

Interlocutory Order

IN THE MATTER OF

HOWARD ENTERPRISES, INC.

Docket 9096. Interlocutory Order, April 7, 1978

Order directing that oral argument not be set down without a further order of the Commission.

ORDER GRANTING MOTION TO OMIT ORAL ARGUMENT

On March 13, 1978, complaint counsel filed with the Secretary a motion dated March 8 to omit oral argument pursuant to Rule Section 3.52(f). The grounds urged for the motion were that the case presented essentially legal issues and that these were fully discussed in complaint counsel's brief. Counsel for the respondents, contacted telephonically by the Secretary, declined to oppose the motion.

That the issues presented by a case are legal rather than factual bears no necessary relationship to the value of oral argument, which serves as an opportunity to sharpen and define the opposing positions of the parties, and to probe the implications of their arguments, whatever the nature of the issues. However, we will defer provisionally to the evident judgment of both counsel that the issues here will be fully elaborated in the briefs. If the Commission should determine, once all the briefs are available, that oral argument would nonetheless be useful, it can so order at that time.

Accordingly, *it is ordered*, That no date for oral argument in this matter shall be set down without a further order of the Commission.

Interlocutory Order

91 F.T.C.

IN THE MATTER OF

KELLOGG COMPANY, ET AL.

Docket 8883. Interlocutory Order, April 19, 1978

Denial of Kellogg's applications (1) for review of ALJ's order denying motion to nullify subpoenas duces tecum for taking of depositions and production of documents, and (2) for stay of deposition program pending resolution of application for review.

ORDER DENYING APPLICATIONS OF KELLOGG COMPANY FOR
REVIEW AND FOR A STAY

On April 13, 1978, respondent Kellogg Company ("Kellogg"), filed with the Commission an Application for Review of Order Denying Its Motion to Nullify Subpoenas Duces Tecum for the Taking of Depositions and Production of Documents. With that Application, Kellogg also filed an Application for a Stay of the Commencement of Complaint Counsel's Deposition Program Pending Resolution of Kellogg Company's Application for Review. For the reasons briefly outlined below, the Commission denies both Applications.

Kellogg's Application for Review comes to the Commission without the certification of the Administrative Law Judge pursuant to Commission Rule 3.23(b). Under the Commission's Rules, that certification is essential for interlocutory review unless the matter is one which falls within the provisions of Rule 3.23(a). Kellogg cites to Reorganization Plan No. 4 of 1961, H. Doc. No. 159, 87th Cong., 1st Sess., as support for its appeal without certification. Even that Plan, however, provides that the Commission shall retain its discretionary right to review "within such time and in such manner as the Commission shall by rule prescribe" In this instance, the Commission has explicitly provided for review under Rule 3.23(b) or after issuance of the Administrative Law Judge's initial decision.

The Commission's Rules are designed to provide for the orderly and efficient conduct of a hearing. That process would be seriously undercut if the Commission were to interject itself into every dispute between the parties and the law judge. Interlocutory review is the exception to the rule that the Administrative Law Judge is vested with broad discretionary powers to conduct the proceeding. Rule 3.42(c).¹ In fact, this is precisely the kind of matter which is peculiarly within the province of the Administrative Law Judge as the trier of fact. Accordingly,

¹ As we have noted on other occasions, *Kellogg Co., et al.*, 83 F.T.C. 1756 (1974); *Warner-Lambert Co.*, 83 F.T.C. 485 (1974).