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W. J. FORSTER, CLERK
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
TITLE INSURANCE RATING)
BUREAU OF ARIZONA, INC.,)
)
Defendant.)

No. CIV 80-769 PHX CAM

J U D G M E N T

This action came before the court on cross-motions for summary judgment. The parties filed evidentiary materials, including a joint stipulation of facts, in support of their cross-motions. On June 23, 1981, the court granted the plaintiff United States' motion for summary judgment and denied the defendant Title Insurance Rating Bureau of Arizona Inc.'s (TIRBA) motion for summary judgment.

The plaintiff's motion having been granted, the United States was ordered to prepare a proposed form of judgment. The defendant has filed objections to the proposal.

TIRBA first objects to the proposed judgment's prohibition of the exchange of historical data regarding escrow service rates, costs, volume or sales among escrow

1 providers. ¶ IV(B). It asserts that the exchange of this
2 information is needed to justify the rates which escrow pro-
3 viders are required to file with the Arizona Director of
4 Insurance. The Court finds that the exchange of this infor-
5 mation was the seed from which the instant fixed prices
6 sprung. Further, finding that justification for proposed rates
7 need not be based upon collective information, A.R.S. § 20-377(A),
8 and that such a judgment provision has been approved in a
9 situation similar to this, United States v. American Column
10 and Lumber Co., 257 U.S. 377 (1921), the defendant's objection
11 to the provision is overruled.

12 TIRBA has also objected to the proposed definition of
13 "collective rate," ¶ II(F), the filing of which is prohibited by
14 the proposed judgment. ¶ IV(D). The court finds merit in the
15 defendant's objection and has amended the definition of
16 "collective rate" to permit the filing of a joint rate by an
17 escrow provider and any agent performing services exclusively
18 for that provider. The amended section would also permit two
19 escrow providers to file a joint rate where one provider owns
20 a controlling interest in a second escrow service provider.

21 Also in reference to ¶ IV, TIRBA has noted that the
22 language suggested by the United States would restrain the
23 exchange of information regarding rates, costs, et cetera,
24 even in the situation where two escrow providers are engaged
25 in a joint business transaction. The plaintiff has recognized
26 the practical difficulties such language could occasion.

1 Accordingly, the court has added a proviso at the end of ¶ IV
2 which would exempt the exchange of information in the course
3 of a transaction involving more than one escrow provider.

4 In ¶ VI, the United States has proposed language
5 which would require that members and subscribers of the defendant
6 complete an affidavit stating that they have read the judgment
7 entered in this action. TIRBA has objected on the ground that
8 it lacks the authority to require such action. The court has
9 simply added a section which requires TIRBA to pass a resolution
10 requiring its members and subscribers to read the judgment and
11 complete the statement.

12 Finally, TIRBA objects to the visitorial powers
13 accorded to the Department of Justice by the judgment. ¶ VII.
14 Such provisions are customary in judgments entered in cases
15 of this nature, and their propriety has been repeatedly upheld.
16 United States v. Bausch and Lomb Optical Co., 321 U.S. 707,
17 724-28 (1944); United States v. United States Gypsum Co.,
18 340 U.S. 76, 95 (1950); United States v. Grinnell Corp.,
19 384 U.S. 563 (1966).

20 Consistent with and in reliance on the above, it
21 is hereby

22 ORDERED, ADJUDGED, AND DECREED as follows:

23 I

24 This court has jurisdiction over the subject matter
25 of and parties to this action. The defendant and co-conspirators
26 have engaged in the unlawful combination and conspiracy

1 charged in the complaint in unreasonable restraint of interstate
2 trade and commerce in violation of Section 1 of the Sherman
3 Act (15 U.S.C. § 1).

4 II

5 As used in this Final Judgment:

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

8 B. "Escrow" means any transaction in which any
9 property, money, written instrument or evidence of title or
10 possession to real or personal property or other thing of
11 value is delivered with or without transfer of legal or
12 equitable title, or both, and irrespective of whether a debtor-
13 creditor relationship is created, to a person not otherwise
14 having any right, title or interest therein in connection
15 with the sale, transfer, encumbrance or lease of real or
16 personal property, to be delivered or redelivered by that
17 person upon the contingent happening or nonhappening of a
18 specified event or performance or nonperformance of a prescribed
19 act, when it is then to be delivered by such person to a
20 grantee, grantor, promisee, promisor, obligee, obligor,
21 bailee, bailor, or any designated agent or employee of any
22 of them. Escrow includes subdivision trusts and account
23 servicing transactions.

