

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,	)	
	)	Civil No. 83-1947
Plaintiff,	)	
	)	Filed: April 15, 1983
v.	)	
	)	
STATE BOARD OF CERTIFIED PUBLIC	)	15 U.S.C. §1 (Antitrust Vio-
ACCOUNTANTS OF LOUISIANA,	)	lation Alleged)
	)	
Defendant.	)	15 U.S.C. §4 (Equitable Relief Sought)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed under Section 4 of the Sherman Act, as amended (15 U.S.C. § 4), in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. § 1).

2. The defendant, State Board of Certified Public Accountants of Louisiana (hereinafter referred to as the "Board"), maintains its principal office, transacts business and is found within the Eastern District of Louisiana.

## II

### DEFENDANT

3. The Board is made the defendant herein. The Board is comprised of five practicing certified public accountants and is organized and exists under Section 1 of Chapter 2 of Acts 1979, No. 510 of Louisiana (LSA R.S. 37:71 et seq.). The Board maintains its principal office in New Orleans, Louisiana. The Board's members are appointed by the Governor of Louisiana from a slate of nominees chosen by the Society of Louisiana Certified Public Accountants. Louisiana law requires that Board members be residents of Louisiana and hold Board certificates and licenses. While serving their membership terms, Board members may, and do, continue to practice as certified public accountants (hereinafter referred to as "CPAs") in Louisiana. Board members are compensated when attending to the work of the Board from funds generated by the payment of certification and licensing fees by CPAs to the Board.

4. The Board is the sole licensing authority of CPAs in Louisiana. It administers written examinations and otherwise supervises the qualification, certification and licensing of CPAs for practice within Louisiana. Upon payment of fees, the Board annually issues certificates and licenses to all properly qualified CPAs. It is unlawful in Louisiana for individuals to practice or offer to practice as CPAs, or to represent that they are CPAs, unless they have been properly certified and licensed by the Board and hold a current Board certificate and license to practice in Louisiana.

5. Pursuant to the terms of Section 1 of Chapter 2 of Acts 1979, No. 510 of Louisiana, the Board may promulgate and amend rules of professional conduct for CPAs. The Board is also authorized to take disciplinary action against any licensee who violates any of the rules of professional conduct. Such disciplinary action may include the issuance of a cease and desist order, the reprimand of a licensee, or the suspension, refusal to renew, or revocation of the offender's certificate or license.

6. The laws of Louisiana are silent as to the form or content of any rules of professional conduct and neither direct, require, nor mandate restrictions upon, or the regulation of, solicitation or advertising of CPAs' services. No policy of restricting or regulating solicitation or advertising in the offering of CPAs' services has been established or dictated by Louisiana.

### III

#### CO-CONSPIRATORS

7. Various other persons not made defendants herein have participated as co-conspirators with the defendant in the violation hereinafter alleged, and have performed acts and have made statements in furtherance thereof.

## IV

### TRADE AND COMMERCE

8. CPAs provide general accounting services, including, among other things, reviews and audits leading to the issuance of opinions attesting to the accuracy of financial statements; under Louisiana law, only CPAs may issue opinions as to these matters. CPAs also give tax advice, prepare tax returns, provide bookkeeping services and provide management advisory services; under Louisiana law, such services may also be performed by persons other than licensed CPAs. There are more than 5500 CPAs licensed by the Board to practice in Louisiana. More than \$100 million are spent annually by Louisiana residents and governmental entities for CPAs' services.

9. In selecting a CPA, clients consider such factors as quality of service, price, reputation, timeliness of performance of services, and the firm's experience and expertise. Advertising and oral and written solicitation, as well as referrals, enable CPAs to inform potential clients about these factors and to prompt inquiries. Advertising and solicitation benefit consumers by increasing the amount of information available to them and by furthering competition among accounting firms.

10. At least as early as 1974, the Board adopted rules of professional conduct to regulate CPAs. The Board has amended and supplemented these rules from time to time. The rules of professional conduct regulate, among other things, the ability of CPAs to solicit and advertise for potential clients.

11. The Board's current rules of professional conduct applicable to advertising and solicitation are Rules 5.5.3, 5.5.4, and 5.5.5. Exhibit A, attached to this Complaint, sets forth the text of these rules.

