

Interlocutory Order

92 F.T.C.

IN THE MATTER OF

HERBERT R. GIBSON, SR., ET AL.

*Docket 9016. Interlocutory Order, November 8, 1978*ORDER DENYING MOTION TO WITHDRAW MATTER FROM
ADJUDICATION

The administrative law judge has certified to the Commission a consent settlement proposed by respondents Herbert R. Gibson, Sr., and Belva Gibson. The consent is the second such consent proposal by these respondents, the first having been denied by the Commission on September 21, 1976.

Complaint counsel have expressed opposition to the proposed agreement primarily because it would allow respondents to establish trade show fees based on volume of sales. Complaint counsel maintain that:

[I]f Gibson Senior can get suppliers to pay a percentage of their sales to him in order to participate in the Gibson Trade Show, (which is exactly what he does now and what this case is all about) there has to be an actual or perceived connection between Gibson Senior and the Gibson store buyers. In other words, . . . separation and insistence upon Volume exclusion are mutually contradictory.¹

We are not persuaded, however, that the manner in which the trade show fees are set bears a necessary relationship to the question of insuring separation between the Gibson Trade Show and the Gibson retail operation. As we noted in response to the first proposed consent settlement, a key element of any acceptable settlement is the assurance that respondents maintain a "high, impenetrable wall" between the two operations. In our view this objective can be achieved short of restricting the methods for establishing trade show fees.

Nevertheless, despite our differences with complaint counsel on the fee issue, we do not believe it is appropriate to remove the proposed settlement from litigation. There are simply too many deficiencies in the proposal to warrant withdrawal at this time. For example, we are not satisfied that the proposed order adequately assures that the trade show will be open on a non-discriminatory basis to all suppliers and retailers. Other concerns are described in the law judge's order certifying the proposed settlement. See Certification to the Commission of a Consent Settlement Offered by Respondents H.R. Gibson, Sr. and Belva Gibson at 8-9.

¹ Answer in Opposition to Motion for Conference to Consider Disposition of Proceeding Without Further Litigation and for Certification of Proposed Settlement Agreement at 4-5.

While a settlement may be attainable, we believe the nature and extent of the issues remaining are such that further negotiations should continue in the context of the adjudicatory proceeding under the supervision of the administrative law judge. Accordingly,

It is ordered, That the motion to withdraw matter from adjudication be, and the same hereby is, denied.

Interlocutory Order

92 F.T.C.

IN THE MATTER OF
CHRYSLER CORPORATION, ET AL.

Docket 9072. Interlocutory Order, Nov. 9, 1978

ORDER DENYING APPLICATION FOR LEAVE TO APPEAL

On October 27, 1978, respondents Chrysler Corporation and Chrysler Credit Corporation moved before the administrative law judge (ALJ) that the hearings in this matter be adjourned until March 1, 1979, to afford them an opportunity to solicit the cooperation of many of their independently owned dealers in the execution of the proposed settlement. Complaint counsel joined in the respondents' motion to adjourn. The ALJ, by order issued on October 30, 1978, declined to cancel the hearings in the absence of an assurance that respondents have signed or shortly would sign a consent agreement which is binding upon them. Respondents subsequently filed an application with the Commission for leave to appeal, arguing that the ALJ has abused his discretion in denying their motion.

Although settlement in this case is not a "certainty," both sides have asserted that there is a "strong likelihood" that agreement will be reached, and under such circumstances the request of the contending parties that the proceedings be stayed is highly compelling. Nevertheless, we cannot find an abuse of discretion in the law judge's contrary determination not to adjourn the hearings for a period of four months, at which time hearings might have to resume if respondents' dealers (and apparently, as a result, respondents) were to prove unwilling to accede to the proposed settlement.

The law judge possesses broad discretion in scheduling a trial so as to facilitate a prompt resolution of the issues, either through an adjudicated order or a negotiated settlement. To this end, the ALJ has full authority to postpone scheduled hearings so that parties to a proposed settlement may confer, under the supervision of the law judge, with third parties whose cooperation is deemed necessary for the success of the settlement. But it is the law judge, not the Commission, who is best positioned to weigh the length of the delay against the prospects for third party approval. While the parties have made out a strong case for postponement in this instance, the Commission will not disturb an ALJ's decision to proceed with trial or postpone hearings in the absence of a clear abuse of discretion. Accordingly,

It is ordered, That respondents' application for leave to appeal is denied.