June 10, 1977 respondents moved (1) for summary decision on Counts I and III of the complaint, (2) for removal of Count II from adjudication because they agreed to accept complaint counsel's suggested consent order as to that count, and (3) in the alternative, for certification to the Commission of their request for dismissal for lack of public interest. On the 19th and 20th of July 1977, the law judge denied all three motions.

On July 26, 1977 respondents filed an application for an interlocutory appeal from the order denying their motions for summary decision and for certification of the public interest question. On August 10, 1977, the law judge entered an order denying authorization to file an interlocutory appeal of the denial of their motion for summary decision and granting authorization to file an interlocutory appeal of the denial of their request for certification of the motion to dismiss.

The threshold question, then, is whether the motion to dismiss for asserted lack of public interest is properly before the Commission. We conclude it is because the law judge lacks authority to rule on it.¹ It is well established that an administrative law judge lacks authority to rule on and must certify motions to dismiss for lack of public interest and other motions containing questions pertaining to the Commission's exercise of administrative discretion. See *Exxon Corp.*, Dkt. 8934, CCH Trade Reg. Rep. ¶21,299 (April 19, 1977); *Amrep Corporation*, 87 F.T.C. 283 (1976); *Crush International Ltd.*, 80 F.T.C. 1023 (1972); *Philip Morris, Inc.*, 79 F.T.C. 1023 (1971); *First Buckingham Community, Inc.*, 73 F.T.C. 938 (1968); and *Suburban Propane Gas Corporation*, 71 F.T.C. 1695 (1967).²

The asserted facts as to the lack of public interest on which the motion rests are essentially the same as those that formed the basis for respondents' June 10, 1977 motion for summary decision. The

¹ Commission Rules, Section 3.22(a), provide that "[a]ny motion upon which the Administrative Law Judge has no authority to rule shall be certified by him to the Commission with his recommendation."

² Respondents were not prejudiced by the law judge's July refusal to certify their June motion to dismiss. The matter is now before the Commission for *de novo* consideration and determination. *Suburban Propane*, *supra* at 1697.

respondents argued that H. R. Gibson, Sr. had no interest in any retailer, that no monies received by the Gibson Trade Show were paid to any retailer, and that the trade show was open to any retailer. The law judge in ruling on that motion, explained that respondents' assertions involved factual issues that were in dispute, the resolution of which would require a hearing. With the proof in this posture, the motion to dismiss is no riper for decision than was the motion for summary decision. Accordingly,

It is ordered, That the aforesaid motion to dismiss for lack of public interest be, and it hereby is denied.

IN THE MATTER OF
FRANKART DISTRIBUTORS, INC., ET AL.

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

Docket C-2904. Complaint, Oct. 13, 1977 — Decision, Oct. 13, 1977

This consent order, among other things, requires a New Rochelle, N.Y. furniture dealer and its affiliates to cease using the terms "carved" or "detailed carving" or any other similar terms to describe furniture which has not been cut or carved into shape. Further, the order requires the firms to make clear and conspicuous disclosures regarding the composition or construction of their furniture, both in their advertising and on the furniture displayed in their showrooms.

Appearances

For the Commission: *Alan F. Rubinstein.*

For the respondents: *John A. Occhiogrosso, New Hyde Park, N.Y.*

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 Frankart Distributors, Inc., a corporation; Frankart Flushing, Inc., a corporation; Frankart-Fordham, Inc., a corporation; Frankart Westchester, Inc., a corporation; Frankart-New Rochelle, Inc., a corporation; Frankart Paramus, Inc., a corporation; Frankart Jamaica, Inc., a corporation; Frankart Kings, Inc., a corporation; Mallary, Inc., a corporation, doing business under that name and as Frankart-Grand Concourse, and Bernard Frankel, 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 Frankart Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 543 Main St., New Rochelle, New York.

Respondent Frankart Flushing, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 37-11 Main St., Flushing, New York.