

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).

It is ordered, That the Application of Kellogg Company for Review of Order Denying Its Motion to Nullify Subpoenas Duces Tecum for the Taking of Depositions and Production of Documents, and the Application of Kellogg Company for a Stay of the Commencement of Complaint Counsel's Deposition Program Pending Resolution of Kellogg Company's Application for Review be, and the same hereby is, denied.

Complaint

91 F.T.C.

IN THE MATTER OF

INSILCO CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-2919. Complaint, April 19, 1978 — Decision, April 19, 1978

Consent order requiring a Meriden, Conn., distributor of pre-cut housing products and its subsidiary, among other things, to cease misrepresenting or failing to make relevant disclosures with regard to product assembly, delivery costs, legal building requirements, need for skilled building tradesmen, mortgage liens, and cancellation rights—in Spanish, if applicable. The order further requires the firm to acknowledge and resolve complaints in a prescribed manner. Additionally, the firm must cease failing to provide consumers, in connection with the extension of credit, such material disclosures as required by Federal Reserve Board regulations.

Appearances

For the Commission: *Blanche Stein, Richard A. Palewicz and Walter R. Baron.*

For the respondent: *William G. Dillon, Simpson, Thacher & Bartlett, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Insilco Corporation, a corporation, and Miles Homes, Inc., a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending Act, and it now 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. For purposes of this complaint, the following definitions shall apply:

a) The term "pre-cut housing" means homes sold to the general public by any of the Miles Homes Companies in the form of unassembled or partially assembled materials and components other than a package.

b) The term "package" means the materials and components for the