

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) CIVIL ACTION NO. _____
)
v.)
)
TOM PAIGE CATERING CO., INC.)
and VALLEY FOODS, INC.,)
)
Defendants.)

FINAL JUDGMENT

Plaintiff, the United States of America, filed its complaint on December 16, 1997. Plaintiff and defendants have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party to any issue of fact or law. Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

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, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I

JURISDICTION

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint

states a claim upon which relief may be granted against defendants under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

DEFINITIONS

As used in this Final Judgment:

A. "Bid" means an offer, proposal, or quotation, formal or informal, oral or written, to a potential buyer or its agent.

B. "Food service contract" means any agreement to provide meals to a customer for a period of time, but is not intended to include contracts for the routine purchase of ordinary supplies by the defendants.

C. "Food service contractor" means anyone engaged in the business of soliciting and performing food service contracts.

D. "Person" means any natural person; public or private corporation, whether or not organized for profit; governmental entity; partnership; association; cooperative; sole proprietorship; or other business or legal entity.

III

APPLICABILITY

A. This Final Judgment applies to defendants and to each of their officers, directors, 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.

B. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that any acquiring party agrees to be bound by the provisions of this Final Judgment and that such agreement be filed with the Court.

IV

DISSOLUTION OF JOINT VENTURE

The defendants are hereby ordered and directed to dissolve the joint venture formed by them on April 1, 1994, within seventy five (75) days of the entry of this Final Judgment, and are enjoined and restrained from entering into future joint ventures together for the purpose of bidding on food service contracts.

V

OTHER PROHIBITED CONDUCT

A. Each defendant is hereby enjoined and restrained from agreeing with any other food service contractor to fix, establish, raise, stabilize or maintain prices quoted on food service contracts.

B. Each defendant is further enjoined and restrained from participating in any future discussion with or in the future communicating with any other food service contractor concerning prices quoted on food service contracts.

C. Each defendant is further enjoined and restrained from agreeing with any other food service contractor on customers or territories to be bid for or served.

D. Each defendant is further enjoined and restrained from entering into any agreement with any non-defendant food service

contractor regarding food service contracts before notifying the plaintiff.

VI

COMPLIANCE PROGRAM

Each defendant is ordered to establish and maintain an antitrust compliance program that shall include designating, within thirty (30) days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

A. Furnishing a copy of this Final Judgment within thirty (30) days of entry of the Final Judgment to each of defendant's officers and directors and each of its employees, salespersons, sales representatives, or agents whose duties include supervisory or direct responsibility for determining the bid prices submitted on food service contracts except for employees whose functions are purely clerical;

B. Distributing in a timely manner a copy of this Final Judgment to any owner, officer, employee or agent who succeeds to a position described in Section VI(A);

C. Providing each person designated in Sections VI(A) or (B) with a written explanation in plain language of this Final Judgment, with examples of conduct prohibited by the Final Judgment, and with instructions that each person designated in Section VI(A) and (B) shall report any known violation of the Final Judgment to the Antitrust Compliance Officer;

D. Arranging for an annual oral briefing to each person designated in Sections VI (A) or (B) on the meaning and requirements of this Final Judgment and the antitrust laws, including the advice that such defendant will make legal advice available to such persons regarding any compliance questions or problems, accompanied by a written explanation of the type described in Section VI(C);

E. Obtaining from each person designated in Sections VI(A) or (B) certification that he or she:

(1) has read, understands and agrees to abide by the terms of this Final Judgment;

(2) has been advised of and understands defendant's policy with respect to compliance with the Sherman Act and the Final Judgment;

(3) has been advised and understands that his or her non-compliance with the Final Judgment may result in conviction for criminal contempt of court and imprisonment, a fine, or both; and

(4) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer.

F. Maintaining (1) a record of all certifications received pursuant to Section VI(E); (2) a file of all documents related to any alleged violation of this Final Judgment; and (3) a record of all communications related to any such violation, that shall identify the date and place of the communication, the persons

involved, the subject matter of the communication, and the results of any related investigation.

VII

CERTIFICATION

A. Within seventy five (75) days of the entry of this Final Judgment, each defendant shall certify to plaintiff whether such defendant has (1) designated an Antitrust Compliance Officer; (2) has distributed the Final Judgment in accordance with Section VI(A) and (B) above; and, (3) has provided the explanation and instructions in accordance Section VI[©] above.

B. For ten years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall file with the plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections V and VI.

C. If a defendant's Antitrust Compliance Officer learns of any violation of any of the terms and conditions contained in this Final Judgment, defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII

INSPECTION AND COMPLIANCE

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff, 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, shall be permitted, subject to any legally recognized

privilege:

1. Access during that defendant's office hours to inspect and copy all records and documents in the possession or under the control of that defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. To interview that defendant's officers, employees, and agents, who may have counsel present, regarding any such matters. The interviews shall be subject to defendant's reasonable convenience.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to a defendant at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. 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.

D. If at the time information or documents are furnished by a defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7)

of the Federal Rules of Civil Procedure, and 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 ten (10) days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding), so that defendant shall have an opportunity to apply to this Court for protection pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

E. Nothing set forth in this Final Judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as Civil Investigative Demand process provided by 15 U.S.C. §§ 1311-1314 or a federal grand jury, to determine if a defendant has complied with this Final Judgment.

IX

TEN-YEAR EXPIRATION

This Final Judgment will expire on the tenth anniversary of its date of entry.

X

CONSTRUCTION, ENFORCEMENT, MODIFICATION AND COMPLIANCE

Jurisdiction is retained by the 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 its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XI

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: _____

UNITED STATES DISTRICT JUDGE