

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil No. J-80-0235(R)  
 )  
 MISSISSIPPI STATE BOARD OF )  
 REGISTRATION FOR PROFESSIONAL ) Filed: May 22, 1980  
 ENGINEERS AND LAND SURVEYORS, )  
 )  
 Defendant. )

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 and these proceedings are instituted 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). This Court has jurisdiction over this action pursuant to 15 U.S.C. §4.

2. The defendant maintains its principal office, is doing business, and is found within the Southern District of Mississippi.

II

THE DEFENDANT

3. The Mississippi State Board of Registration for Professional Engineers and Land Surveyors (hereinafter referred to as the "Board") is made the defendant herein. The Board is composed of practicing professional engineers and land surveyors and was created and organized and exists under the laws of the State of Mississippi. [Miss. Code Ann. § 73-13-1 et seq. (Supp. 1979)] The Board maintains its principal office in Jackson, Mississippi.

III

CO-CONSPIRATORS

4. Various individuals, corporations, associations, and business or professional entities not made defendants herein have participated as co-conspirators with the defendant in the violation hereinafter alleged. Such co-conspirators include, but are not limited to, past and present Board members and certificate of registration holders.

IV

TRADE AND COMMERCE

5. The Board is the sole professional engineering and land surveying licensing authority in the State of Mississippi. Pursuant to this authority, the Board administers written examinations and otherwise supervises the qualification, certification and registration of professional engineers and land surveyors located in Mississippi and other states for practice within the State of Mississippi. Upon payment of a fee, the Board annually issues certificates of registration

to all properly certified or registered professional engineers and land surveyors. Currently, there are approximately 5,800 professional engineers and land surveyors holding Board certificates of registration to practice professional engineering or land surveying in Mississippi. Nearly half of these certificate of registration holders are residents of states other than Mississippi.

6. It is unlawful in Mississippi for individuals to represent that they are professional engineers or land surveyors unless they have been properly certified or registered by the Board and hold a Board certificate of registration to practice professional engineering or land surveying. Under some limited circumstances, professional engineers and land surveyors, properly certified or registered in other jurisdictions, may practice temporarily in Mississippi without a Board certificate of registration, provided that such practice in the State of Mississippi does not exceed thirty days in any calendar year or, in the case of recent residents of the State, such time as the Board requires for consideration of the application for registration.

7. The Board consists of six members appointed to four-year terms by the Governor of the State of Mississippi. Five of the Board members must be Board registered professional engineers and one must be a Board registered land surveyor. While serving their membership terms, the Board members may continue to engage in professional engineering or land surveying within the State of Mississippi. Board members are compensated at the rate of twenty dollars per day when actually attending to the work of the Board or any of its committees. In addition, Board members are reimbursed for all actual traveling, incidental and clerical expenses necessarily incurred in carrying out their duties.

8. The Board is authorized by statute to adopt and amend all regulations and rules of procedure, not inconsistent with the constitution and laws of Mississippi, which are reasonably necessary for the proper performance of its duties and the regulation of proceedings before it. The act creating the Board is otherwise silent as to the form or content of any such regulations and rules and neither directs, requires nor mandates restrictions upon, or the regulation of, price competition in the offering of professional engineering services. Nor has any policy of restricting or regulating price competition in the offering of professional engineering services been established or dictated by the State of Mississippi.

9. In 1971, the Board adopted a "Code of Conduct" intended to regulate the practice of professional engineering by certificate of registration holders in Mississippi. In 1977, the Board amended the Code by adding Section 5E which prohibits the solicitation or submission of proposals for professional engineering services on the basis of competitive bidding. Section 5E defines competitive bidding as the formal or informal submission or receipt of verbal or written estimates of cost or any measure of compensation whereby the prospective client may compare engineering services on a price basis prior to the time an engineer has been selected for negotiations.

10. The Board is authorized, by State statute, to take disciplinary action against any Board certificate of registration holder for gross negligence, incompetency, or misconduct in the practice of professional engineering. Such action may include a Board reprimand and the revocation of the offender's certificate of registration.

11. Board certificate of registration holders are engaged in the practice of professional engineering and render such services to individuals, corporations, governmental entities and other business entities located in Mississippi and other states for a fee or salary. The professional engineering services provided by Board certificate of registration holders involve and affect individuals, corporations, governmental entities and other business entities located throughout the United States. Board certificate of registration holders design and supervise the construction of roads, bridges, dams, industrial plants and other structures located throughout the United States. Many Board certificate of registration holders located outside the State of Mississippi perform professional engineering services within Mississippi.

12. In the course of rendering professional engineering services, Board certificate of registration holders often travel from the state of their principal place of business to other states and make substantial use of interstate mail and wire services in the transport of contracts, plans, reports, plats, drawings and other communications throughout the United States.

13. There is a regular, continuous and substantial flow in interstate commerce of the services of Board certificate of registration holders, and of material used in designing and constructing projects designed and supervised by Board certificate of registration holders. The activities of the defendant and Board certificate of registration holders are within the flow of interstate commerce and have a substantial effect on interstate commerce.

VIOLATION ALLEGED

14. Beginning at least as early as 1977, 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.

15. The unlawful combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendant and co-conspirators to restrain price competition among professional engineers in the State of Mississippi.

16. The substantial terms of said agreement, understanding and concert of action have been and are:

- (a) That the defendant promulgate, adopt, publish, and distribute a provision in its Code of Conduct prohibiting certificate of registration holders practicing in Mississippi from submitting competitive bids for professional engineering services; and
- (b) That the defendant's certificate of registration holders abide by said provision of the defendant's Code of Conduct.

17. For the purpose of effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators have done those things which, as hereinbefore alleged, they agreed and conspired to do.

VI

EFFECTS

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

- (a) Price competition among Board members and certificate of registration holders in the sale of professional engineering services has been suppressed and eliminated;
- (b) Customers requiring the services offered by Board members and certificate of registration holders have been deprived of the benefits of free and open competition in the sale of such services; and
- (c) Board members and certificate of registration holders have been restrained in their ability to make professional engineering services readily and fully available to customers 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 the aforesaid trade and commerce in violation of Section 1 of the Sherman Act.

2. 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 practice, plan, program or device having similar purposes or effects.

3. That the defendant, its members and all other persons acting or claiming to act on its behalf be enjoined and restrained from promulgating, publishing, distributing or otherwise suggesting, and from adhering or agreeing to adhere to, any rule prohibiting competitive bidding by Board certificate of registration holders.


4. That the defendant be required to cancel and rescind those provisions of its Code of Conduct, and every other resolution or statement of policy which has as its purpose or effect the suppression or elimination of price competition among Board certificate of registration holders.




5. That the defendant be required to notify all Board certificate of registration holders that it has cancelled and rescinded those provisions of its Code of Conduct that have the purpose or effect of suppressing or eliminating competition.

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

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

  
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