

INTERLOCUTORY, VACATING, AND
MISCELLANEOUS ORDERS

KNOLL ASSOCIATES, INC.*

Docket 8549. Supplementary Ruling, Feb. 25, 1965

Upon petition by respondent the Commission reopened this case for further proceedings on the question of whether respondent's constitutional immunity against unlawful search and seizure had been violated. The hearing examiner found that none of the respondent's constitutional rights had been infringed upon.

SUPPLEMENTARY RULING UPON RESPONDENT'S MOTION
TO SUPPRESS BASED UPON RECORD AS REOPENED

CHRONOLOGY OF RELEVANT EVENTS

January 1, 1961—March 5, 1964

- January 1, 1961 —Herbert Prosser goes to work for Joseph Dworski in Birmingham, Michigan showroom.
- September 1, 1963 —Gary Beals of Knoll moves into Dworski showroom. Shortly thereafter Prosser seeks unsuccessfully to have Dworski and Knoll indicate what Prosser's business future will be. Knoll and Dworski ignore and evade Prosser's inquiries.
- October 9, 1963 —Prosser makes personal call in the late evening upon Turiel and Brod at their hotel room in Detroit.
- November 13, 1963 —Prosser telephones Turiel in his hotel room in Detroit in the morning to inquire "how case is going."
- December 9, 1963 —At luncheon meeting at Kingsley Inn, Dworski and Knoll representatives still refuse to tell Prosser whether they will hire him after contract with Dworski is terminated in 3 weeks.
- Prosser telephones Turiel in Washington, D.C., and offers to testify for Federal Trade Commission and to turn over documents damaging to Knoll. Turiel refuses the offer. Dworski, Beals and William Nolan of Knoll are informed of Prosser's call to Turiel and

* This case is reported p. 311 herein.

- his, Prosser's, offer to be a witness and turn over documents.
- In the evening, Dworski and Beals talk with Prosser over the telephone about his earlier telephone conversation with Turiel.
- December 10, 1963 (About 7 a.m.) —Prosser goes to Woodward Avenue showroom early in the morning and obtains documents.
- (About 8:30 a.m.) —Knoll's employee, Beals, goes into Woodward Avenue showroom "a little earlier that day * * * out of suspicion * * *" (Tr. 4466), and observes that someone has been in showroom before him, that morning.
- January 1, 1964 —Beals changes locks on showroom door. Knoll terminates arrangement with Dworski. Prosser terminates arrangement with Dworski.
- January 2, 1964 —Prosser calls Turiel at parents' home in New York City late in evening and persuades Turiel to permit him, Prosser, to send documents to Turiel.
- January 5, 1964 —Prosser sends documents to Turiel.
- January 6/7, 1964 —Turiel receives Prosser documents in New York office of Federal Trade Commission.
- January 13, 1964 —Telephone call from Prosser to Turiel to inquire whether Turiel has received documents.
- February 19, 1964 —Telephone call from Turiel to Prosser.
- February 24, 1964 —Turiel and Brod file motion to admit authenticity of documents.
- February 25, 1964 —Imberman receives copy of motion to admit with documents attached. Documents sent to Detroit for authentication.
- February 28, 1964 —Imberman goes to Detroit and converses with "various persons in that city" (page 2 of Imberman affidavit of March 4, 1964).
- Dworski, *not* Imberman, who is also in Detroit, calls Prosser by telephone concerning the documents.
- March 5, 1964 —Knoll's lawyers file motion to suppress documents based upon alleged unlawful search and seizure.

The hearing examiner is faced, for the second time in this proceeding, with determining whether Knoll's constitutional immunity against unlawful search and seizure¹ has been violated. On March 24, 1964, after evaluating all of the evidence which counsel had offered on the search and seizure issue up to that time, the hearing examiner determined that Knoll's constitutional immunity had not been violated, and so found in his ruling dated March 24, 1964.²

On November 19, 1964 [66 F.T.C. 1577], the Federal Trade Com-

¹ Amendment IV, U.S. Constitution.