12. The services provided by CPAs licensed by the Board involve and affect individuals, corporations, and other business entities throughout the United States. These services facilitate, direct, and shape the conduct of interstate business and contribute to the flow of persons, money, goods, and services into and out of Louisiana. In the course of rendering services, Board licensees located in Louisiana travel to states other than Louisiana and make substantial use of interstate mail and telephone services in the transport of funds, documents, plans, reports, and other communications. Many Louisiana CPAs are in partnership with CPAs practicing in states other than Louisiana.

13. The Board's rules of professional conduct prohibit CPAs from using interstate telephone services to solicit potential clients and restrict the content of advertising and written solicitation sent through the mails or otherwise disseminated in interstate commerce.

14. The activities of the Board and its licensees, as described herein, are within the flow of interstate commerce and have a substantial effect upon interstate commerce.

V

VIOLATION ALLEGED

15. Beginning at least as early as 1974, and continuing up to and including the date of the filing of this Complaint, the defendant and co-conspirators have been engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act. Said violation is continuing and will continue unless the relief hereinafter prayed for is granted.

16. The aforesaid combination and conspiracy has consisted of an agreement, understanding and concert of action among the defendant and co-conspirators to restrain competition among CPAs by unreasonably restricting advertising and solicitation.

17. In furtherance of the aforesaid combination and conspiracy, the defendant and co-conspirators have done those things which they have combined and conspired to do, including, among other things:

- (a) from at least 1974 until 1979, the Board maintained rules of professional conduct that prohibited all advertising and solicitation;

- (b) in 1979, the Board adopted rules of professional conduct that continued to prohibit all direct, uninvited written and oral solicitation, and further prohibited advertisements disseminating certain types of truthful and useful information about CPAs' services, including but not limited to information reflecting a firm's past performance and areas of practice specialization or expertise, comparisons with other CPAs, testimonials, and laudatory statements;
- (c) in 1983, after the institution of the investigation leading to the filing of this Complaint, the Board adopted rules of professional conduct that continued to prohibit all direct, uninvited oral solicitation and, as to all direct, uninvited written solicitation, imposed the same prohibitions against certain types of truthful and useful information about CPAs' services that have been in effect since 1979 with regard to advertisements generally; and
- (d) from 1974 to the present, the Board has interpreted and enforced its rules of professional conduct in a manner that has unreasonably prevented or discouraged CPAs from conveying in advertisements or through solicitation information useful to consumers of CPAs' services.

VI

EFFECTS

18. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) solicitation and advertising for clients by CPAs have been unreasonably restricted;
- (b) competition in the sale of CPAs' services has been unreasonably restrained;
- (c) consumers of CPAs' services have been deprived of information as to CPAs' services and of the benefits of free and open competition in the sale of such services; and
- (d) CPAs have been unreasonably restrained in their ability to make their services readily and fully known and available to consumers requiring such services.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant and co-conspirators have engaged in an unlawful combination and conspiracy in restraint of trade in violation of Section 1 of the Sherman Act by the adoption and enforcement of the rules of professional conduct regarding advertising and solicitation complained of herein.

2. That the defendant be required to cancel all such rules of professional conduct and every other resolution or statement

of policy which has the purpose or effect of unreasonably restricting solicitation or advertising by Board licensees.

3. That the defendant, its members and all other persons acting or claiming to act on its behalf be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the aforesaid combination and conspiracy or from engaging in any other combination, conspiracy, contract, agreement, understanding, or concert of action having similar purposes or effects, and from adopting, ratifying, or following any rules, practice, plan, program, or device having similar purposes or effects.

4. That the defendant be required to notify all Board licensees and the general public that it has cancelled and rescinded all rules of professional conduct and every other resolution or statement of policy which has the purpose or effect of unreasonably restricting solicitation and advertising by Board licensees.

5. That the Court impose such additional restrictions on the defendant as are necessary to insure that any rule or policy adopted by the Board pertaining to advertising or solicitation by CPAs is not applied, interpreted, or otherwise enforced in a manner that unreasonably restrains advertising or solicitation, the dissemination of information, or competition among CPAs.

