

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL HOST CORPORATION,
CONTINENTAL BAKING COMPANY,
WILLIAM FREIHOFER BAKING CO.,
HUBER BAKING COMPANY, INC.,
SCHAIBLE'S BAKERY,
STROEHMANN BROTHERS COMPANY, and
WARD FOODS, INC.,

Defendants.

Civil No. 68-558

Entered: March 1, 1971

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on March 13, 1968, and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment, pursuant to a Stipulation entered into on **January 27,** 1971, without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect to any such issue, and without this Final Judgment constituting evidence with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of the parties consenting hereto. The Complaint states claims against the defendants upon which relief may be granted under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

II

As used in this Final Judgment:

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

(B) "Bakery products" means any type of bread or bread type buns or rolls;

(C) "Philadelphia market" means the territory encompassed by the counties of Bucks, Berks, Chester, Delaware, Lehigh, Montgomery, Northampton, and Philadelphia in the Commonwealth of Pennsylvania; the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem in the State of New Jersey; and New Castle County in the State of Delaware.

III

The provisions of this Final Judgment applicable to each of the defendants shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to activities between a defendant, its officers, directors, agents or employees and its parent or subsidiary companies, or affiliated corporations in which 50% or more of the voting stock is owned by a defendant's parent or subsidiary companies or which is in fact controlled by the defendant or such defendant's parent or subsidiary companies.

IV

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other person, directly or indirectly to:

(A) Fix, determine, maintain or stabilize prices, discounts or other terms or conditions for the sale of any bakery product to any third person;

(B) Submit collusive or rigged bids or quotations or to allocate any such bids or quotations for the sale of any bakery product;

(C) Communicate to or exchange with any other person selling any bakery product any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any bakery product is to be, or has been, sold to any third person prior to the communication of such information to the public or trade generally (except in the course of negotiating for, entering into, maintaining, or carrying out bona fide purchase or sale transactions, subject to the prohibitions of Section IV (A) and (B) above).

V

Each defendant is enjoined and restrained, directly or indirectly:

(A) For a period of ten (10) years from communicating to any other person selling any bakery product, any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any bakery product is to be sold by the defendant, or such other person to any third person, prior to the communication of such information to the public or trade generally;

(B) Subparagraph (A) hereof shall not apply to the communication of such information in the course of negotiating for, entering into, maintaining or carrying out bona fide purchase or sale transactions, subject to the prohibitions of Section IV above; and

(B) From joining, participating in, or belonging to any trade association, organization, or other group with knowledge that any of the activities thereof would violate any term of this Final Judgment if such trade association, organization, or group had been a party to this Final Judgment.

VI

Each defendant is ordered and directed:

(A) For a period of five (5) years from and after the date of entry of this Final Judgment to furnish simultaneously with each bid or quotation required to be sealed which is submitted by it for the sale of any bakery product in the Philadelphia market, a certification, in substantially the form set forth in the Appendix hereto, by an official of such defendant knowledgeable about and having authority to determine the price or prices bid or quoted, that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan or program between such defendant and any other person selling bakery product. Provided, however, that such certification would not be violated solely because the defendant has negotiated for, entered into, maintained, or carried out bona fide purchase or sale transactions with any other person with respect to said bid or quotation whereby the defendant would purchase bakery product from or supply bakery product to such person, or whereby the defendant would submit a joint bid or quotation with such other person.

(B) Within thirty (30) days after the date of entry of this Final Judgment, independently and individually, to review and determine its prices, discounts, terms and conditions for the sale of each bakery product in the Philadelphia market, based upon lawful considerations unless such review and determination shall have been made voluntarily within six (6) months prior to the entry of this Final Judgment; and within

forty-five (45) days after the date of entry of this Final Judgment, to file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of compliance with this Section VI (B) including a statement setting forth the method used to review and determine such prices, discounts, terms and conditions for sale of each such bakery product.

(C) Within ninety (90) days after the date of entry of this Final Judgment, to furnish a copy thereof to each of its officers and directors and to each of its plant managers, and to file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with this Section VI (C); provided, however, that insofar as defendant General Host Corporation is concerned, the words "plant managers" as used in this subparagraph VI(C) only, shall mean plant managers of the Bond Baking Division of General Host Corporation.

VII

Defendant Stroehmann Brothers Company is ordered and directed:

(A) Within ninety (90) days after the date of this Final Judgment, to furnish a copy thereof, together with a copy of the Final Judgment of this Court entered June 26, 1964 in United States v. Ward Baking Co. et al., Civil No. 31666, to each person having supervisory responsibility in the sale of bakery products, and to obtain from each such person a certification that he has received and understands such Final Judgments.

(B) For a period of five (5) years from and after the date of entry of this Final Judgment, at yearly intervals, to furnish a copy of this Final Judgment, together with a copy of the Final Judgment of this Court entered June 26, 1964 in United States v. Ward Baking Co. et al., Civil No. 31666, to each person having supervisory responsibility in the sale of bakery products, and to obtain from each such person each year a certification that he has received and understands such Final Judgments.

(C) To retain the certifications required by this Section VII until December 31, 1980.

VIII

Nothing in this Final Judgment shall be deemed to prohibit the lawful exercise by any defendant of such legal rights, if any, which a defendant may have under the Miller-Tydings Act, 50 Stat. 693 (1937), and the McGuire Act, 66 Stat. 632 (1952).

IX

If the plaintiff should institute contempt proceedings against defendants Continental Baking Company or Ward Foods, Inc., with respect to a set of facts which it believes to constitute a violation of the terms of both this Final Judgment and a Final Judgment of any other court, then the plaintiff shall elect the court in which it shall institute such contempt action and, upon such election, shall not institute another contempt action based upon substantially the same set of facts in any other court.

X

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to a defendant, made through its principal office:

(A) Duly authorized representative of the Department of Justice shall be permitted:

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

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

(B) Defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section X 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 plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of determining or securing compliance with this Final Judgment or as otherwise required by law.

XI

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 or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Dated: March 1, 1971

/s/ CHARLES R. WEINER
UNITED STATES DISTRICT JUDGE

APPENDIX

The undersigned hereby certifies that, to his best knowledge and belief, the annexed bid has not been prepared in collusion with any other producer or seller of any bakery product and that the prices, discounts, terms and conditions thereof have not been communicated by or on behalf of the bidder to any such person other than the recipient of such bid and will not be communicated to any such person prior to the official opening of said bid. This certification may be treated for all purposes as if it were a sworn statement made under oath, and is made subject to the provisions of 18 U.S.C., 1001, relating to the making of false statements.

Dated:

Signature of Official Having
Authority to Determine the
Price or Prices Bid or Quoted.