

Interlocutory Orders, Etc.

IN THE MATTER OF

**SANFORD HEALTH,
SANFORD BISMARCK,
AND
MID DAKOTA CLINIC, P.C.**

Docket No. 9376. Order, November 3, 2017

Order granting in part respondent's Expedited Motion for a Two-Month Stay of Administrative Proceedings.

ORDER GRANTING 14-DAY CONTINUANCE

On October 6, 2017, Respondents Sanford Health, Sanford Bismarck, and Mid Dakota Clinic, P.C. moved to postpone commencement of the administrative hearing in this proceeding from November 28, 2017 to January 30, 2018, and to stay all pre-hearing deadlines for two months. *See* Expedited Motion for a Two-Month Stay of Administrative Proceedings ("Respondents' Motion"). On October 12, 2017, Complaint Counsel responded that Respondents have not shown good cause for the requested relief and consequently opposed Respondents' Motion.¹

Respondents argue that a ruling in a parallel action brought by the Federal Trade Commission in federal district court – seeking a preliminary injunction barring Respondents from merging or acquiring each other's assets or other interests, pending final disposition of this administrative proceeding – will obviate the need for the administrative hearing. In particular, Respondents state that if, after all appeals in the injunction proceedings are exhausted, they are enjoined from consummating the acquisition, they will abandon the transaction. Respondents' Motion at 2-3, Exhibits A-B. Respondents further assert that, if the district court denies an injunction, they will move under Commission Rule 3.26 to withdraw the case from adjudication or to dismiss the administrative proceeding. Respondents' Motion at 4-5. Respondents argue that under either scenario, deferring

¹ On October 13, 2017, Respondents moved for leave to file a reply to Complaint Counsel's opposition filing. That motion is **GRANTED**.

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commencement of the administrative hearing is likely to avoid the expenditure of resources by Respondents, Complaint Counsel, and third parties on administrative litigation that may prove unnecessary. *Id.* at 2-4.

Commission Rule 3.41(f) provides, in relevant part, that a pending “collateral federal court action that relates to the administrative adjudication shall not stay the proceeding . . . [u]nless a court of competent jurisdiction, or the Commission for good cause, so directs.” 16 C.F.R. § 3.41(f). The administrative hearing is scheduled to begin November 28, 2017. The proposed findings of fact for the preliminary injunction hearing are due to be filed on November 10, 2017, and a decision is expected sometime thereafter. Presently, it is not clear whether the two proceedings will in fact overlap.

As reflected in its Rules of Practice, the Commission has committed to moving forward as expeditiously as possible with administrative hearings on the merits. *See, e.g.*, 16 C.F.R. §§ 3.1, 3.11(b)(4), 3.41, 3.46, 3.51-3.52. A two-month delay of the long-scheduled administrative hearing would interfere with that objective in a manner not warranted by present circumstances. At the same time, the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary. Under the circumstances presented, we find that a short continuance is justified. Deferring the start of trial by fourteen days – to December 12, 2017 – and extending remaining pre-hearing deadlines by the same fourteen-day interval – provide additional time for resolution of the district court action without materially delaying the Commission proceeding. We have granted similar, short continuances under comparable circumstances in the past. *See In re Advocate Health Care Network*, 2016 WL 2997850 (F.T.C. May 6, 2016) (granting continuance when “the district court hearing on the Commission's motion for preliminary injunction ha[d] yet to conclude”). Respondents and/or Complaint Counsel, of course, may seek extension of this continuance based on future circumstances. Accordingly,

IT IS HEREBY ORDERED that Respondents’ Expedited Motion for a Two-Month Stay of Administrative Proceedings is **GRANTED IN PART**; and

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IT IS FURTHER ORDERED that the evidentiary hearing in this proceeding shall commence on December 12, 2017, and that, unless modified by the Chief Administrative Law Judge, all related pre-hearing deadlines shall be extended by 14 days.

By the Commission.

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IN THE MATTER OF

1-800 CONTACTS, INC.

Docket No. 9372. Order, November 16, 2017

Order granting a Joint Motion to extend the deadlines for the parties to file their respective appellate briefs.

**ORDER GRANTING JOINT MOTION TO EXTEND DEADLINES FOR
FILING APPEAL, ANSWERING, AND REPLY BRIEFS**

On November 6, 2017, Complaint Counsel and Respondent in this matter filed a Joint Motion to extend the deadlines for the parties to file their respective appellate briefs. Under the Joint Motion's proposed schedule, Respondent would file its Appeal Brief on or before December 6, 2017; Complaint Counsel would file its Answering Brief on or before January 24, 2018; and Respondent would file its Reply Brief on or before February 9, 2018. The parties request these extensions "in order to prevent cancellation of holiday travel plans and to ensure that [they] have sufficient time to provide helpful, yet thorough, briefs in this case." This small delay in the schedule will accommodate counsels' schedules and provide a modicum of additional time for the preparation of briefs.

In light of the foregoing and pursuant to Commission Rule 4.3(b), 16 C.F.R. § 4.3(b), we find there is good cause to grant the parties' joint request to extend the deadlines for the filing of their respective appeals briefs. Accordingly,

IT IS HEREBY ORDERED THAT Respondent must file its Appeal Brief on or before December 6, 2017, and if Respondent files its Appeal Brief by that date, its appeal from the Initial Decision will be treated as having been perfected in accordance with Commission Rule 3.52(b)(2);

IT IS FURTHER ORDERED THAT Complaint Counsel must file its Answering Brief on or before January 24, 2018; and

IT IS FURTHER ORDERED THAT Respondent must file its Reply Brief on or before February 9, 2018.