

Interlocutory Order

91 F.T.C.

IN THE MATTER OF

CHRYSLER CORPORATION, ET AL.

Docket 9072. Interlocutory Order, May 8, 1978

Denial of complaint counsel's motion to enforce subpoena *duces tecum* against present owner of records sought, a purchaser of the assets of the corporation named in the subpoena.

ORDER DENYING MOTION TO ENFORCE SUBPOENA DUCES
TECUM

On February 13, 1978, Administrative Law Judge Lewis F. Parker certified to the Commission the motion of complaint counsel herein for enforcement of a subpoena *duces tecum* issued in November, 1976,¹ directing Northline Dodge, Inc., a California corporation, to produce certain documents relating, *inter alia*, to motor vehicle repossessions in which it had been involved during a specified time period. A partial return was made, and complaint counsel were pursuing further compliance when, on July 29, 1977, complaint counsel were advised that the assets of the California corporation had been sold to a Texas corporation having different principals but the same name, and the California corporation dissolved. The assets transferred evidently include the records sought, to the extent they exist, but complaint counsel assert that the Texas corporation has declined to take the effort necessary to make any further return on the subpoena. Matters were in this posture when complaint counsel moved for enforcement of the subpoena.

Complaint counsel's motion does not attempt to propound a theory for enforcing a subpoena *duces tecum* against a corporation which simply purchased assets from the corporation against which it was issued. It is patent, however, that mere identity of name between the two corporations has no bearing on the matter. The subpoena was issued against and served upon a particular legal entity. While that legal entity retains the capacity to be sued for some period of time after formal dissolution, it evidently no longer possesses the documents sought. The legal entity which does possess the documents, on the other hand, has never been subpoenaed to produce them. Moreover, there is nothing in the record to indicate that the new entity stands in the position of a legal successor to the dissolved corporation so as to enable the outstanding subpoena to be enforced

¹ The exact date does not appear from the materials before us. Indeed, as complaint counsel note, the copy of the subpoena attached to the motion herein does not show on its face that it was authorized by the ALJ. Because of

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against the Texas corporation. In these circumstances, an order that the November 1976 subpoena be enforced would appear to be an exercise in futility. Accordingly,

It is ordered, That complaint counsel's Motion to Enforce Subpoena *Duces Tecum* be, and it hereby is, denied.²

² This ruling, of course, in no way precludes complaint counsel from seeking to subpoena the documents directly from the new corporation.

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IN THE MATTER OF

AMERICAN DENTAL ASSOCIATION, ET AL.

Docket 9093. Interlocutory Order, May 8, 1978

Denial of supplemental motions of subpoenaed third parties to quash and/or limit subpoenas *duces tecum*.

ORDER DENYING MOTION TO QUASH AND/OR LIMIT SUBPOENAS
DUCES TECUM

This matter comes to the Commission upon supplemental motions to quash and/or limit subpoenas *duces tecum* filed on behalf of Henry L. Ernstthal and the California Dental Association ("CDA") and Kathie Boise and the Orange County Dental Society, Inc. ("OCDS"). Because of the unusual posture of this motion, it is necessary to chronicle the prior developments in some detail.

The Commission issued an administrative complaint in this proceeding on January 4, 1977. In the course of the administrative proceedings, the administrative law judge ("ALJ"), at the request of Commission complaint counsel, on November 16, 1977, issued subpoenas *duces tecum* to CDA and OCDS pursuant to Section 3.34(b) of the Commission's Rules of Practice and Procedures. CDA and OCDS filed a joint motion to quash the subpoenas on December 1, 1977, which motion was denied by the ALJ on December 15, 1977. CDA and OCDS then filed a joint motion on January 3, 1978, seeking extraordinary leave to appeal to the Commission the denial of their motion to quash. On January 6, 1978, this motion was denied by the ALJ, who established January 23, 1978, as the final date for compliance with the subpoenas. CDA and OCDS moved before the ALJ on January 18, 1978, for reconsideration of his denial of their motion to quash and their motion for appeal to the Commission, arguing for the first time that the Commission lacked jurisdiction over the parties. The ALJ denied this motion on January 23, 1978. Upon the parties' subsequent refusal to comply with the subpoenas, on February 17, 1978, the Commission granted complaint counsel's motion requesting court enforcement of the subpoenas and enforcement papers were filed on March 14, 1978.

In an order issued April 19, 1978, the District Court for the District of Columbia concluded that it was inappropriate to consider the parties' jurisdictional challenge to the Commission's pending adjudicative proceeding. However, the court found that the ALJ had not had an opportunity to consider some of the parties' non-jurisdictional challenges. Accordingly, the court's order permitted