UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION

Federal Trade Commission v. Glenn W. Turner Enterprises, Inc.

446 F. Supp. 1113 (M.D. Fla. 1978) · No. No. 77-67-Orl-Civ-R · Decided March 15, 1978

SUMMARY

The court denied the defendant's motion to dismiss an action by the Federal Trade Commission seeking consumer redress under Section 19 of the Federal Trade Commission Act. The court held that the statute-of-limitations issue required factual development and construed Section 19 to permit redress for deceptive practices that were the subject of a final cease-and-desist order, including conduct preceding the order.

CASE DETAILS

COURT	United States District Court for the Middle District of Florida, Orlando Division
WRITING FOR THE COURT	Reed, District Judge
JURISDICTION	USA
DECIDED	March 15, 1978
DOCKET	No. 77-67-Orl-Civ-R
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant moved to dismiss the Federal Trade Commission's action for consumer redress under Section 19 of the Federal Trade Commission Act.
STANDARD OF REVIEW	On a motion to dismiss, the court accepted sufficiently pleaded allegations for purposes of determining whether the action stated a legally cognizable claim; a fact-dependent statute-of-limitations defense was not suitable for resolution on the motion.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority within the Middle District of Florida and nonbinding authority elsewhere.

TOPICS

motions to dismiss · statute of limitations · affirmative defenses · statutory interpretation · consumer protection

PRACTICE AREAS

consumer protection · administrative law · civil procedure · statutory interpretation · remedies

QUESTIONS PRESENTED

1. Whether the statute-of-limitations defense could be resolved on the motion to dismiss when the accrual issue depended on disputed facts concerning service of the cease-and-desist order.
2. Whether Section 19(a)(2) authorizes consumer redress for the deceptive act or practice that was the specific subject of a final cease-and-desist order even if the conduct was not repeated or continued in violation of that order.
3. Whether Section 19 authorizes consumer redress for conduct occurring before the enactment of Section 19 when the requirements of Section 206(b) of the Federal Trade Commission Improvement Act are satisfied.

HOLDINGS

1. The statute-of-limitations issue could not be decided on the motion to dismiss because its resolution depended on disputed facts concerning how, when, and where the cease-and-desist order was served and whether the service location qualified under the applicable rule.
2. Section 19(a)(2) authorizes consumer redress for the deceptive act or practice that was the specific subject of the final cease-and-desist order, even if that act or practice was not repeated or continued in violation of the order.
3. Consumer redress may be sought under Section 19(a)(2) for conduct occurring before Section 19 was enacted when the cease-and-desist order was entered after January 4, 1975, and the defendant was notified that consumer redress might be sought.

KEY QUOTATIONS

> *"Because the statute of limitations problem involves issues of fact, it is not appropriate for decision on the basis of the motion to dismiss."* (446 F. Supp. at 1114)

> *"While statutes are normally to be construed literally, such a construction is not warranted where it creates a conflict within the statute or a patently unreasonable result."* (446 F. Supp. at 1115)

> *"For this reason, the court construes Section 19(a)(2) as authorizing consumer redress for the act or practice which was the specific subject of the cease and desist order, even though the act or practice may not have been repeated or continued in violation of the order."* (446 F. Supp. at 1115)

FACTUAL BACKGROUND

The Federal Trade Commission brought an action seeking consumer redress under Section 19 of the Federal Trade Commission Act based on conduct allegedly covered by a final cease-and-desist order. The defendant argued that the action was time-barred, that Section 19(a)(2) authorized redress only for conduct occurring after and violating the cease-and-desist order, and that redress was unavailable for conduct predating Section 19. The court concluded that the limitations issue required factual development and rejected the defendant's restrictive interpretations of the statute.

PROCEDURAL HISTORY

The defendant filed a motion to dismiss on March 23, 1977, asserting statute-of-limitations, statutory-authorization, and retroactivity grounds. The district court held that the limitations issue depended on disputed facts and was not appropriate for resolution on a motion to dismiss, while rejecting the defendant's two statutory arguments. The motion to dismiss was denied.

DISPOSITION

dismissed

Retrieved from lawtools.ai · https://lawtools.ai/cases/state/usa-united-states-district-court-for-the-middle-district-of-florida-orlando-division/1978/federal-trade-commission-v-glenn-w-turner-enterprises-inc-gcg4lli0