
IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 11-1679

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS,

Plaintiff-Appellant,

v.

FEDERAL TRADE COMMISSION,

Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

SUPPLEMENTAL BRIEF OF THE FEDERAL TRADE COMMISSION

THOMAS G. WALKER
United States Attorney

BY: JENNIFER P. MAY-PARKER
SETH M. WOOD
Assistant United States Attorneys
310 New Bern Avenue
Suite 800
Raleigh, North Carolina 27601
Telephone: (919) 856-4530
Attorneys for Appellee

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STATEMENT OF ISSUE

On November 2, 2012, the Court directed the parties to file supplemental briefs addressing whether this appeal is moot. The

OVERVIEW¹

Plaintiff North Carolina State Board of Dental Examiners ("Board") filed a complaint for declaratory judgment and for a preliminary and permanent injunction with the United States District Court for the Eastern District of North Carolina on

proceedings pending its decision on the motion to dismiss. (J.A. 5, Docket Entry 22).

The district court granted the Commission's motion to dismiss on May 3, 2011. (J.A. 149-58). Among other things, the court held that it is "well-settled that this court lacks jurisdiction to enjoin ongoing administrative enforcement proceedings such as the one at issue here." (J.A. 153). The district court also noted that, in the event the Commission issued a final order subject to review, the Board could appeal that order exclusively to this Court. (J.A. 154-55). Judgment was entered on May 9, 2009. (J.A. 159). The Board filed a timely notice of appeal on June 27, 2011. (J.A. 160).

On December 2, 2011, the Commission issued a final cease and desist order in the administrative case at issue in this appeal. North Carolina Bd. of Dental Examiners, Final Order, Docket No. 9343 (F.T.C.) (Dec. 2, 2011), available at <http://www.ftc.gov/os/adjpro/d9343/111207ncdentalorder.pdf> (last accessed Dec. 16, 2011) ("Final Order"). Pursuant to 15 U.S.C. § 45(c), the Board challenged the Commission's final order in this Court. NC Board of Dental Examiners v. FTC, Case No. 12-

1172. Oral argument in Case Number 12-1172 is scheduled for December 5, 2012.

SUMMARY OF ARGUMENT

The original administrative proceeding that the Board challenged has concluded. The Board has appealed the final administrative order to this Court, pursuant to 15 U.S.C. § 45(c). As no live case or controversy remains as to the Board's original complaint and its appeal in this matter, this appeal is moot. Additionally, no exceptions to the mootness doctrine apply. Consequently, this Court should dismiss this matter based on mootness.

ARGUMENT

A case is moot “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the out-come.” Incumaa v. Ozmint, 507 F.3d 281, 286 (4th Cir. 2007) (quoting Powell v. McCormack, 395 U.S. 486, 496 (1969)).

“[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed.”

Id. (quoting Church of Scientology of Cal. v. United States 200 f BT /TT1 1

this case"). In its opening brief, the Board asked this Court to reverse the district court and "order the Commission to dismiss its administrative proceeding." (Brief at 49-50).

When the Commission filed its brief with the Court on October 6, 2011, the Commission had not yet issued its final order. On December 2, 2011, however, the Commission issued a final order upholding the ALJ's initial decision. See Final Order. As a result of this final order, the Board has appealed to this Court pursuant to 15 U.S.C. § 45(c). The parties have

Commission. See Suarez v. Rooney, 53 F. App'x 703, 703 (4th Cir. 2003) (unpublished). In Suarez, this Court dismissed as moot an appeal from a district court's denial of a 28 U.S.C. § 2241 petition that attempted to stop the petitioner's removal. This Court concluded that the petitioner's appeal was moot after the petitioner filed a direct challenge to his removal on the merits. Id. (holding that the "petition for review on the merits renders moot the jurisdictional issue in the current appeal by causing it to lose 'its character as a present, live controversy of the kind that must exist if we are to avoid

CONCLUSION

For the foregoing reasons, this Court should dismiss this appeal as moot. In the alternative, it should affirm the judgment of the district court for the reasons articulated in the Commission's brief.

Respectfully submitted, this 15th day of November, 2012.

THOMAS G. WALKER
United States Attorney

BY: /s/ Seth M. Wood
SETH M. WOOD
Assistant United States Attorney
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601-1461
Telephone: 919-856-4530

Jennifer P. May-Parker
Assistant United States Attorney
Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

Noel L. Allen
M. Jackson Nichols
Alfred P. Carlton, Jr.
Catherine E. Lee
Nathan E. Standley
Bric A. Allen
ALLEN, PINNIX & NICHOLS, P.A.

/s/ Seth M. Wood

SETH M. WOOD

Assistant United States Attorney