

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA,)
) PLAINTIFF,)
))
VS.)
))
STEWART MECHANICAL)
ENTERPRISES, INC.)
) DEFENDANT.)

Civil No. C75-0377L(A)

Filed: March 15, 1979

Entered: 7/20/79


STIPULATION

It is stipulated by and between the undersigned parties,
by their respective attorneys, that:


1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on this defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff and defendant in this and any other proceeding.

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. C75-0377L(A)
)	
STEWART MECHANICAL)	Filed: March 15, 1979
ENTERPRISES, INC.,)	
)	Entered: 7/20/79
Defendant.)	

FINAL JUDGMENT

The Plaintiff, having filed its Complaint herein on November 18, 1975, and the Defendant, having appeared by its attorney, and having filed its Answer to such Complaint denying the substantive allegations thereof; and Plaintiff and Defendant, by their respective attorneys, having consented to the making and entry of this Final Judgment herein, without trial or adjudication of, or finding on, any issues of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any such issues;

NOW, THEREFORE, without any testimony having been taken herein, and without trial or adjudication of or finding on any issues of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto, and the Complaint states

claims upon which relief may be granted against Defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II

As used in this Final Judgment:

(A) "Person" shall mean any individual, corporation, partnership, firm, association or other business or legal entity;

(B) "Mechanical contracting services" shall mean the contracting for, and the installation of, all phases of plumbing, pipe fitting, and sheet metal work in or at job sites for new construction or for renovation purposes;

(C) "Mechanical contractor" shall mean any person engaged in the business of providing mechanical contracting services for customers;

(D) "Mechanical contracting supplies" shall mean products, including, but not limited to, pipe, sanitary plumbing fixtures, valves, faucets, fittings, hangers, connectors, and heating and air conditioning units, sold and installed by companies rendering mechanical contracting services.

III

The provisions of this Final Judgment applicable to the Defendant shall also apply to its subsidiaries, successors, assigns, officers, directors, agents, servants and employees, and to all 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, provided, however, that this Final Judgment shall not apply to transactions or activities solely between the Defendant and its directors, officers, employees, parent companies, subsidiaries or any of them when acting in such capacity.

IV

The Defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, furthering, enforcing or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination or conspiracy with any other mechanical contractor to:

(A) Submit any noncompetitive, collusive or complementary bid for any project requiring mechanical contracting services;

(B) Include any agreed-upon charge in any bid on a project requiring mechanical contracting services;

(C) Compensate unsuccessful bidders on a project requiring mechanical contracting services;

(D) Refrain from bidding on a project requiring mechanical contracting services;

(E) Exchange information concerning bid amounts or bid ranges with respect to mechanical contracting jobs.

V

The Defendant is enjoined and restrained from furnishing to or exchanging with any other mechanical contractor any information concerning the prices, terms, or other conditions of sale or lease which any mechanical contractor has submitted, intends to submit or is considering submitting to any prospective customer prior to the release of such information to the public or to the trade generally.

VI

Nothing in this Final Judgment shall be:

(A) Applicable to any price, terms or other conditions of sale, lease or rental offered by the Defendant

to any other mechanical contractor or offered by any other mechanical contractor to the Defendant in negotiating a purchase, sale, lease, or rental of mechanical contracting supplies or mechanical contracting equipment between this Defendant and such other mechanical contractor;

(B) Deemed to prohibit the Defendant from entering into, participating in, or maintaining with any other person a joint venture or sub-contract agreement whereby a single bid will be submitted and the assets and facilities of each of the parties thereto will be combined for rendering mechanical contracting services, provided that the transaction is denominated as a joint venture or sub-contract agreement in the bid submitted to the prospective customer.

VII

The Defendant is ordered and directed for a period of five (5) years from the date of entry of this Final Judgment to affix to every bid or quotation for the rendering of mechanical contracting services a written certification, signed by an officer of the Defendant responsible for the preparation of bids or quotations, that such bid or quotation was not in any way the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan or program, whether formal or informal, between the Defendant and any other mechanical contractor, except as specifically permitted by Paragraph VI of this Final Judgment.

VIII

The Defendant is ordered and directed to:

(A) Furnish a copy of this Final Judgment to each of its officers, directors, sales managers and service managers within thirty (30) days after the date of entry of this Final Judgment;

(B) Furnish a copy of this Final Judgment to each successor to those persons described in subparagraph (A) hereof within thirty (30) days after each such successor is employed;

(C) Obtain from each such person furnished a copy of this Final Judgment pursuant to subparagraphs (A) and (B) hereof, a signed receipt therefor, which receipt shall be retained in the Defendant's files;

(D) Attach to each copy of this Final Judgment furnished pursuant to subparagraphs (A) and (B) hereof a statement advising each person of his obligations and of the Defendant's obligations under this Final Judgment, and of the criminal penalties which may be imposed upon him and/or upon the Defendant for violation of this Final Judgment;

(E) Hold, within forty-five (45) days after the date of entry of this Final Judgment, a meeting of the persons described in subparagraph (A) hereof, at which meeting such persons shall be instructed concerning the Defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year for a period of five (5) years from the date of entry of this Final Judgment, which meetings shall also be attended by the persons described in subparagraph (B) hereof;

(F) Establish and implement a plan for monitoring compliance by the persons described in subparagraphs (A) and (B) hereof with the terms of this Final Judgment; and

(G) File with this Court and serve upon the Plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of the Defendant's compliance with subparagraphs (A), (C) and (D) hereof.

IX

(A) For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendant made to its principal office, be permitted, subject to any legally recognized privilege;

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

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

(B) The Defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Paragraph IX 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.

If at any time information or documents are furnished by the Defendant to the Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents of a type described in 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 10 days notice shall be given by Plaintiff to the Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the Defendant is not a party.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment 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 the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

XI

Entry of this Final Judgment is in the public interest.

/s/ Charles M. Allen
UNITED STATES DISTRICT JUDGE

Entered: July 20, 1979