² The hearing examiner incorporates herein by reference and makes a part hereof his March 24, 1964, ruling.

mission ordered this record, which had been closed since August 24, 1964, to be reopened and additional hearings to be conducted; specifically directed Messrs. Bernard Turiel and Ernest Brod to testify under oath; ordered all pertinent material in the Commission's files to be exhibited to Knoll's lawyers; and ordered the hearing examiner to receive "such other evidence as the examiner deems pertinent to resolve the issues raised by the motions of respondent denied by the order of the hearing examiner of March 24, 1964."

Hearings were conducted in Washington, D.C., on December 23, 1964, and in Detroit, Michigan, on January 5, 6, 7, and 8, 1965. Complaint counsel have exhibited to Knoll's lawyers all the documents in the Commission's files relating to this issue, and have delivered to Knoll's lawyers photostatic copies of all such documents which Knoll's lawyers requested.³

Messrs. Brod and Turiel have testified under oath, and have been grilled by Knoll's lawyers. Mr. Herbert Prosser testified, as well as Paul R. Copeland, national sales manager of Knoll.

Everything has been done that could be done to air fully Knoll's charges, and to develop a complete record. Such omissions, if any, as may be in the record may be ascribed to Knoll's lawyers' failure to place in the record certain evidence, or their refraining from asking certain pointed questions.

No restrictions were placed upon the length or scope of the hearings, and counsel were permitted to offer all evidence which they deemed pertinent to the issue of unlawful search and seizure. The reopened record was closed by order of the examiner dated January 11, 1965. Briefs and reply briefs have been filed.

The additional evidence (Tr. 4839-5647), which was received after the record was reopened, does not justify any modification or change in the basic findings and conclusions in the hearing examiner's ruling of March 24, 1964.

The hearing examiner heard and observed the witnesses in the hearing room and on the witness stand. He observed their demeanor and their manner of answering questions. He was able to and did form an opinion as to their reliability and credibility. He was able to and did form a judgment as to the weight and probative value of the witnesses' testimony in preparing this

³It is to be noted in passing that, although Knoll's lawyers insisted that Mr. Brod be available as a witness at the Detroit hearings, and although Mr. Brod was actually present in Detroit, Michigan, from January 4 through January 7, 1965, Knoll's lawyers refused to call Mr. Brod. Mr. Brod had testified on December 23, 1964, and the examiner had sought, unsuccessfully, to have the January hearings transferred from Detroit, Michigan, to Washington, D.C., in order to save substantial time and money. However, Knoll's lawyers rejected the suggestion and, even at this late date, the hearing examiner is unable to explain why the suggestion was rejected.

supplementary ruling. There are no material contradictions in the sworn testimony of Messrs. Turiel, Brod, and Herbert Prosser. There are, of course, human variations in skill of recollection and precision of memory.

The hearing examiner, after a careful study of the record made after reopening, finds no reason for changing the conclusion in his March 24, 1964, ruling.

The record shows, and the examiner finds:

Herbert Prosser (Tr. 5576, *et seq.*), who last testified on January 6, 1965, in Detroit, Michigan, was thirty-four years old at the time of his testimony. A native of Jersey City, New Jersey, he was educated in Jersey City, New York City, Allenville, New York, and had two years of college education which terminated in 1951. Mr. Prosser had never been a member of the armed services; had never married; was unemployed; and, throughout these proceedings, has never been represented by a lawyer.

At the time of his last testimony, Mr. Prosser had been out of college for approximately fourteen years. Those fourteen years had been spent representing Thayer, Incorporated, manufacturers of juvenile furniture, out of Gardner, Massachusetts. Mr. Prosser also represented Keystone Midwest Company, a drug manufacturer, and worked out of Chicago, Illinois. He had represented Union National and Burns Case Goods Company out of Jamestown, New York. He had worked for a brief period for a manufacturer of summer furniture located in Toledo, Ohio, and he had, of course, worked for Joseph Dworski, the Knoll representative in the Detroit, Michigan, area from January 1, 1961, through December 31, 1963. In 1956, Mr. Prosser went to the West Coast and worked for most of that year for the San Francisco Chronicle. After he terminated his services with the Chronicle, he went to work for the Toledo, Ohio, furniture manufacturer mentioned above.

