

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF NEVADA
10

11 UNITED STATES OF AMERICA,)
12)
13 Plaintiff,)

14 v.)

15 A. LEVY & J. ZENTNER CO.; and)
16 JOHN H. BURROWS, INC.,)

17 Defendants.)

Civil Action No. R-2724

Filed: Aug. 20, 1973

Entered: Sept. 20, 1973

18 FINAL JUDGMENT
19

20 Plaintiff, United States of America, having filed its
21 Complaint herein on August 15, 1972, and plaintiff and
22 the defendants, by their respective attorneys, having
23 consented to the entry of this Final Judgment, without trial
24 or adjudication of any issue of fact or law herein, and
25 without admission by any party with respect to any such
26 issue, and without this Final Judgment constituting evidence
27 or admission by any party with respect to any such issue;

28 NOW, THEREFORE, before the taking of any testimony
29 and without adjudication of any issue of fact or law herein
30 and upon the consent of the parties hereto, it is hereby:
31
32

1 ORDERED, ADJUDGED and DECREED as follows:

2 I

3 This Court has jurisdiction of the subject matter of
4 this action and of all parties hereto. The Complaint states
5 a claim against the defendants upon which relief may be
6 granted under Section 1 of the Act of Congress of July 2,
7 1890, entitled "An Act to protect trade and commerce against
8 unlawful restraints and monopolies," as amended (15 U.S.C.
9 § 1), commonly known as the Sherman Act.

10 II

11 As used in this Final Judgment:

12 (A) "Person" means any individual, partnership, firm,
13 corporation, association or other business or legal entity;

14 (B) "Produce" means fresh fruits, vegetables, and
15 other similar food products, including but not limited to
16 lettuce, tomatoes, bananas, lemons, onions, oranges, and
17 potatoes.

18 III

19 The provisions of this Final Judgment applicable to
20 any defendant shall apply to such defendant, its
21 subsidiaries, successors and assigns and to its officers,
22 directors, agents, employees and attorneys, and to all
23 other persons in active concert or participation with
24 any of them who receive actual notice of this Final
25 Judgment by personal service or otherwise.

26 IV

27 Each defendant is enjoined and restrained from directly
28 or indirectly in any manner entering into, adhering to, or
29 claiming or maintaining any right under any contract,
30 agreement, arrangement, understanding, plan or program
31 with any other person:
32

1 (A) To fix, raise, maintain or stabilize prices,
2 discounts, markups or other terms or conditions relating to
3 the sale of produce to any third person;

4 (B) To submit collusive or rigged bids or quotations
5 for produce to any agency of any local, state, or federal
6 government, or to any other person;

7 (C) To allocate or rotate customers, territories or
8 produce business.

9 V

10 Each of the defendants is enjoined and restrained from:

11 (A) Communicating to or exchanging with any other
12 person selling produce any information concerning prices,
13 discounts, markups or other terms or conditions relating to
14 the sale of produce that is contained in any bid or is to
15 be contained in any bid to any third person prior to the
16 opening of any such bid, or, in the absence of a bid opening,
17 prior to the release by such third person of such information
18 to the public;

19 (B) Communicating to or exchanging with any other
20 person selling produce any information concerning any actual
21 or proposed prices, discounts, markups or other terms or
22 conditions at which produce is to be, or has been, sold to
23 any third person, prior to the communication of such
24 information to the public or to customers generally.

25 VI

26 Each defendant is ordered and directed to:

27 (A) Serve within sixty (60) days after the entry
28 of this Final Judgment a conformed copy of this Final
29 Judgment upon each of its respective officers, directors,
30 managing agents and employees who have any responsibility
31 for establishing prices or bids for the sale of produce
32 by said defendant;

1 (B) Serve a conformed copy of this Final Judgment upon
2 each successor officer, director, managing agent and employee
3 having any responsibility for establishing prices or bids
4 for the sale of produce by said defendant;

5 (C) Advise and inform each such officer, director,
6 managing agent and employee upon whom this Final
7 Judgment has been served as described in subparagraphs
8 (A) and (B) above, that violation by him of the terms
9 of this Final Judgment could result in a conviction
10 for contempt of court and could subject him to imprisonment
11 and/or fine;

12 (D) Within ninety (90) days after the entry of
13 this Final Judgment, to file with this Court and to
14 serve upon the plaintiff affidavits concerning the
15 fact and manner of compliance with subsections (A)
16 and (C) of this Section VI.

17 VII

18 For a period of ten (10) years from the date of
19 entry of this Final Judgment, each defendant is
20 ordered to file with the plaintiff, on each anniversary
21 date of such entry, a report setting forth the steps
22 which it has taken during the prior year to advise
23 the defendant's appropriate officers, directors and
24 employees of its and their obligations under this
25 Final Judgment.

26 VIII

27 A. For the purpose of determining or securing
28 compliance with this Final Judgment, duly authorized
29 representatives of the Department of Justice shall,
30
31
32

1 upon the written request of the Attorney General, or
2 the Assistant Attorney General in charge of the Antitrust
3 Division, and upon reasonable notice to any defendant
4 made to its principal office, be permitted, subject to
5 any legally recognized privilege:

6 (a) Access, during office hours of each
7 defendant, to all books, ledgers, accounts,
8 correspondence, memoranda, and other records
9 and documents in the possession of or under
10 the control of said defendant relating to
11 any of the matters contained in this Final
12 Judgment; and

13 (b) Subject to the reasonable
14 convenience of each defendant to interview
15 the officers, directors, agents, and employees
16 of said defendant, who may have counsel
17 present, regarding any such matters.

18 B. Each defendant shall submit such reports in
19 writing, under oath if so requested, to the Department
20 of Justice with respect to any of the matters contained
21 in this Final Judgment as from time to time may be requested.

22 C. No information obtained by the means provided in
23 this Section VIII shall be divulged by any representative
24 of the Department of Justice to any person other than a
25 duly authorized representative of the Executive Branch of
26 the plaintiff except in the course of legal proceedings to
27 which the United States is a party for the purpose of
28 securing compliance with this Final Judgment, or as
29 otherwise required by law.
30
31
32

IX

Jurisdiction is retained 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 and 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 thereof, for the enforcement of compliance therewith and for punishment of violations thereof.

DATED this 20th day of September, 1973.

/s/ ROGER D. FOLEY
UNITED STATES DISTRICT JUDGE