6. That the defendant be required to submit semiannually for a period of five years to the Department of Justice

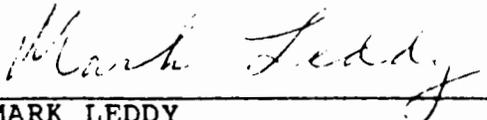
information and copies of correspondence with Board licensees concerning the application, interpretation, or enforcement of any rule or policy pertaining to advertising or solicitation by CPAs.

7. That the plaintiff have such other and further relief as the Court may deem just and proper.

8. That the plaintiff recover the costs of this suit.

  
WILLIAM F. BAXTER  
Assistant Attorney General

  
ANN LEA HARDING  
Trial Attorney

  
MARK LEDDY

  
EDWARD D. ELIASBERG, JR.

  
JOHN W. POOLE, JR.

Attorneys, United States  
Department of Justice  
10th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Telephone: (202) 633-1419

  
THOMAS L. GREANEY

Attorneys, United States  
Department of Justice

JOHN VOLZ  
United States Attorney  
Eastern District of Louisiana

EXHIBIT A

5.5.3 Advertising.

A. Licensees shall have the right to advertise. However, a licensee shall not use or participate in the use of any public communication or advertisement which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes but is not limited to a statement or claim which:

1. Contains a misrepresentation of fact; or
2. Is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or
3. Contains any testimonial or laudatory statement, or other statement or implication that the licensee's professional services are of exceptional quality, or statements intended to attract clients by use of showmanship, hucksterism, slogans, jingles, or other garish language; or
4. Is intended or likely to create false or unjustified expectations of favorable results; or
5. Implies educational or professional attainments or licensing recognition not supported in fact; or
6. States, implies, or claims that the licensee has received formal recognition as a specialist or has any specialized expertise in any aspect of the practice of public accountancy without stating from whom the recognition has been received; or
7. States or implies that the licensee's ingenuity and/or prior record are principal factors likely to determine the results of the services rather than the merit of the facts involved, or contains statistical data or information so as to reflect past performance or predict future success; or
8. Represents that professional services can or will be completely performed for a stated fee when this is not the case, or makes representations

with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or

9. Contains other representations or implications beyond those set forth in B below that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived; or

10. Implies the ability to influence any court, tribune, regulatory agency or similar body or any official thereof; or

11. Makes comparison with other CPAs.

B. As an example, a licensee may use or participate in the use of a public communication which states in a dignified manner the following information about the licensee and any associated licensees:

1. Name, firm name, address, telephone numbers, office hours, and telephone-answering hours;

2. Biographical and educational background;

3. Professional memberships and attainments;

4. Description of services offered;

5. The limitation of practice to certain areas of service;

6. The opening or change in location of any office and changes in personnel;

7. Fees charged for the initial consultation, for specific services of average complexity, and hourly rates. Quoted fees must be adhered to for a reasonable period not less than thirty days after the publication.

C. All licensees shall retain copies or recordings of all public communications by date of publication for a period of at least three years.

5.5.4 Solicitation. A licensee shall not by any direct uninvited personal communication solicit an engagement to perform professional services:

A. If the communication would violate Rule

5.5.3 above if it were a public communication; or

B. By the use of coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct; or

C. Where the solicitation is done in-person or by telephone by the licensee or an employee or agent of the licensee.

Any written solicitation shall be subject to the provisions of Rule 5.5.5.

5.5.5 Written Advertisements, Solicitations, and Other Public Communications. A licensee shall have the right to mail or deliver advertisements, solicitations and other public communications, subject to the following provision:

A. A licensee shall not mail or deliver any advertisement, solicitation or other public communication if such advertisement, solicitation or other public communication would violate Rule 5.5.3 or Rule 5.5.4 above.

For purposes of this Rule, a public communication shall be deemed to include newsletters, brochures, magazines, books, announcements, notices, reports, notes, journals, letters, cards, inquiries, tapes, recordings and all other written, printed or recorded materials mailed or delivered to one or more addressees who are not clients of the licensee at the time of such mailing or delivery. Materials disseminated only to clients of the licensee shall be not deemed to be a public communication.