

IN THE MATTER OF

BOISE CASCADE CORPORATION

Docket 9133. Interlocutory Order, Jan. 12, 1983

ORDER DENYING RESPONDENT'S APPLICATION
FOR INTERLOCUTORY APPEAL

At the conclusion of the presentation of complaint counsel's case in this proceeding, respondent filed with the ALJ a motion to dismiss the complaint. On November 23, 1982, the ALJ issued an order declaring his decision to defer ruling on the motion until after the presentation of respondent's defense and the filing of proposed findings and conclusions of law by the parties. On December 9, respondent filed with the Commission a motion requesting an order directing the ALJ to rule *now* on respondent's motion to dismiss.

Respondent's motion is not permitted by either Commission Rule 3.22(e), which provides specifically for the treatment of motions for dismissal, or by Rule 3.23, which governs interlocutory appeals. The Commission, of course, retains the authority to grant review of an interlocutory ruling where the requirements of Rule 3.23 are not met, but it has said that it will consider doing so only on a showing of a clear abuse of discretion by the ALJ and irreparable harm to the appealing party. *E.g., American Home Products Corp.*, 90 F.T.C. 148 (1977); *General Motors Corp.*, 90 F.T.C. 172 (1977). This occasion does not present such a case.

Even when its standards for review were less stringent, the Commission repeatedly declined to review ALJ determinations denying motions to dismiss or for summary decision. *E.g., Vulcanized Rubber and Plastics Co.*, 52 F.T.C. 533 (1955); *School Services, Inc.*, 72 F.T.C. 1003 (1967); *The Hearst Corp.*, 80 F.T.C. 1011 (1972).¹ As the Commission noted in those cases, denial of such motions does not affect the ultimate outcome of a case. Moreover, a decision whether to continue a proceeding with the presentation of respondent's defense is peculiarly within the grasp of the ALJ.

The ALJ's discretion in ruling on motions to dismiss is broad. Indeed, Rule 3.22(e) expressly provides that the ALJ may defer ruling until the close of the case. Like interlocutory appeals from discovery rulings, appeals from determinations under Rule 3.22(e) merit a par-

¹ These decisions were issued under rules permitting review "upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision, and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice." The current rules provide for review only upon certification by the ALJ under Rule 3.23(b) or in narrow circumstances, clearly not applicable here delineated in Rule 3.23(a).

ticularly skeptical reception. *See, Bristol-Myers Co.*, 90 F.T.C. 273 (1977). It is inappropriate for the Commission to entertain an appeal of such a determination when the factual record is clearly in dispute and the ALJ has concluded that the proceeding should continue.

Accordingly, *it is ordered* that respondent's application for review is denied.

SOUTHERN MARYLAND CREDIT BUREAU, INC.

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Complaint

IN THE MATTER OF

SOUTHERN MARYLAND CREDIT BUREAU, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5(a)
OF THE FEDERAL TRADE COMMISSION ACT AND THE FAIR CREDIT
REPORTING ACT

Docket C-3101. Complaint, Jan. 26, 1983—Decision, Jan. 26, 1983

This consent order requires a La Plata, Md. consumer reporting agency, among other things, to cease failing to require customers, such as private investigative agencies, detectives or attorneys, who do not extend credit in the normal course of their business, to certify the purpose for which information is sought; that use of the data will be restricted to that purpose; and that the customer understands that anyone obtaining credit information under false pretenses is subject to a fine and/or imprisonment under Federal law. Respondent is further required to compile a list of detectives and attorneys from the yellow pages of the telephone book in the area where the requesting party does business, and to consult the list to determine whether certification must be provided. Additionally, the firm must require prospective customers to identify themselves and comply with certification requirements; and to withhold credit reports from parties it has reason to believe would use the information for improper purposes.

Appearances

For the Commission: *Charlyn J. Buss.*

For the respondent: *Robert T. Barbour, Barbour, Zverina & Myer,*
La Plata, Md.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*, as amended, the Fair Credit Reporting Act, Public Law 91-508, 15 U.S.C. 1681 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, hereinafter referred to as the "Commission," having reason to believe that Southern Maryland Credit Bureau, Inc., a corporation, hereinafter referred to as "respondent," has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its Complaint stating its charges as follows:

PARAGRAPH 1. For the purposes of this Complaint and the accompanying Consent Order to cease and desist, the terms *consumer*, *consumer report*, and *consumer reporting agency* are defined as set forth in Section 603 of the Fair Credit Reporting Act.