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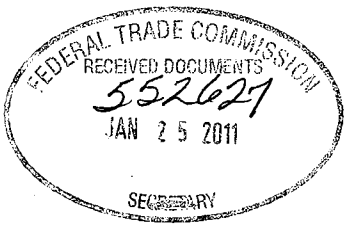

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of The North Carolina Board of Dental Examiners, Respondent.	)	DOCKET NO. 9343

ORDER DENYING RESPONDENT'S MOTION TO CHANGE HEARING LOCATION

I.

On January 14, 2011, Respondent filed a Motion to Change Hearing Location ("Motion"). Complaint Counsel filed its Response to Respondent's Motion to Change Hearing Location on January 19, 2011. For the reasons set forth below, Respondent's Motion is DENIED.

II.

Respondent seeks an order to change the location of the hearing in the above captioned matter to Raleigh, North Carolina. Respondent asserts that the location of the hearing, in Room 532 of the Federal Trade Commission building in Washington, D.C., was selected by the Commission without discussion among the parties and argues that a Washington, D.C. forum is unnecessary for Complaint Counsel to pursue this action. Respondent further states that instances giving rise to this action all occurred within the State of North Carolina and that 18 of Respondent's 20 fact witnesses and 14 of Complaint Counsel's fact witnesses are located in North Carolina. Thus, Respondent argues, Raleigh, North Carolina would be more convenient than Washington, D.C., for the witnesses in this proceeding.

Respondent argues that the Fourth Circuit Court of Appeals has held that a denial of a request to change the location of the proceedings under circumstances similar to those presented here was an abuse of discretion. Lastly, Respondent states that, "[t]here is sufficient courtroom space within which the hearing of this matter may be conducted in Raleigh, NC."

Complaint Counsel argues that Respondent's Motion, filed nearly seven months after learning that the hearing in this matter was scheduled to take place in Washington,

D.C., and with only one month remaining before the start of trial, is far too late in the proceedings and far too close to trial to be anything other than an attempt to materially inconvenience Complaint Counsel's trial preparations. Complaint Counsel contends that the incremental convenience to some witnesses cannot overcome the extreme prejudice to Complaint Counsel that relocation of the trial would cause, and does not overcome the impracticability of making relocation arrangements just a few weeks before the start of trial. Complaint Counsel also argues that because all the documentary and testimonial evidence can readily be made available in the Commission's Hearing Room in Washington D.C., Washington D.C. is an appropriate trial location.

In addition, Complaint Counsel argues that the authority relied upon by Respondent is not applicable because a motion to transfer a case pursuant to 28 U.S.C. § 1404 ("§ 1404 transfer") transfers a matter from one fully operational system to another – the trier of fact as well as the site of the trial; a §1404 transfer does not require a sitting judge to arrange for appropriate courtrooms, chambers, and other facilities in a distant locale, uproot together with books, technical equipment, and clerks, and conduct a trial in an unfamiliar community, with minimal support, while living out of a suitcase. Complaint Counsel also contends that because "contacts with the forum state," as evaluated under a § 1404 transfer, is not a proper inquiry, whether the events being litigated occurred in North Carolina is immaterial. Finally, Complaint Counsel argues that Respondent's unsupported statement that there is sufficient courtroom space in Raleigh, North Carolina, is not adequate.

III.

Pursuant to the governing Commission Rule, Rule 3.41(b)(1), "[h]earings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place. . . ." 16 C.F.R. § 3.41(b)(1). In addition, "[t]he Administrative Law Judge may order hearings at more than one place. . . ." 16 C.F.R. § 3.41(b)(1). In support of its motion to change the hearing location, Respondent relies on two cases from the Court of Appeals for the Fourth Circuit, which adjudicated the question of transfer under 28 U.S.C. § 1404(a).

Where the Federal Rules of Civil Procedure are similar to the Commission's Rules of Practice, those rules and case law interpreting them may be useful, though not controlling, in adjudicating a dispute. *In re L.G. Balfour Co.,* No. 8435, 61 F.T.C. 1491, 1492, 1962 FTC LEXIS 367, *4 (Oct. 5, 1962); *In re Gemtronics, Inc.,* 2010 FTC LEXIS 40, *10 (April 27, 2010). In this dispute, however, the federal statute controlling change of venue is not similar to the Commission's Rule on hearing location. The federal statute sets forth: "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The Commission's headquarters, its Administrative Law Judges, and its usual hearing room are located only in Washington, D.C., and thus Washington, D.C. is the only location in which a Part III complaint "might

have been brought."[1] Thus, the federal statute controlling change of venue and cases interpreting motions to transfer a case from one district court to another are not applicable.

Under the Commission's Rules, the Administrative Law Judge "may order hearings at more than one place" and thus has discretion to hold hearings in a location other than Washington, D.C. Indeed, in *In re North Texas Specialty Physicians*, a change of location was permitted where, unlike the instant case, all counsel were in a location other than Washington, D.C.,[2] all fact witnesses were located in or near Forth Worth, Texas, and all parties agreed that it was more practicable to hold the hearing in Fort Worth, Texas. In addition, unlike Respondent herein, the request was made at the initial scheduling conference, well in advance of trial. Finally, the Administrative Law Judge's obligations in other cases then pending in Part III adjudication permitted such a change in hearing location. Therefore, the hearing, with the exception of closing arguments, was held in Forth Worth, Texas. *In re North Texas Specialty Physicians*, Docket No. 9312, *available at* http://ftc.gov/os/adjpro/d9312/031016aljschedulingorder.pdf (Administrative Law Judge D. Michael Chappell presiding).

The Commission Rule requires that the hearing shall be held at one place, insofar as practicable. An overriding consideration in exercising the discretion granted to the Administrative Law Judge under the Commission Rule is whether setting the hearing away from the location set by the Commission in the Complaint will allow the hearing "to proceed with all reasonable expedition." 16 C.F.R. § 3.41(b)(1). Thus, administrative efficiency must be considered. Changing the hearing location would require the undersigned to travel to Raleigh, North Carolina. In addition, although Respondent stated that "[t]here is sufficient courtroom space within which the hearing of this matter may be conducted in Raleigh, NC," this unsupported statement fails to provide sufficient assurance that appropriate facilities are available on such short notice. Trial in this matter is set to begin on February 17, 2011, less than one month from now. To change the hearing location at this time is not practicable.

Moreover, a change in the location of this hearing, scheduled to begin on February 17, 2011, would require the Administrative Law Judge to spend significant time away from Washington, D.C., at a time when three other pending matters scheduled for trial in May 2011 will require the attention of the Administrative Law Judge. Thus, to

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[1] Some of the factors that district courts consider in determining whether to grant a motion to transfer venue also simply have no bearing on the question of where to hold a Part III administrative hearing. Those factors include: "(1) the plaintiff's choice of forum, (2) the convenience of witnesses, (3) the location of relevant documents and relative ease of access to sources of proof, (4) the convenience of parties, (5) the locus of operative facts, (6) the availability of process to compel the attendance of unwilling witnesses, and (7) the relative means of the parties." *D.H. Blair & Co., v. Gottdiener*, 462 F.3d 95, 106-07 (2nd Cir. 2006) (internal quotation marks and alteration omitted). While a district court considers the locus of operative facts, it will almost always be the case that the material events giving rise to the matters brought by the Federal Trade Commission will occur in locations other than the District of Columbia.

[2] FTC attorneys prosecuting that case were predominantly from the FTC's New York Office.

hold the hearings in Raleigh, North Carolina is not practicable and not in the interest of administrative efficiency.

For the above stated reasons, Respondent's motion is DENIED.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: January 25, 2011