

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 83-3053
v.)	
)	Filed: June 27, 1983
THE PHILADELPHIA PRODUCE)	
CREDIT AND COLLECTION BUREAU,)	Entered: September 20, 1983
)	
Defendant.)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on June 27, 1983, and defendant, by its attorney, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

NOW, 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 hereto, it is hereby,

ORDERED, ADJUDGED, AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

As used in this Final Judgment:

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

B. "Produce" means fresh fruits and vegetables;

C. "Member" means any member of the defendant pursuant to the terms specified in its by-laws;

D. "Distributor" means any person engaged, in whole or in part, in the business of distributing produce to restaurants, schools, hospitals, or other businesses that resell produce directly to the consumer; and

E. "The date of entry" means the date on which this Final Judgment is entered by this Court. Acts required to be done "on" an anniversary of the date of entry must be done on or about that date.

III.

This Final Judgment applies to the defendant and to its officers, directors, managers, 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.

IV.

The defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it in the collection and distribution of credit information and payments to members by their customers, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with the Court.

V.

The defendant is enjoined and restrained from directly or indirectly entering into, adhering to, enforcing, or maintaining any contract, understanding, rule, by-law, regulation, plan, or program with or affecting any member or distributor which:

(a) fixes, maintains, or establishes the length of time which that member or distributor grants or allows customers before payment for produce sold becomes due;

(b) prevents or interferes with the granting of credit to any person by any member or distributor;

(c) prevents or interferes with the collecting of any amount due for a sale on credit by any member or distributor attempting such a collection without using the services of defendant; or

(d) fixes, maintains, or establishes the amount or any term or condition of credit which any member or

distributor grants or offers to any person in connection with the sale of produce.

VI.

A. Nothing contained in this Final Judgment shall prevent the defendant from circulating to members (1) information concerning the payment history of any person, or (2) the fact that information concerning the credit worthiness of any person is unavailable.

B. Nothing contained in this Final Judgment shall prevent the defendant from (1) collecting payment of credit extended by any member if the member requests the defendant to collect such payment (a member's request that the defendant collect a debt may be expressed by the member sending a credit-bill or invoice to the defendant in the normal course of business), (2) conducting credit investigations on behalf of members for the purpose of obtaining credit information for circulation to members, or (3) conducting its business in any other reasonable, lawful, commercial fashion.

VII.

The defendant is enjoined from using any form or form letter which refers to bills being due: (a) within 10 days of purchase, (b) within any other specified time from purchase, or (c) on a specified day of the week, except as provided in the notices that this Final Judgment requires the defendant to provide to its members and their customers.

VIII.

The defendant is hereby ordered:

A. To inform members, by providing them with a notice in the form of Exhibit A attached hereto, within thirty (30) days of the date of entry, and again six months after the date of entry, and on the anniversary of the date of entry for three (3) years: (a) of the substance of the terms of the Final Judgment; (b) that each of them must individually establish terms and conditions of sale; (c) that each of them is free to extend credit to any person or firm whatsoever; and (d) that the billing and collection services of the defendant can be used in connection with credit extended to any person for any period of time;

B. To inform those customers of its members to whom the Bureau mails bills, by providing them with a notice in the form of Exhibit B attached hereto, within thirty (30) days of the date of entry, and again six months after the date of entry, and on the anniversary of the date of entry for three (3) years: (a) of the substance of the terms of the Final Judgment; (b) that members are free to offer any terms and conditions of sale they choose; (c) that members are free to offer credit to any person or firm they desire; and (d) that the billing and collection services of the defendant can be used in connection with credit extended to any person for any period of time;

C. Within thirty (30) days from the date of entry, and on the anniversary of the date of entry for a period of five (5) years, to notify each of its officers, managers, and employees who have contact with members or their customers, of the obligations imposed on each of them by this Final Judgment;

D. To have copies of this Final Judgment, including Exhibits A and B, available for public inspection in its offices, and to provide a copy to any person who requests one for a reasonable copying fee; and

E. Within sixty (60) days from the date of entry, and on the anniversary of the date of entry for a period of five (5) years, to inform plaintiff of actions taken to ensure compliance with this Final Judgment, and to provide plaintiff a copy of any rule or by-law enacted by the defendant within the preceding year.

IX.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

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

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

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment.

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

C. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under 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 plaintiff shall give ten days notice to the defendant before divulging the material in any legal proceedings (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 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 the enforcement of compliance with it or for the punishment of any violation of it.

XI.

This Final Judgment shall be in effect for the period of ten years following the date of entry.

XII.

Entry of this Final Judgment is in the public interest.

