

IN THE MATTER OF

AMERICAN CREDIT BUREAU, INC., ET AL.

Docket C-2608. Interlocutory Order, Feb. 3, 1978

Petition to vacate or modify consent order denied on grounds that respondents' allegations were insufficient because of public interest or changed conditions of law.

ORDER DENYING PETITION TO VACATE OR MODIFY CONSENT
ORDER

Respondents, by petition filed pursuant to Rule 3.72(b)(2) on November 17, 1977, request that the Commission vacate or modify the consent order to cease and desist entered herein on December 4, 1974 (84 F.T.C. 1582), on the ground that changed conditions of law require such action.

The specific change of law underlying respondents' petition is the enactment of Pub. Law 95-109, the "Fair Debt Collection Practices Act," 15 U.S.C. 1601, *et seq.* (1977). The Act becomes effective on March 20, 1978.

Respondents allege that the Act regulates the same practices as are covered by the order, that the order differs substantially in terms from the Act, and that since the Act imposes severe penalties for violation, it would be in the public interest to vacate the order. Respondents further contend that certain sections of the Act are less restrictive than comparable sections of the order, that respondents would be competitively disadvantaged if they were subject to the order while their competitors were subject to the Act, and that, in the alternative, the order should be modified to bring it into conformity with the Act. The Director of the Bureau of Consumer Protection has filed an answer in opposition to respondents' petition.

The Commission, having carefully considered the petition and answer thereto, is of the opinion that (1) it would be premature and contrary to the public interest to grant respondents' request inasmuch as the Commission is currently conducting an investigation to determine whether or not respondents are in compliance with the cease and desist order, (2) the Fair Debt Collection Practices Act as a whole is more restrictive than the cease and desist order, and that those few instances in which the order may be more restrictive are necessary and proper as remedies fashioned by the Commission to redress abusive practices engaged in by respondents in violation of the Federal Trade Commission Act. There is nothing in the Fair Debt Collection Practices Act to prohibit the imposition of similar

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remedies in future cases brought under that Act if the circumstances so warrant, and (3) it would be premature to reopen the proceeding to modify or set aside the order since the Act has not yet taken effect.

Accordingly, the Commission having concluded that the allegations in respondents' petition are not sufficient to require that the order to cease and desist be modified or set aside because of the public interest or because of changed conditions of law:

It is ordered, That respondents' petition be, and it hereby is, denied.

IN THE MATTER OF
FORD MOTOR COMPANY

Docket 9001. Interlocutory Order, Feb. 10, 1978

On motion to withdraw matter from adjudication, Commission directed that pleadings of complaint counsel be furnished to the Commission, but not placed on the public record, to enable it to determine the probability that a settlement will be achieved.

ORDER

By his order of January 19, 1978, the Administrative Law Judge certified to the Commission an amended motion by respondent to withdraw this matter from adjudication for consideration of a consent order.

Beyond those facts, the posture of the motion becomes somewhat murky. Respondent's original motion recites that "complaint counsel do not oppose this motion," but this recital is absent from the amended motion.¹ Complaint counsel have not, however, executed the proposed consent order, for reasons which the Administrative Law Judge describes as including both some disagreement with its terms and the view that it would vary the terms of our earlier order (Dkt. C-2582) against the respondent, a variance complaint counsel presumably felt they could not agree to since "[a]ny modification of an outstanding order is exclusively within the jurisdiction and discretion of the Commission."²

Evidently the respective positions of respondent and complaint counsel with regard to the proposed consent order are fully set out in respondent's memorandum of December 23, 1977, complaint counsel's answer of January 16, 1978, and respondent's reply of January 18. These pleadings have not been sent forward to us, however, because of the Administrative Law Judge's opinion that "it would not be appropriate for the Commission to consider the substance of that memorandum [of December 23, 1977] before it withdraws the instant matter from adjudication."

The reasons for this are not elaborated, nor are they self-evident. Obviously, no "*ex parte*" problem exists, and if respondent in its memorandum concedes matters it had placed in issue the damage has already been done by submitting the memorandum to the initial

¹ In his certification, however, the Administrative Law Judge characterizes the motion as "unopposed."

² While this statement is correct, its application in this context seems to reflect a misunderstanding of the significance of executing a proposed consent order. Complaint counsel's signature would indicate a recommendation that the Commission accept the order. Actual modification of the outstanding order would occur only if the Commission followed that recommendation. We make this observation only to obviate confusion in the future, since it appears here that complaint counsel could not unreservedly make such a recommendation.