

Interlocutory Order

91 F.T.C.

IN THE MATTER OF

KOSCOT INTERPLANETARY, INC., ET AL.

*Docket 8888. Interlocutory Order, May 16, 1978*

Grant of complaint counsel's motion requesting leave to file an answer to petition for reconsideration.

## ORDER GRANTING LEAVE TO FILE ANSWER

Counsel supporting the complaint in this matter have filed two requests for brief extensions of time within which to file an answer to "Petitions for Reconsideration" filed by respondents Glenn W. Turner and Raleigh P. Mann pursuant to an order entered December 28, 1977 by the United States Court of Appeals for the District of Columbia. Complaint counsel, having received no response to these motions, subsequently filed an "Answer" accompanied by a motion to file the answer "out of time."

Complaint counsel have apparently assumed that the time established for filing of an answer is governed by Section 3.55 of the Commission's Rules of Practice, pertaining to requests for reconsideration of Commission orders. This section of the Rules requires that petitions for reconsideration be filed within 20 days after service of a Commission order. Thereafter, opposing counsel are given 10 days within which to file an answer. The Commission doubts whether Section 3.55 should properly be applied to the case at hand, because it plainly applies only to requests for reconsideration filed within a short time of the entry of an order, before the matter has left the Commission's jurisdiction.

Complaint counsel's position doubtless results from the use by petitioners and the Court of Appeals of the term "reconsideration" to characterize petitioners' request. Petitioners have also referred to Section 3.55 of the Rules. Assuming *arguendo* that this section of the Rules has any applicability to the matter at hand, the Commission has determined that the 8 days' total extension of time requested by complaint counsel is appropriate, given that respondents have had a much longer period of time than that allowed by Section 3.55 of the Rules within which to prepare the petition to which complaint counsel responds. Accordingly,

*It is ordered,* That complaint counsel's motion requesting leave to file an Answer to Respondents' Petitions for Reconsideration be granted.

## Interlocutory Order

## IN THE MATTER OF

HERBERT R. GIBSON, SR., ET AL.

*Docket 9016. Interlocutory Order, May 18, 1978*

Request for subpoena enforcement denied without prejudice to renew.

ORDER DENYING REQUEST FOR SUBPOENA ENFORCEMENT  
WITHOUT PREJUDICE TO RENEW

On April 20, 1978, the administrative law judge, pursuant to Commission Rule 3.22 certified complaint counsel's Request for Court Enforcement of the Subpoena Served on Commission Witness Nix. For the reasons discussed below, we deny complaint counsel's request without prejudice to renewal at a later date.

The subpoena in question was dated March 16, 1978, served on Mr. Nix on March 22, 1978, with a return date of April 11, 1978. On April 10, 1978, complaint counsel received a letter from Mr. Nix indicating that he would not be able to comply with the subpoena because of illness. Attached to his letter is a statement to that effect from his physician, Dr. William deVlaming. Additionally, Mr. Nix indicated that he could not remember much of the information about which he spoke with complaint counsel and remarked on the fact that complaint counsel had previously indicated that he would not be called to testify.

Complaint counsel takes issue with each of Mr. Nix's assertions and points out that "failing memory is not a valid basis for failing to appear." Moreover, complaint counsel argues that the testimony of Mr. Nix

is crucial for several reasons. He is one of the few witnesses that will testify as to the issues raised under Count III of the Complaint. His testimony is expected to directly contradict the testimony previously presented by respondent, Gerald P. Gibson. His testimony is finally expected to link respondents, H.R. Gibson Sr., H.R. Gibson, Jr. and Gerald P. Gibson, to payments and receipt of illegal brokerage.

Nevertheless, the administrative law judge has recommended that the request be denied because of the length of time that may be involved in an enforcement proceeding and because of the likelihood that no substantive evidence will be elicited if Mr. Nix cannot recall the events in question. At the same time, the administrative law judge notes that Mr. Nix could possibly be a "crucial witness on whom complaint counsel placed considerable reliance."

We have determined that the best way to reconcile the needs of all parties is to deny without prejudice, complaint counsel's request with instructions that the administrative law judge and the parties consider the procedures of Commission Rule 3.33. Rule 3.33(a) provides that: