

Interlocutory Orders, Etc.

IN THE MATTER OF

**THE PENN STATE HERSHEY MEDICAL
CENTER,
AND
PINNACLEHEALTH SYSTEM**

Docket No. 9368. Order, March 21, 2016

Order denying respondent's motion to stay the evidentiary hearing, without staying discovery or any other scheduling order deadlines, "until 60 days after entry of a ruling" on the Commission's district court complaint for a preliminary injunction.

**ORDER DENYING MOTION TO STAY THE ADMINISTRATIVE
HEARINGS**

On December 8, 2015, the Commission issued an administrative complaint alleging that a merger agreement between the Respondents in this administrative proceeding violates Section 5 of the Federal Trade Commission Act, and, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act. On December 9, 2015, pursuant to Section 13(b) of the FTC Act and Section 16 of the Clayton Act, the Commission filed a complaint in United States District Court for the Middle District of Pennsylvania seeking a temporary restraining order and a preliminary injunction to prevent Respondents from consummating their proposed merger until final resolution of this administrative proceeding. Compl., *FTC v. Penn State Hershey Med. Ctr.*, No. 1:15-cv-2362-JEJ (M.D. Pa.) (Dec. 9, 2015). In accordance with Commission Rule 3.11(b) (4), the administrative complaint provides that the evidentiary hearing shall begin on May 17, 2016.

On February 22, 2016, Respondents filed a motion to stay the evidentiary hearing, without staying discovery or any other scheduling order deadlines, "until 60 days after the ruling" on the Commission's district court complaint for a preliminary injunction. Motion at 1. Complaint Counsel opposes the motion.

Commission Rule 3.41(f) provides, in relevant part, that a pending "collateral federal court action that relates to the

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administrative adjudication shall not stay the proceeding unless a court of competent jurisdiction, or the Commission for good cause, so directs.” 16 C.F.R. § 3.41(f) (2016). Respondents rest their motion to stay on the suggestion that the district court may not rule on the preliminary injunction request until after the administrative hearing begins on May 17, 2016. Respondents’ conjecture, however, is not a basis for delaying the administrative hearing. The preliminary injunction hearing is scheduled to begin on April 11, 2016; will be “held over no more than five (5) days;” and will conclude no later than April 15, 2016. Stip. Case Mgmt. Order at 10, *FTC v. Penn State Hershey Med. Ctr.*, No. 1:15-cv-2362-JEJ (M.D. Pa.) (Jan. 19, 2016). At this time, we see no conflict between the two proceedings or any other reason that would justify staying the administrative hearing. Furthermore, as reflected in the Commission’s rules, the Commission has made a commitment to move forward as expeditiously as possible with administrative hearings on the merits. We therefore find that no good cause exists to grant Respondents’ motion to stay.

Accordingly, **IT IS HEREBY ORDERED** that Respondents’ February 22, 2016 Motion To Stay the Administrative Hearing is hereby **denied** without prejudice.

By the Commission.

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IN THE MATTER OF

**CABELL HUNTINGTON HOSPITAL, INC.,
PALLOTTINE HEALTH SERVICES, INC., AND
ST. MARY'S MEDICAL CENTER, INC.**

Docket No. 9366. Order, March 24, 2016

Order granting Complaint Counsel and Respondents Joint Expedited Motion to withdraw this matter from adjudication for thirty days.

**ORDER WITHDRAWING MATTER FROM ADJUDICATION FOR THIRTY
DAYS**

On November 5, 2015, the Commission issued an administrative complaint alleging that an agreement among Respondents Cabell Huntington Hospital, Inc.; Pallottine Health Services, Inc.; and St. Mary's Medical Center, Inc. ("Respondents") – pursuant to which Cabell Huntington Hospital would acquire all the assets of St. Mary's Medical Center – violates Section 5 of the FTC Act, 15 U.S.C. § 45, and that if the acquisition were consummated, it would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act. In accordance with Commission Rule 3.11(b)(4), the administrative complaint provides that the evidentiary hearing shall begin on April 5, 2016.

On March 16, 2016, Complaint Counsel and Respondents filed a Joint Expedited Motion ("Joint Motion") to withdraw this matter from adjudication for thirty days, or in the alternative, to delay the commencement of the administrative evidentiary hearing until at least April 26, 2016. The Parties represent that legislation recently passed by the West Virginia legislature and now signed by the Governor of West Virginia "raises significant new issues about whether the Transaction may become immune from federal antitrust law" and "potentially creates a defense for Respondents that did not exist at the time the Commission voted to initiate the Part 3 action." Joint Motion at 5.

In light of those developments, Complaint Counsel and Respondents believe that there is good cause for the Commission