William H. Isely - Appellant
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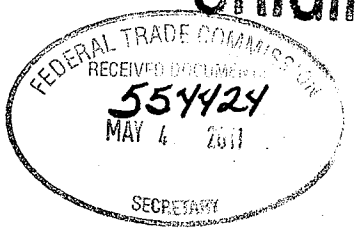


To:

Patricia S. Connor, Clerk
U. S. Court of Appeals for the Fourth Circuit
1100 East Main Streeet, Suite 501
Richmond, Virginia, 23219-3517

CC to: ✓ Donald Clark, Sec. FTC .
John Daly FTC
Lawrence DeMille-Wagman FTC
S. M. Oliva

Dear Ms. Patricia S. Connor:

Enclosed is a supplement to my motion of April 27, 2011, my Motion to Deny Respondent's Motion to Dismiss, which was my Response. This supplement provides the Law which requires that the Respondent's Motion to Dismiss be denied.

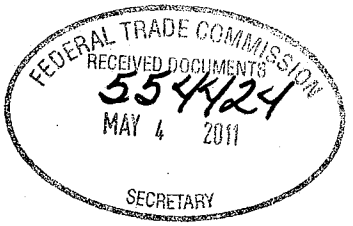
It is not clear why the Respondent's Counsel has asked for Dismissil except as a ploy to obtain additional time to respond to my application for review. If the Counsel is qualified to appear before the Court of Appeals of the 4th Circuit, he should know their Rules provide the appellant with 60 days to enter a petition for a Review.

DATED this 2nd of May, 2011.

William H. Isely
WILLIAM H. ISELY
Appellant, *pro se*

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ORIGINAL



GEMTRONICS, INC. & WILLIAM H. ISELY
Appellants,

v.

FEDERAL TRADE COMMISSION,
Respondent.

No. 11-1301

SUPPLEMENT TO APPELLANT'S MOTION (RESPONSE) TO DENY RESPONDENT'S (FTC) MOTION TO DISMISS

William H. Wisely hereby continues to petition this Court with a supplement to deny the Respondent's (FTC) motion to dismiss Appellants' Request for Review from an order rendered by the FTC on Feb. 11, 2011, and to continue proceedings as scheduled by the Court. This supplement identifies the Law that requires the Respondent's motion to be denied.

The Respondent has claimed, erroneously, that the Appellants' petition was submitted in an untimely manner, which is not the case. Appellants concede that their petition was filed 47 day after the Commission's order was entered. However from the Court of Appeals, 4th Circuit Federal Rules of Appellate procedure,. Rule 4 (a) (1) (B) allows 60 days, so the Petition was submitted in a timely manner. A quote from Rule 4 reads:

> **"When the United States or its officers or agency is a party, the notice of appeal may be filed by any party within 60 days after judgment or order appealed from is entered."**

For their claim of 30 days the FTC Respondent had cited 5 U.S.C 504(c)(2) of the Federal Administrative Procedure Act. In anticipation of conflicts with statutes, when the Federal Rules of Appellate Procedure were last modified December 1, 2010, as Authority For Promulgation of Rules Title 28 U.S.C. 2072 it included paragraph (b)

> **"Such rules shall not abridge, enlarge or modify any substantive right. All laws in**

conflict with such rules shall be of no further force or effect after such rules have taken effect."

It is noted that the Congress and the Supreme Court have approved the Federal Rules of Appellate Procedure from which the Fourth Circuit Rules were derived. So it is clear that where the Federal Administrative Procedure conflicts with the Fourth Circuit Federal Rules of Procedure, that the latter prevails and the former has no force or further effect.

Even if Rule 4 (a)(1)(B) was not controlling, the Respondent's Motion to Dismiss is flawed. In 5 U.S.C. 504 (a)(2), another paragraph of the law cited by Respondents, a 30 day period starts with the language, "within thirty days of a final disposition in the adversary adjudication." This is different from the expression used in Rule 4 which is from when the order has been entered. Much litigation has involved the meaning of "final disposition", but it has generally been held to be only when no further actions in the case are possible. The times of various contingencies written into the FTC Rules allowing the Commission to modify, reverse, or delay orders after being issued, have to run their course before the order is final and the 30 day period can begin.

A case in point. is ***Secretary of Labor v Martin Construction*** where the Secretary had dismissed as untimely an EAJA application but was later reversed on the basis that the order was not final and so the point to start the time allowed to submit a petition started later than calculated by the Secretary. It should be noted that in this 2007 case, the 60 day period to seek an appellant review was not contested and the final disposition was found to be even greater.

In the instant case this period might not be determined without extensive adjudication which is not necessary under Rule 4 of the governing procedure which simply sets it at 60 days.

DATED this 2nd of MAY, 2011.

William H. Isely

WILLIAM H. ISELY
Appellant, *pro se*

CERTIFICATE OF SERVICE

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I certify that on_5-2-2011, I served a complete copy of this Response supplement to Respondent's Motion to Dismiss on all Parties by priority mail addressed as shown below and by e-mail to all parties except the Clerk.

Patricia S. Connor, Clerk
U. S. Court of Appeals for the Fourth Circuit
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DATED this 2nd of May, 2011.

William H. Isely

WILLIAM H. ISELY
Appellant, *pro se*