INTERLOCUTORY, MODIFYING, VACATING, AND MISCELLANEOUS ORDERS

DYNA-E INTERNATIONAL, INC.
AND
GEORGE WHEELER

Docket No. 9336, Order, July 2, 2009

Order withdrawing the Matter from adjudication.

ORDER WITHDRAWING MATTER FROM ADJUDICATION FOR THE PURPOSE OF CONSIDERING A PROPOSED CONSENT AGREEMENT

Complaint Counsel and Respondents having jointly moved that this matter be withdrawn from adjudication to enable the Commission to consider a proposed Consent Agreement, and having submitted a proposed Consent Agreement containing a proposed Order, executed by the Respondents and by Complaint Counsel and approved by the Director of the Bureau of Consumer Protection, which, if accepted by the Commission, would resolve this matter in its entirety;

IT IS ORDERED, pursuant to Rule 3.25(c) of the Commission Rules of Practice, 16 C.F.R. § 3.25(c) (2009), that this matter in its entirety be and it hereby is withdrawn from adjudication, and that all proceedings before the Administrative Law Judge be and they hereby are stayed pending a determination by the Commission with respect to the proposed Consent Agreement, pursuant to Rule 3.25(f), 16 C.F.R. § 3.25(f); and

IT IS FURTHER ORDERED, pursuant to Rule 3.25(b) of the Commission Rules of Practice, 16 C.F.R. § 3.25(b), that the proposed Consent Agreement not be placed on the public record unless and until it is accepted by the Commission.

By the Commission.

Interlocutory Orders, Etc.

WHOLE FOODS MARKET, INC.

Docket No. 9324, Order, July 9, 2009

Order granting the Motion by Ahold U.S.A., Inc., New Seasons Market, Inc., Save Mart Supermarkets, Gelson's Markets, Safeway, Inc., Harris Teeter, Inc., and Apollo Management Holding L.P. and ordering Respondent to return any third-party documents that were subject to any outstanding discovery requests in *Kottaras v. Whole Foods Market, Inc.*

ORDER GRANTING THIRD PARTIES' MOTION TO ENFORCE PROTECTIVE ORDER

Ahold U.S.A., Inc., New Seasons Market, Inc., Save Mart Supermarkets, Gelson's Markets, Safeway, Inc., Harris Teeter, Inc., and Apollo Management Holding L.P. ("Moving Third Parties") have filed a motion requesting that the Commission enforce the Protective Order Governing Confidential Information ("Protective Order") issued in this matter. On May 21, 2009, the Commission issued an Order relieving Respondent Whole Foods Market, Inc. ("Whole Foods") of its obligation under Paragraph 12 of the Protective Order to return any third-party documents that were subject to any outstanding discovery requests in related federal court litigation,[1] provided that Whole Foods complied with its obligations under Paragraph 11 of the Protective Order. The Commission did so reluctantly. The Commission's investigations and cases rely heavily on the good faith cooperation of Third Parties. Third Party cooperation in turn is based in no small part on the expectation that their documents and testimony will be used only in the Commission action at issue. The purpose of the Commission's May 21, 2009 Order was to allow the United States District Court to rule on the appropriateness of the discovery requests pending before it. Absent such an order from the Commission, the documents could have been returned immediately, thus mooting the issue and depriving the District Court of the opportunity to rule.

[1] The discovery requests covered included but were not limited to outstanding discovery requests in *Kottaras v. Whole Foods Market, Inc*., No. 1:08-cv-01832 (D.D.C.) (*Kottaras*).