

Interlocutory Order

91 F.T.C.

IN THE MATTER OF

FORD MOTOR COMPANY, ET AL.

Docket 9073. Interlocutory Order, Mar. 16, 1978

Denial of a respondent's application for interlocutory review of ALJ's denial to stay the proceedings and to consider other motions.

ORDER DENYING APPLICATION FOR REVIEW

On March 15, 1978, respondent Francis Ford, Inc., filed a document styled "Emergency Petition for Review to the Federal Trade Commission" which we will treat as an application for interlocutory review of the ALJ's ruling on March 13, 1978, denying respondent's motion to stay the proceedings and to consider other motions.¹ The ALJ also denied a request to certify his order to the Commission under Section 3.23(b) of the Commission's Rules of Practice, 16 C.F.R. 3.23(b).

Section 3.23(a) of the Commission's Rules of Practice specifies the limited situations in which an interlocutory appeal from a ruling of the ALJ will be entertained in the absence of certification by the ALJ under Section 3.23(b).² Respondent has advanced no basis on which an appeal will lie under one of the enumerated subsections.

Even if the order were subject to interlocutory review under Section 3.23, it would be reversible only if there had been a clear abuse of discretion by the ALJ. *Kellogg Co., et al.*, 83 F.T.C. 1956 (1974) and 86 F.T.C. 650 (1975). Insofar as the respondent seeks a delay of the proceedings, the Commission has repeatedly ruled that matters of scheduling are within the sound discretion of the law judge. See, e.g., *Maremont Corp.*, 77 F.T.C. 1654 (1970); *American Home Products*, Dkt. 8918, Order of August 18, 1977 Denying Application

¹ Respondent submitted the following motions to the ALJ:

Motion for Emergency Determination on Motion to Withdraw Matter from Adjudication for the Purpose of Considering Such Respondent's Proposed Consent Agreement and on its Motion in Opposition to Withdrawal of Ford Motor Company and Ford Motor Credit Company from this proceeding or in the Alternative to Join Such Respondents as Third Party Respondents;

Motion to Withdraw the Matter from Adjudication for the Purpose of Considering Respondent's Proposed Consent Agreement, for Certification of Settlement Proposal, and for a Stay of the Proceedings;

Motion in Opposition to Withdrawal of Ford Motor Company and Ford Motor Credit Company from Proceeding or in the Alternative to Join Such Respondents as Third Party Respondents.

² Section 3.23(a) of the Commission's Rules of Practice provides that

"The Commission may, in its discretion, entertain interlocutory appeals where a ruling of the Administrative Law Judge: (1) requires the disclosure of the Commission records or the appearance of an official or employee of the Commission pursuant to §3.26; (2) requires the appearance of other government officials pursuant to §3.37; (3) suspends an attorney from participation in a particular proceeding pursuant to §3.42(d); or (4) grants or denies an application for intervention pursuant to the provisions of §3.14."

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for Review at 2 [90 F.T.C. 148]. Insofar as respondent requests a review of the ALJ's refusal to rule on respondent's other motions, its request is premature.

It is therefore ordered, That the application is denied.

