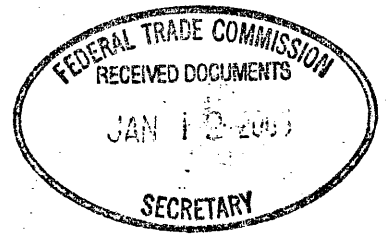


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
)

DYNAMIC HEALTH OF FLORIDA, LLC)
CHHABRA GROUP, LLC)
DBS LABORATORIES, LLC)
VINEET K. CHHABRA aka VINCENT K. CHHABRA, and)
JONATHAN BARASH,)
Respondent.)
)

Docket No. 9317

**ORDER ON COMPLAINT COUNSEL'S MOTIONS TO COMPEL DISCOVERY
AND RESPONDENTS' SECOND MOTION FOR PROTECTIVE ORDER
AND TO STAY PROCEEDINGS**

I.

On December 20, 2004, Complaint Counsel filed a motion seeking to compel Respondents Chhabra, Dynamic Health, LLC, and Chhabra Group, LLC (collectively "Respondents") to produce documents and answers to interrogatories ("Motion to compel"). On December 30, 2004, Respondents filed their opposition ("Opposition to motion to compel").

On December 23, 2004, Complaint Counsel filed a motion seeking to compel adequate and complete responses to requests for admission ("Motion to compel admissions"). On January 4, 2005, Respondents filed their opposition ("Opposition to motion to compel admissions").

On December 30, 2004, Respondents filed a second motion for protective order and to stay proceedings ("Motion to stay"). On January 7, 2005, Complaint Counsel filed its opposition ("Opposition to motion to stay"). The motion for protective order and to stay proceedings will be addressed first with the disposition of the two discovery motions following.

II.

Respondents argue in the motion to stay that the burdens imposed on Chhabra by proceeding with this case at this time are great; Complaint Counsel's legitimate interests in resolving this case quickly are virtually non-existent; and a stay will not undermine any public interest, third party interest, or court interest concerning this case when balanced against Chhabra's due process right to defend this case and assert his Fifth Amendment privilege against self-incrimination. Motion to stay at 4-9. Complaint Counsel contends that Respondents'

request to further stay these proceedings is not warranted; and a stay of the proceedings at this time will undermine the Commission's interest in proceeding expeditiously with this litigation, frustrate the public's interest, and constitute an inefficient use of judicial resources. Opposition to motion to stay at 3-6.

Complaint Counsel argues in the two discovery motions that Chhabra has waived his Fifth Amendment privilege against self-incrimination; Respondents' argument that the United States government seized responsive documents is factually incorrect; the general objections asserted by Respondents based upon a variety of grounds are without merit; Dynamic Health has not made the reasonable inquiry required by the Commission's rules; and Chhabra is required to provide answers to the requests for admissions. Motion to compel at 3-8; Motion to compel admissions at 2-8. Respondents contend in opposition to the two discovery motions that Complaint Counsel grossly misrepresents Fifth Amendment jurisprudence; Respondent Chhabra has not waived his Fifth Amendment rights; Complaint Counsel's quest for new documents is unavailing since these documents do not exist or are not under the custody of Respondents; and Respondents Chhabra Group, LLC and Dynamic Health, LLC are in the process of preparing additional responses to Complaint Counsel's interrogatory requests. Opposition to motion to compel at 3-5; Opposition to motion to compel admissions at 3-5.

III.

Commission Rule 3.42 authorizes the Administrative Law Judge ("ALJ") to "conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order" in each case. 16 C.F.R. § 3.42(c). "An administrative law judge has both the authority and the duty to control an adjudicative proceeding so as to ensure a fair and impartial hearing." *In re Intel Corp.*, 1999 FTC LEXIS 206 (Mar. 2, 1999). ALJs should "exercise their discretion in regulating the course of adjudicative proceedings in a manner that expedites proceedings, consistent with due process considerations." 61 Fed. Reg. 50640, 50641 (Sept. 26, 1996).

