

IN THE MATTER OF

THE KROGER COMPANY

Docket 9102. Interlocutory Order, Feb. 1, 1979

ORDER AFFIRMING ORDER RULING ON RESPONDENT'S MOTION
FOR PRODUCTION OF DOCUMENTS PURSUANT TO § 3.36

Administrative Law Judge Montgomery K. Hyun (the "ALJ") has *sua sponte* certified to the Commission for discretionary review certain of his rulings in connection with respondent's motion for *in camera* production of documents in the files of the Commission. We decline to disturb the ALJ's discovery rulings and, accordingly, we affirm. Our disposition of this matter also moots respondent's application for a stay of further proceedings before the ALJ and for oral argument before the Commission.

The ALJ certified his rulings only because of suggestions by respondent that his continued participation in this matter might be inappropriate in light of the Commission's refusal to grant clearance to one of respondent's attorneys, Mr. Mark Tuller, notwithstanding that both previously served at different times as attorney-advisors to former Chairman Engman.

The standards governing the appearance of former agency employees in Commission proceedings address issues different from those concerning the propriety of participation by administrative law judges. The clearance rules concern impropriety resulting from access to inside information whereas the principal question involving an ALJ's participation is one of bias or prejudgment. Thus, application of these standards may lead to differing results concerning the continued participation of Mr. Tuller and Judge Hyun in this proceeding, notwithstanding that each avers that during his tenure with Chairman Engman he did not participate in any matter pertaining to the respondent.

Here, no question of possible bias or prejudgment by the ALJ has been raised by the respondent and we can perceive none. Certainly mere access to information in the possession of the Commission casts no shadow on Judge Hyun's ability to render an impartial decision in this matter. Indeed, to suggest otherwise would call into question a judge's ability to review assertedly privileged information *in camera* for the purpose of determining whether the attorney requesting the information is entitled to see it. For these reasons, we find nothing inconsistent about the fact that Mr. Tuller

has been denied clearance in this proceeding while Judge Hyun may continue to serve in his altogether different role.

It is ordered, That the ALJ's rulings of January 15, 1979 be, and they hereby are, affirmed; and

It is further ordered, That respondent's motions for a stay and for oral argument, dated January 30, 1979, be, and they hereby are, denied.

Commissioner Pitofsky did not participate.

IN THE MATTER OF
FEDERAL SIGNAL CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2953. Complaint, Feb. 1, 1979 — Decision, Feb. 1, 1979

This consent order, among other things, requires a Chicago, Ill. manufacturer and seller of public safety and communication equipment to cease, in connection with the sale of such products to governmental entities, from exchanging bidding information with its distributors prior to submission of competitive bids, submitting or soliciting the submission of collusive bids, or employing any other business practice that may hinder or prevent competitors from bidding successfully. The firm is also required to cease furnishing governmental bodies seeking to purchase civil defense warning systems with advertisements or specifications that might induce such bodies to limit distribution of invitations to bid; incorporate the name or model number of firm's products into advertisements for bids or specifications; or draft specifications that would restrain, lessen, or prevent the sale of such devices by others.

Appearances

For the Commission: *John T. Hankins* and *David J. Richman*.

For the respondent: *Gary L. Mowder, Schiff, Hardin & Waiter*,
Chicago, Ill.

COMPLAINT

The Federal Trade Commission having reason to believe that Federal Signal Corporation has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. For the purpose of construing this complaint, the following definitions shall apply:

A. "Signal Division products" means any products, or component or accessory thereof, presently or in the future sold by the Signal Division of Federal Signal Corporation, including but not limited to radio equipment, vehicle lights and sirens, speed detecting devices, helmets, visual and audible warning and signaling devices such as lights, sirens, horns and bells, and civil defense warning systems.

B. "Civil defense warning systems" means outdoor warning sirens and components and accessories thereof, which are designed to warn the public of impending enemy attack, storms or other emergency situations. The term includes sirens, activating devices,