

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

**THE NORTH CAROLINA BOARD OF
DENTAL EXAMINERS**

DOCKET NO. 9343

ORDER DENYING EXPEDITED MOTION FOR A LATER HEARING DATE

The Federal Trade Commission issued the Administrative Complaint in the above-captioned matter on June 17, 2010, and it 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. On November 2, 2010, Complaint Counsel filed a Motion For Partial Summary Decision ("Summary Decision Motion"), and on November 3, 2010, Respondent filed a Motion To Dismiss. Respondent has now filed an Expedited Motion For A Later Hearing Date ("Expedited Motion"), requesting that the Commission postpone the beginning of the administrative hearing until May 18, 2011. Counsel for Respondent advise that Complaint Counsel intend to oppose the Expedited Motion.

On November 15, 2010, the Commission issued an Order denying Respondent's Motion to stay the proceedings until Respondent's Motion To Dismiss had been determined on the merits. As the Commission noted in that Order, Commission Rule 3.22(b) provides:

A motion under consideration by the Commission shall not stay proceedings before the Administrative Law Judge unless the Commission so orders.¹

Thus, when the Commission promulgated the current version of Commission Rule 3.22(b), it stated:

¹ Order Denying Motion For Stay of Proceeding at 1 (Nov. 15, 2010) (hereinafter November 15 Order) (quoting 16 C.F.R. § 3.22(b)).

The purpose of proposed paragraph [3.22](b) was to ensure that discovery and other prehearing proceedings continue while the Commission deliberates over the dispositive motions²

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. Respondent argues that good cause exists “when a scheduling order deadline ‘cannot be met despite the diligence of the party seeking the extension.’” Expedited Motion at 3 (citations omitted). Respondent argues further that the following developments support a finding of good cause: (1) discovery is ongoing; (2) the Summary Decision Motion, the Motion To Dismiss, and Respondent’s January 14, 2011 Motion To Disqualify the Commission are pending; and (3) Respondent’s Motion For An Order Compelling Discovery is pending. Expedited Motion at 3-7.

None of these circumstances provides any support for the requisite showing of good cause, and in particular, Respondent has not established that it cannot meet the deadlines at issue. With respect to discovery, Chief Administrative Law Judge Chappell issued the Scheduling Order in this matter on July 15, 2010; the Order provides a detailed set of deadlines for all components of the discovery process; and Respondent has thus been aware of that schedule for more than five months. With respect to pending Motions, the Commission has already determined that the pendency of the Summary Decision Motion and the Motion To Dismiss does not warrant staying the proceedings,³ and the filing of the Motion To Disqualify provides no support for a different conclusion. With respect to the Motion To Compel, the ALJ has now issued an order denying that motion.⁴

As this discussion establishes, Respondent has not given the Commission any reason to depart from our preference to move Part 3 matters expeditiously. Accordingly,

IT IS ORDERED THAT Respondent’s Expedited Motion For A Later Hearing Date be, and it hereby is, denied.

By the Commission, Commissioner Brill recused.

SEAL:
ISSUED: January 21, 2011

Donald S. Clark
Secretary

²Federal Trade Commission, 16 C.F.R. Parts 3 and 4: Rules of Practice: Interim Final Rules With Request For Comment, 74 Fed. Reg. 1804, 1810 (Jan. 13, 2009), *adopted as final*, 74 Fed. Reg. 20205 (May 1, 2009). The amendments thus effected govern all Commission adjudicatory proceedings commenced after January 13, 2009, such as this proceeding. *See* 74 Fed. Reg. at 1804.

³ November 15 Order at 2.

⁴ Order Denying Respondent’s Motion To Compel (Jan. 20, 2011).