At the time of his testimony on January 7, 1965, Mr. Prosser's family consisted of his father and one brother. Mr. Prosser had worked in Chicago, Des Moines, Milwaukee, New York City, San Francisco, Toledo, and Detroit.

When Mr. Prosser went to work for Joseph Dworski in January 1961, Dworski was a registered practicing architect in the State of Michigan, and a representative of Knoll Associates, Inc. The record does not contain a written contract embodying the business arrangement between Dworski and Knoll, although there is inference that such business arrangement was in writing.

When Prosser went to work for Dworski, Dworski owned the improved real estate at 1080 North Woodward Avenue, Birming-

ham, Michigan; paid taxes, maintenance, upkeep and utility bills thereon; and paid all other charges involved in the ownership and operation of the real estate. It was Dworski's property in every legal sense. The real estate was improved with a showroom. On the outside of the window of the showroom the word "Knoll" had been inscribed in the distinctive script which Knoll uses as its trademark.

Initially Dworski compensated Prosser on a straight salary basis. After one year, this arrangement was changed, orally, so that Prosser was compensated on a salary plus commission basis.

Prosser "was the sales representative employed by Mr. Dworski" and his "responsibilities were the showroom and they were of a very loose nature" (Tr. 5388). Also employed were: a full time secretary, Miss Rose Weishar; a part time secretary, Mrs. Kathryn Sanders; a porter who cleaned the showroom; and on a part time basis draftsmen and carpenters (Tr. 5388). During the latter part of 1963, Gary Beals, a Knoll employee, also used the showroom facilities, but his status was never specifically explained to Mr. Prosser.

Prosser secured design commissions for Dworski as an interior designer, but Prosser's principal job was to promote the sale of Knoll furniture. In so doing, Prosser called upon various dealers in, and prospective users of, Knoll furniture. Prosser did not know the specifics of Dworski's business arrangements with Knoll (Tr. 5389). Dworski was sales representative for Knoll in the State of Michigan and the western tier counties of Ohio, the city of Fort Wayne [Indiana] and several counties surrounding Fort Wayne (Tr. 5390-91). When Prosser helped with a sale of Knoll furniture, he received a commission from the sale.

Prosser was paid his salary by Dworski. Dworski was Prosser's employer. Prosser took his orders from Dworski, and carried out the instructions which Dworski gave him. Although Prosser devoted most of his time as Dworski's employee to promoting the sale of Knoll furniture, Prosser carried out other instructions from Dworski, which were not related to the sale of Knoll furniture.

Dworski, as a practicing architect, specified Knoll furniture in some of the submissions he made to prospective buyers, and was compensated by Knoll for the Knoll furniture that he sold by this, and other techniques. Prosser participated in Dworski's commissions under the terms of the employment contract between Prosser and Dworski.

Dworski maintained his architectural office in the Birmingham showroom, but he also practiced architecture from an office in

his home. Prosser's office was in the showroom where he had his own desk; was responsible for the day to day operations; and prepared papers and documents used in such day to day operations of Dworski's business.

In addition to his files in the showroom, Prosser also kept files in his residence quarters, where he had a typewriter upon which he wrote letters and other documents pertaining to Dworski's business.

Prosser had unrestricted access to, and full use of, all of the papers and documents in the showroom and in his residence quarters, with the exception of such papers, if any, which Dworski may have kept in his private desk.

On September 1, 1963, Gary Beals, who had previously been employed by Knoll Associates, Inc., in Dallas, Texas, was transferred from Dallas to Detroit as prospective regional manager. Knoll was terminating Dworski's agency and Beals was to take over as regional manager. Knoll would operate a factory showroom directly from Dworski's property on Woodward Avenue (Tr. 4456). Since January 1, 1964, the Dworski property has been used by Knoll as a factory showroom, and office.