Dated: September 20, 1983

/s/ Norma Shapiro
United States District Judge

Exhibit A

NOTICE TO MEMBERS OF THE PHILADELPHIA PRODUCE
CREDIT AND COLLECTION BUREAU

The United States Department of Justice, on June 27, 1983, filed a complaint in United States District Court in Philadelphia alleging that The Philadelphia Produce Credit and Collection Bureau (the "Bureau") had violated the Sherman Antitrust Act by engaging in a combination and agreement to fix and maintain credit terms employed in the sale of produce. The complaint alleged that in pursuit of their agreement, the Bureau and others, among other things, had:

(a) agreed to fix the length of time for which Bureau members extend credit to customers;

(b) agreed to withhold credit from customers who did not pay their bills within the terms the Bureau established; and

(c) agreed to withhold credit from customers who did not establish credit through the Bureau.

The Bureau, without making any admission of wrongdoing or violation of any laws, entered a consent decree with the government settling the lawsuit. The decree has now been entered by the Court. It requires that we publish this notice so that you understand the decree. A copy of the entire decree is attached, and copies of the decree will be available at the Bureau's office. Violations of the decree can be punished as

civil or criminal contempt of court. The Bureau and any person who participated in any such violation could be prosecuted, so it is important that you understand and comply with the decree.

Under the decree, the Bureau cannot have any agreement like those described above with any member or other produce distributor. Accordingly, you are free to establish your own credit terms with your customers. You can extend credit to anyone you like, including "unapproved" accounts and "delinquents." Previous notices to the contrary that the Bureau sent you are no longer valid. You can extend credit for any period of time you desire. Also, the Bureau cannot agree with any member or distributor as to the amount of credit they should give their customers.

The Bureau will continue to collect payment for your bills and distribute information to you concerning the identity of persons who do not pay their bills on time and provide other credit information regarding your customers. You can use this information as you see fit. If you extend credit to persons on a list of delinquents, the Bureau will attempt to collect such bills for you and continue to provide its other normal services.

A notice similar to this one is being sent to your customers with their bills. The decree requires this also. Therefore, you may have customers attempt to negotiate

different credit terms than you have had in the past. This does not concern the Bureau, except that we need to know your terms of sale so that we will know when debts become overdue. We need this information to continue supplying you with information on the credit worthiness of your customers and to collect overdue accounts.

The U.S.D.A. regulations regarding prompt payment continue to be in effect. If you and your customer do not discuss when payment of a credit bill is due, and you have no announced terms, then payment is due in 10 days under current regulations. However, under the regulations, you can establish any other length of credit you desire, and payment within those terms constitutes the prompt payment required by the Perishable Agricultural Commodities Act of 1930 (commonly known as the "PACA").

Finally, in choosing what terms of sale you offer to your customers, you cannot reach any understanding or agreement with any other Bureau member or distributor regarding credit terms. Any such agreement or understanding would violate the Sherman Antitrust Act and could subject you to civil or even criminal prosecution. You may, of course, make any credit terms of sale with your customers as you see fit. You may require that payment of credit purchases be made in any period of time that is agreeable to you and your customer.

Exhibit B

NOTICE TO CUSTOMERS OF MEMBERS OF THE PHILADELPHIA
PRODUCE CREDIT AND COLLECTION BUREAU

The United States Department of Justice, on June 27, 1983, filed a complaint in United States District Court in Philadelphia alleging that The Philadelphia Produce Credit and Collection Bureau (the "Bureau") had violated the Sherman Antitrust Act by engaging in a combination and agreement to fix and maintain credit terms employed in the sale of produce. The complaint alleged that in pursuit of their agreement, the Bureau and others, among other things, had:

(a) agreed to fix the length of time for which Bureau members extend credit to customers;

(b) agreed to withhold credit from customers who ~~did~~ not pay their bills within the terms the Bureau established; and

(c) agreed to withhold credit from customers who did not establish credit through the Bureau.

The Bureau, without making any admission of wrongdoing or violation of any laws, entered a consent decree with the government settling the lawsuit. The decree has now been entered by the Court. It requires that we publish this notice so that you understand the decree. A copy of the entire decree is available at the Bureau's office.

Under the decree, the Bureau cannot have any agreement like those described above with any member or other produce

distributor. Accordingly, our members are free to establish their own credit terms with you, their customers. Members can extend credit to anyone they like, including "unapproved" accounts and "delinquents." Members can extend credit for any period of time they desire. Also, the Bureau cannot agree with any member as to the amount of credit it should give its customers.

The Bureau will continue to collect payment for members' bills and distribute information to members concerning the identity of persons who do not pay their bills on time, and provide other credit information regarding customers. Members can use this information as they see fit. If a member decides to extend credit to a person on a list of delinquents, the Bureau will, if the member desires, attempt to collect that bill and will not interfere with the member's right to make such a sale.

The U.S.D.A. regulations regarding prompt payment continue to be in effect. If you and one of our members do not discuss when payment of a credit bill is due, and the member has no announced term, then payment is due in 10 days under current regulations. However, under the regulations, members can establish any other length of credit they desire, and payment within those terms constitutes the prompt payment required by the Perishable Agricultural Commodities Act of 1930 (commonly known as the "PACA").