A "court may decide in its discretion to stay civil proceedings, postpone civil discovery, or impose protective orders and conditions 'when the interests of justice seem[] to require such action, sometimes at the request of the prosecution, . . . sometimes at the request of the defense[.]'" *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1375 (D.C. Cir. 1980) (quoting *U.S. v. Kordel*, 397 U.S. 1, 12 n.27 (1970)). A noncriminal proceeding, if not deferred, "might undermine the party's Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits of Federal Rule of Criminal Procedure 16(b), expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case." *Dresser*, 628 F.2d at 1376. "If delay of the noncriminal proceeding would not seriously injure the public interest, a court may be justified in deferring it." *Dresser*, 628 F.2d at 1376. "A court must decide whether to stay civil proceedings in the face of criminal proceedings in light of the particular circumstances and competing interests involved in the case." *Fed. Sav. and Loan Inc. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989).

By Order dated August 2, 2004, this case was stayed through October 15, 2004 pending a criminal trial in a federal court proceeding. The parties represent that a plea agreement was entered in the federal court proceeding and the parties to the federal court proceeding are in the process of scheduling a sentencing date. Motion to stay at 2; Opposition to stay at 2. The factors that weighed in favor of granting the original stay also weigh in favor of staying the proceedings through sentencing. Specifically, a criminal indictment has been filed; sentencing is imminent; the duration of the stay is limited; discovery in this case may involve facts related to the criminal charges; the products at issue are no longer being sold to the public; and there has been no demonstration that discovery will be adversely impaired by a delay. Because the criminal sentence is not final until the requirements of the plea agreement are met, due process considerations require the Court to stay the proceedings at least through formal sentencing. *See* 61 Fed. Reg. at 50641. However, to assure that this matter is resolved expeditiously, the parties will be required to provide joint status reports as outlined below in section IV.

Based on the ruling on the motion to stay, it is not necessary to decide the discovery motions at this point. In addition, Complaint Counsel filed their discovery motions without sufficiently conferring with opposing counsel in an effort to resolve the discovery disputes as required by Rule 3.22(f). For example, Respondents indicate in their opposition briefs that they are in the process of providing additional responsive discovery. Opposition to motion to compel at 5-6; Opposition to motion to compel admissions at 5. Filing a motion with the Court should be a last resort after the parties have made every effort to resolve their discovery disputes between themselves. Accordingly, the discovery motions are not ripe for determination at this point. Prior to renewing any motions to compel, the parties shall meet and confer in good faith in an effort to resolve discovery disputes.

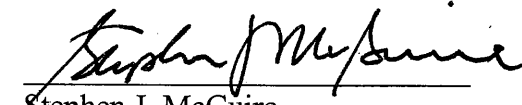
IV.

For the above stated reasons, Respondents' motion for stay is **GRANTED IN PART AND DENIED IN PART**. The matter will be stayed through entry of formal sentence in the federal court proceeding. Respondents' motion seeking a stay through the duration of the sentence or for a Federal Rule of Civil Rule 26(c) protective order is **DENIED WITHOUT PREJUDICE**.

The parties shall, within **fourteen days** of the date of this Order, **file a written joint status report** advising the Court of the anticipated date of sentencing in the federal court proceeding and outlining the status of settlement negotiations. To ensure prompt resolution of this matter, the parties shall file an updated written joint status report within **twenty-one days** of the prior status report advising the Court of the status of sentencing in the federal court proceeding and outlining the status of settlement negotiations. **These status reports shall continue to be filed within twenty-one days of the most recent status report through the duration of the stay.** Although the case is temporarily stayed, the parties are strongly advised to continue negotiating settlement and resolving discovery disputes.

After formal entry of sentence in the federal court matter, the Court will conduct a status conference by telephone to discuss whether the case should proceed and what issues may arise should the case proceed while Respondent Chhabra is incarcerated. At that time, the parties shall be prepared to advise the court of the status of settlement negotiations, whether discovery disputes have been resolved, and any additional issues as directed by the Court.

ORDERED:



Stephen J. McGuire
Chief Administrative Law Judge

January 12, 2005