Beals testified that Prosser knew that Beals was going to take over as regional manager for Knoll as of January 1, 1964 (Tr. 4457). However, the record proves, and the hearing examiner finds, that neither Dworski nor Knoll at any time apprised Prosser of what Prosser's business future would be after December 31, 1963. Knoll's refusal to inform Prosser concerning his business future prompted Prosser's outburst of temper at the luncheon meeting at Kingsley Inn in Bloomfield Hills on December 9, 1963 (see March 24, 1964 ruling).

Beals, Knoll's employee and witness, testified in part (Tr. 4458-4459):

Q. Just tell us what the discussion was between Mr. Prosser and Mr. Helm concerning Prosser's personal position.

A. Herb Prosser generally pressed Helm. He said, "Am I going to be held by Knoll Associates? What am I going to be earning?" The exact words were, "What's the payoff going to be?" Helm said, "I'm not in a position to tell you at the present time. I cannot tell you what we anticipate, and I can't tell you what the arrangements will be." He said he wished he could tell him whether he would be wanted in Detroit but he couldn't tell him for a week or ten days.

Q. What were Prosser's remarks?

A. He was very angry. He said that he was extremely unfair and that he had been working for two and a half years, "And I think by this time you should be in a position to make an offer to me." John agreed and said, "Yes, I agree with you, but I am prevented from doing so at the present time."

And Herb kept harping on the point and he kept saying he thought that it was extremely unfair of them and Johnny went along, and Herb said, "I owe you \$1200 for some furniture I purchased," and he intimated that if he didn't get a good deal he wouldn't be paying for this furniture, and I remember John said, "This is enough to prevent us from hiring you," and at this point Herb became furious and in an extremely loud voice, shouting at the top of his voice and pounding on the table and he used some swear words—is it all right if I quote these? He said, "I have given a lot of my god-damn time to this god-damn company," at the top of his voice and it was said extremely loud. John said, "Calm down, it's not good to lose your temper." (Tr. 4458-59.)

Knoll's business conduct toward Prosser from September 1, 1963, on was justification for Prosser's behavior and probably accounts for Prosser's call to Turiel's hotel room on October 9, 1963, and his subsequently expressed desire to help Turiel against Knoll. Knoll was under no *legal* obligation to tell Prosser what his business future would be after December 31, 1963, but Dworski probably had such obligation. Dworski and Knoll would appear to have been under a compelling *moral* obligation to tell Prosser, "What's the payoff going to be?" (Tr. 4458). We can only speculate whether Knoll directed Dworski not to tell Prosser what his business future would be as far as Knoll was concerned.

Beals' presence in the Birmingham, Michigan, office was never explained to Prosser, nor was any explanation given of how Beals' presence and Beals' status would affect Prosser's future. Beals was promoting the sale of Knoll furniture in the Detroit, Michigan, area.

Dworski⁴ informed Prosser that Dworski's contract with Knoll would terminate on December 31, 1963, and Dworski had led Prosser to believe that several options were open to Dworski, including Dworski's remaining as Knoll's representative, or Knoll's direct operation of the showroom.

Prosser's efforts to obtain from Knoll, its officers, employees, or from Dworski, any positive statement as to what his, Prosser's, future would be was met by what Prosser characterized as Knoll's "smug indifference" (Tr. 5429).

During the week of October 7, 1963, hearings in this proceeding were going forward in Detroit. One evening that week, probably October 9, 1963, Bernard Turiel and Ernest Brod were working in their hotel room at the Sheraton Cadillac Hotel in Detroit when they received a telephone call around 10:30 p.m. from Prosser, asking that he be allowed to come up to talk to them. Turiel and Brod were suspicious that Prosser had been sent to

⁴ Dworski had died since the record was originally closed on August 24, 1964, and was, therefore, not available as a witness during the reopened proceedings.

