

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

SOUTH WATER MARKET CREDIT
ASSOCIATION,

Defendant.

Civil Action No.

Filed: March 1, 1984

Entered: May 30, 1984

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on March 1, _____ 1984, and defendant, by its attorney, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

ORDERED, ADJUDGED, AND DECREED as follows:

1.

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

As used in this Final Judgment:

- A. "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;
- B. "Produce" means fresh fruits and vegetables;
- C. "Member" means any member of the defendant pursuant to the terms specified in its bylaws; and
- D. "The date of entry" means the date on which this Final Judgment is entered by this Court. Acts required to be done "on" an anniversary of the date of entry must be done on or before that date.

III.

This Final Judgment applies to the defendant and to its officers, directors, managers, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

The defendant is enjoined and restrained from directly or indirectly entering into, adhering to, enforcing, or maintaining any contract, understanding, rule, bylaw, regulation, plan, or program with or affecting any member, or urging any member to engage in any practice, which:

(a) fixes, maintains, or establishes the length of time which that member grants or allows customers before payment for produce sold becomes due;

(b) prevents or interferes with the granting of credit to any person by any member; or

(c) fixes, maintains, or establishes the amount or any term or condition of credit which any member grants or offers to any person in connection with the sale of produce.

V.

The defendant is enjoined from using any stationery, form, or form letter which (a) refers to bills being due on Thursday or any other specified day of the week following purchase, or within any other specified time after purchase, except as provided in the notice that this Final Judgment requires the defendant to provide to its members, or (b) states that customers who do not pay their bills on time will be denied credit by members.

VI.

A. Nothing contained in this Final Judgment shall prevent the defendant from circulating to members (1) information concerning the payment history of any person, or (2) the fact that information concerning the credit worthiness of any person is unavailable.

B. Nothing contained in this Final Judgment shall prevent the defendant from (1) conducting credit investigations on

behalf of members for the purpose of obtaining credit information for circulation to members, or (2) conducting its business in any other reasonable, lawful, commercial fashion.

VII.

The defendant is hereby ordered:

A. To inform members by providing them with a notice in the form of Exhibit A attached hereto, within thirty (30) days of the date of entry, again six months after the date of entry, and on the anniversary of the date of entry for three (3) years: (a) of the substance of the terms of the Final Judgment; (b) that each of them must individually establish terms and conditions of sale; and (c) that each of them is free to extend credit to any person or firm whatsoever;

B. Within thirty (30) days from the date of entry, and on the first anniversary of the date of entry for three (3) years, to notify each of its officers, managers, and employees who have contact with members or their customers, of the obligations imposed on each of them by this Final Judgment;

C. To have copies of this Final Judgment, including Exhibit A, available for public inspection in its offices, and to provide a copy to any person who requests one for a reasonable copying fee; and

D. Within sixty (60) days from the date of entry, and on the anniversary of the date of entry for a period of three (3) years, to inform plaintiff of actions taken to ensure compliance with this Final Judgment, and to provide plaintiff a copy of any rule or bylaw enacted by the defendant within the preceding year.

VIII.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees, and agents of defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment.

No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten days notice to the defendant before divulging the material in any legal proceedings (other than a grand jury proceeding) to which the defendant is not a party.

IX.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for the enforcement of compliance with it or for the punishment of any violation of it.

X.

This Final Judgment shall be in effect for the period of ten years following the date of entry.

XI.

Entry of this Final Judgment is in the public interest.

Dated: May 30, 1984

/s/ Judge Susan C. Getzendanner
United States District Judge

EXHIBIT A

NOTICE TO MEMBERS OF THE SOUTH WATER MARKET CREDIT ASSOCIATION

The United States Department of Justice, on March 1, 1984, filed a complaint in United States District Court in Chicago alleging that the South Water Market Credit Association (the "Association") had violated the Sherman Antitrust Act by engaging in a combination and agreement to fix and maintain credit terms employed in the sale of produce. The complaint alleged that in pursuit of their agreement, the Association and others, among other things, had:

(a) agreed to fix the length of time for which Association members extend credit to customers;

(b) agreed to withhold credit from customers who did not pay their bills within the terms the Association established; and

(c) agreed to withhold credit from customers who did not establish credit through the Association.

The Association, without making any admission of wrongdoing or violation of any laws, entered a consent decree with the government settling the lawsuit. The decree has now been entered by the Court. It requires that we publish this notice so that you understand the decree. A copy of the entire decree is attached, and copies of the decree will be available

at the Association's office. Violations of the decree can be punished as civil or criminal contempt of court. The Association and any person who participated in any such violation could be prosecuted, so it is important that you understand and comply with the decree.

Under the decree, the Association cannot have any agreement like those described above with any member. Accordingly, you are free to establish your own credit terms with your customers. You can extend credit to anyone you like, including accounts who have not furnished a financial statement to the Association and accounts identified as delinquent. Previous Association Credit Rules to the contrary are no longer valid. You can extend credit for any period of time you desire.

The Association will continue to distribute information to you concerning the identity of persons who do not pay their bills on time and provide other credit information regarding your customers. You can use this information as you see fit.

The U.S.D.A. regulations regarding prompt payment continue to be in effect. If you and your customer do not discuss when payment of a credit bill is due, and you have no announced terms, then payment is due in 10 days under current regulations. However, under the regulations, you can establish any other length of credit you desire, and payment within those

terms constitutes the prompt payment required by the Perishable Agricultural Commodities Act of 1930 (commonly known as the "PACA").

Finally, in choosing what terms of Sale you offer to your customers, you cannot reach any understanding or agreement with any other Association member regarding credit terms. Any such agreement or understanding would violate the Sherman Antitrust Act and could subject you to civil or even criminal prosecution. You may, of course, make any credit terms of sale with your customers as you see fit. You may require that payment of credit purchases be made in any period of time that is agreeable to you and your customer.