

Interlocutory Order

94 F.T.C.

IN THE MATTER OF
AMREP CORPORATION

Docket 9018. Interlocutory Order, July 12, 1979

ORDER DENYING MOTION FOR A STAY OF THE INITIAL
DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

On June 14, 1979, respondent, AMREP Corporation, filed a motion with the Commission requesting that the Commission stay the Initial Decision of the administrative law judge so that respondent could have an opportunity to address the Commission on the matter of *ex parte* communications prior to the issuance of the Initial Decision.¹

Respondent makes two arguments in support of its motion. Respondent first argues that Section 7(c) of the Administrative Procedure Act, 5 U.S.C. 556(c), and Rule 3.41(c) of the Commission's Rules of Practice, require that the comments regarding *ex parte* communications be made on the record prior to the Initial Decision. Respondent also argues that Rule 3.54(c) limits the Commission's authority to take evidence in that the Commission has no authority to hear evidence regarding the *ex parte* communications unless such evidence is brought up in the hearings below. However, we find nothing in the text of any of these citations to support respondent's arguments.

Indeed, the respondent has previously sought injunctive relief on this same issue from the United States District Court for the District of Columbia. That relief was denied by Judge Gasch on April 9, 1979, for failure of the respondent to exhaust its administrative remedies. In his opinion, Judge Gasch ruled that respondent "... will have full opportunity to address the Commission on the matter of the *ex parte* communications. Furthermore, the Commission, if necessary, is empowered to take additional evidence, if indeed the Administrative Law Judge's initial decision goes to the Commission." Opinion at page 8.

We fully agree with the opinion of Judge Gasch. The Commission's appellate procedures provide respondent with an adequate mechanism to address the issue of *ex parte* communications should it be necessary.² Under the circumstances, it is unnecessary to stay the Initial Decision.³ Accordingly,

¹ Respondent also filed a motion to extend time for filing the Initial Decision because of the unlikelihood that the Commission could decide the motion for a stay before what had been a June 22, 1979 filing date. Inasmuch as that date was extended by the Commission to July 13, 1979, and a decision is now being made on the motion for a stay, the motion for an extension of time is denied as moot.

² Moreover, Rule 3.54(a) of the Commission's Rules allows the Commission to hear and take additional evidence on appeal from, or review of, an Initial Decision. See also 5 U.S.C. 557(b).

³ Since our decision not to grant respondent's motion is based on the fact that adequate procedures exist on appeal, we intimate no opinion on complaint counsel's assertion that the motion should be denied as a dilatory abuse of the Commission's Rules of Practice.

Interlocutory Order

It is ordered, That the motion for a stay of the initial determination by the administrative law judge be, and the same hereby is, denied.

FEDERAL TRADE COMMISSION DECISIONS

Initial Decision

94 F.T.C.

IN THE MATTER OF
RHINECHEM CORPORATION, ET AL.

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket 9116. Complaint, Aug. 23, 1978 — Dismissal Order, July 12, 1979*

This order dismisses the August 23, 1978 complaint issued against Allegheny Ludlum Industries, Inc. and its subsidiary, Chemetron Corporation, a producer of organic pigments, for alleged violations of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint was dismissed on grounds that changed circumstances which have occurred since issuance of the complaint have provided the Commission with adequate assurances that the challenged matter will not reoccur, and additional relief will not be necessary.

Appearances

For the Commission: *Glenn M. Fellman* and *Michael P. Waxman*.

For the respondents: *Thomas L. VanKirk, Buchanan, Ingersoll, Roderwald, Kyle & Buerger*, Pittsburgh, Pa. and *A.F. Maulsby, Cravath, Swaine & Moore*, New York City.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE LAW
JUDGE

MAY 30, 1979

PRELIMINARY STATEMENT

The complaint in this matter was issued by the Commission on August 23, 1978, alleging that the Commission had reason to believe that the above-named respondents had entered into a merger agreement which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest. Rhinechem Corporation filed its answer to the complaint on October 2, 1978, and Allegheny Ludlum Industries, Inc. and Chemetron Corporation filed their answer to the complaint on September 29, 1978.

On October 20, 1978, Judge Joel M. Flaum, presiding in the United States District Court for the Northern District of Illinois, enjoined consummation of the acquisition "during the pendency of the adminis-

* Complaint previously reported at 98 F.T.C. 883.