

ORIGINAL



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 PREVENT
PUBLIC POSTING OF COMPLAINT COUNSEL’S POST-TRIAL FILINGS
ON THE FEDERAL TRADE COMMISSION’S WEBSITE**

I.

By Order dated May 16, 2011, Respondent’s Motion to Prevent Public Posting of Complaint Counsel’s Post-Trial Brief and Proposed Findings of Fact and Conclusions of Law (“Post-Trial Filings”) Containing Confidential Information on the Federal Trade Commission’s Website (“Respondent’s Motion”) was denied without prejudice (the “May 16, 2011 Order”).¹ The May 16, 2011 Order addressed the two types of information that may be withheld from the public record: confidential information that has been granted *in camera* treatment and “sensitive personal information.”

With respect to the first category of information that may be withheld from the public record, the May 16, 2011 Order explained that pursuant to Commission Rule 3.45(b), once materials designated as confidential have been “offered into evidence,” such materials may not be withheld from the public record unless they are covered by an order granting *in camera* treatment. The May 16, 2011 Order also made clear that both the Protective Order and the Scheduling Order entered in this case expressly advised Respondent that it was required to file a motion for *in camera* treatment if it sought to prevent confidential information from being placed on the public record of the trial. The May 16, 2011 Order stated: “Respondent, despite being informed of the requirement, failed to move for *in camera* treatment of information marked as confidential that was offered into evidence.” On this basis, the May 16, 2011 Order held: “Material designated by Respondent as ‘confidential’ that was not made subject to an *in camera* order shall not be withheld from the public record.”

¹ The Office of the Secretary of the Federal Trade Commission has refrained from posting the Post-Trial Filings on the Federal Trade Commission’s website pending the resolution of Respondent’s Motion.

With respect to the second category of information that may be withheld from the public record, the May 16, 2011 Order explained that “sensitive personal information” shall be withheld from the public record and cited the Commission’s definition of “sensitive personal information”:

“Sensitive personal information” shall include, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.

16 C.F.R. § 3.45(b).

Complaint Counsel stated in its Opposition, filed on May 9, 2011, that none of its Post-Trial Filings contain any “sensitive personal information,” within the meaning of Rule 3.45(b). In an abundance of caution, the May 16, 2011 Order directed Respondent to review all of Complaint Counsel’s Post-Trial Filings and to send a letter to Complaint Counsel, with a courtesy copy to the Office of Administrative Law Judges, identifying -- with reference to each specific proposed finding of fact or page in the brief -- any instances of the disclosure of “sensitive personal information” contained in Complaint Counsel’s Post-Trial Filings that were derived from documents produced by Respondent.

Pursuant to that directive, Respondent submitted a letter, dated May 20, 2011. Complaint Counsel did not reply or file a response to the May 20, 2011 letter.

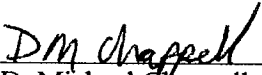
In Respondent’s May 20, 2011 letter, Respondent identifies, by proposed finding of fact number, two categories of information that it argues constitute “sensitive personal information.” Respondent describes the first category of information as containing “currently open case files of the State Board,” which include “identification of complainant and substance of complaint,” “names of open cases,” “details of case; cease and desist recipient’s name and address,” or “communications with complainants.” Respondent describes the second category of information as disclosure of revenues received by former or current Board members that were from teeth whitening services.

Respondent also reasserts in the May 20, 2011 letter that, pursuant to North Carolina law, currently open case files of the State Board are “entitled to confidentiality.” However, as explained in the May 16, 2011 Order, the Federal Trade Commission’s Rules of Practice govern whether confidential information may be given *in camera* protection and withheld from the public record in this proceeding.

Upon review of the challenged proposed findings, the May 20, 2011 letter, Respondent’s Motion, and Complaint Counsel’s Opposition thereto, it is clear that none of the information Respondent seeks to have withheld from the public record constitutes “sensitive personal information” as defined in Commission Rule 3.45(b). Accordingly, Respondent’s Motion is DENIED.

The Office of the Secretary of the Federal Trade Commission is hereby notified that the Post-Trial Filings in this case need not, due to Respondent's Motion, be withheld from the Federal Trade Commission's website.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: June 3, 2011