

Interlocutory Orders, Etc.

THE NORTH CAROLINA BOARD OF DENTAL EXAMINERS

Docket No. 9343. Order, February 9, 2011

Order denying respondent's motion for reconsideration of its request to postpone the commencement of the administrative trial and denying respondent's request for the Commission to review the administrative judge's ruling denying respondent's motion to compel discovery.

ORDER DENYING (1) RESPONDENT'S MOTION FOR
RECONSIDERATION OF THE ORDER DENYING EXPEDITED MOTION
FOR A LATER HEARING DATE AND (2) RESPONDENT'S APPLICATION
FOR REVIEW OF THE ALJ'S ORDER DENYING RESPONDENT'S
MOTION TO COMPEL

The Federal Trade Commission issued the Administrative Complaint in the above-captioned matter on June 17, 2010. The Complaint provides – consistent with Commission Rule 3.11(b)(4), 16 C.F.R. § 3.11(b)(4) – that the administrative hearing in this matter shall begin on February 17, 2011.

Commission Rules 3.21(c)(1) and 3.41(b) provide that the Commission may, “upon a showing of good cause,” postpone the commencement of the evidentiary hearing. 16 C.F.R. §§ 3.21(c)(1), 3.41(b). On January 19, 2011, Respondent filed an Expedited Motion for a Later Hearing Date. On January 21, 2011, the Commission issued an Order (“January Order”) denying that motion¹. As the Commission noted in its January Order, the date on which the evidentiary hearing will begin has been known since June 17, 2010, when the Commission issued the Administrative Complaint in this matter. The Commission determined that none of the circumstances described by Respondent provided the requisite showing of good cause to change the evidentiary hearing date.

¹ *Commission Order Denying Expedited Motion For A Later Hearing Date* (January 21, 2011).

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On January 24, 2011, Respondent filed a motion for reconsideration of the January Order (“Respondent’s Motion”),² and on February 1, 2011, Complaint Counsel filed a memorandum in opposition to Respondent’s Motion. Respondent first suggests that the pending status of a number of motions and related discovery disputes supports reconsideration of the January Order. Respondent’s Motion at 2-5. Respondent also suggests that the fact that Respondent filed an application for review of the ALJ Order denying its motion to compel discovery -- on January 24, 2011, after the Commission issued the January Order -- constitutes a new material fact supporting reconsideration of the January Order. Respondent’s Motion at 5-6. These factors do not, however, provide a basis for reconsideration. It would be anomalous to permit a party to secure a delay in commencement of the evidentiary hearing simply by filing a variety of motions and then arguing that postponement must be granted because the motions have not yet been addressed. In any event, the motions on which Respondent relies have now been addressed³. As a result, neither the date on which the evidentiary

² This is Respondent’s third motion to the Commission seeking a delay in these proceedings. On November 15, 2010, the Commission denied Respondent’s Motion For Stay of Proceeding. *Commission Order Denying Motion For Stay of Proceeding* (November 15, 2010).

³ First, on January 20, 2011, the Chief Administrative Law Judge (“ALJ”) denied Respondent’s Motion For An Order Compelling Discovery, and on February 1, 2011, denied Respondent’s application for review of that order. Second, on January 25, 2011, the ALJ denied Respondent’s Motion To Change Hearing Location, and on February 7, 2011, denied Respondent’s application for review of that order. Third, on January 25, 2011, the ALJ denied Respondent’s Expedited Motion To Amend the Scheduling Order. Fourth, on February 3, 2011, the Commission issued an Opinion and an accompanying Order that denied Respondent’s Motion To Dismiss, granted Complaint Counsel’s Motion for Partial Summary Decision, denied Respondent’s Motion to Disqualify the Commission, and granted Respondent’s Motion for Leave to File Limited Surreply Brief. These documents may all be reviewed on the page for this proceeding, at the following location:
<http://www.ftc.gov/os/adjpro/d9343/index.shtm>.

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hearing will begin nor the place at which it will be conducted has changed since the Complaint was issued more than seven months ago.

We dispose of one other matter in this Order. On February 2, 2011, Respondent filed an application (“Respondent’s Application”) seeking Commission review of the ALJ’s February 1 Order denying Respondent’s Application for Review of Order Denying Respondent’s Motion to Compel. On February 8, 2011, Complaint Counsel filed an opposition. As Complaint Counsel points out, the Commission’s Rules of Practice do not permit Respondent’s Application. Interlocutory appeals to the Commission are governed by Rules 3.23(a) and 3.23(b). 16 C.F.R. § 3.23(a), (b). Commission Rule 3.23(a) does not permit interlocutory appeals to the Commission from ALJ rulings on motions to compel discovery. 16 C.F.R. § 3.23(a). Commission Rule 3.23(b) does permit interlocutory appeals to the Commission from ALJ rulings on such motions but only when (1) the ALJ *fails to rule* on an application to take an interlocutory appeal or (2) the ALJ *grants* the application to take an interlocutory appeal. 16 C.F.R. § 3.23(b). In this case, the ALJ denied Respondent’s application to take an interlocutory appeal on a timely basis. No interlocutory appeal to the Commission therefore may be taken.

* * *

As the foregoing discussion establishes, Respondent has not made the requisite showing of good cause to reconsider the Commission’s January 21, 2011 Order Denying Expedited Motion For A Later Hearing Date. Accordingly,

IT IS ORDERED THAT Respondent’s Motion For Reconsideration Of The Order Denying Expedited Motion For A Later Hearing Date be, and it hereby is, denied; and

IT IS FURTHER ORDERED THAT Respondent’s Application For Review To The Commission Of The Administrative

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Law Judge's Order Denying Respondent's Motion To Compel
Discovery be, and it hereby is, denied.

By the Commission, Commissioner Brill recused.