24 C. "Escrow service" means the performance of an
25 escrow or any service provided in connection with the per-
26 formance of an escrow.

1 D. "Escrow rate" means any proposed or actual price,
2 charge, fee, payment or consideration for any escrow service.
3 Escrow rate includes, but is not limited to, any proposed or
4 actual price or charge for any escrow service filed with the
5 Director of Insurance of the State of Arizona.

6 E. "Escrow provider" means any person engaged in the
7 provision or sale of any escrow service.

8 F. "Collective rate" means any escrow rate established
9 pursuant to any contract, combination, conspiracy, agreement,
10 arrangement, plan, understanding, program or concert of
11 action between two or more persons who are either TIRBA members,
12 subscribers or escrow providers. Collective rate includes,
13 but is not limited to, any escrow rate filed with the Director
14 of Insurance of the State of Arizona on behalf of two or more
15 persons who are either TIRBA members, subscribers or escrow
16 providers, but does not preclude the filing of an escrow
17 rate filed with the Director of Insurance of the State of
18 Arizona on behalf of two persons, one of whom owns a controlling
19 interest in the other or on behalf of an agent or independent
20 contractor, who is contractually bound to perform escrow
21 services exclusively on behalf of the filing entity.

22 III

23 This final judgment shall apply to the defendant Title
24 Insurance Rating Bureau of Arizona, Inc., (TIRBA), and to
25 each of its officers, directors, agents, employees, successors
26 and assigns, and to all other persons, including TIRBA members

1 and subscribers, in active concert or participation with any
2 of them who receive actual notice of this Final Judgment by
3 personal service or otherwise. This Final Judgment shall not
4 apply to escrows which are performed wholly outside the State
5 of Arizona.

6 IV

7 The defendant TIRBA, whether acting unilaterally or
8 in concert or agreement with any other person, and each of its
9 officers and directors are hereby enjoined and restrained from
10 directly or indirectly:

11 (A) entering into, adhering to, adopting, maintaining,
12 or furthering any contract, combination, conspiracy, agreement,
13 arrangement, plan, understanding, program, or concert of action
14 to raise, fix, stabilize, maintain, determine or adhere to any
15 escrow rate;

16 (B) communicating to, or requesting from TIRBA, any
17 TIRBA member, subscriber or escrow provider information con-
18 cerning: (1) any past, present, future or proposed escrow
19 rate; (2) escrow service costs, volume, or sales;

20 (C) inviting, coordinating, facilitating or providing
21 a forum for any discussion among two or more escrow providers
22 referring or relating to escrow rates, or escrow service
23 costs, volume or sales; and,

24 (D) filing, publishing, or authorizing to be filed
25 or published any collective rate.
26

1 each person who becomes an officer, director, member or
2 subscriber of the defendant within thirty (30) days from the
3 time the person assumes such position;

4 (B) to obtain from each person served with a copy
5 of this Final Judgment pursuant to subsection (A) of this
6 section, within thirty (30) days from service of the Judgment
7 on the person, a written statement which the defendant shall
8 retain in its files, signed by the person, which acknowledges
9 the person's receipt of a copy of this Final Judgment and that
10 the person has read it, and that such be required by a
11 resolution to be passed by TIRBA.

12 (C) within ninety (90) days after the date of
13 entry of this Final Judgment, to file with this court and
14 serve on the plaintiff an affidavit as to the fact and manner
15 of its compliance with subsections (A) and (B) of Section V
16 and subsections (A) and (B) of this Section VI of this
17 Final Judgment.

18 VII

19 For the purpose of determining or securing compliance
20 with this Final Judgment, upon written request of the
21 Attorney General or the Assistant Attorney General in charge
22 of the Antitrust Division, made to the defendant at its
23 principal office, subject to any legally recognized privilege:

24 A. On reasonable notice to the defendant, which
25 may have counsel present, duly authorized representatives of
26 the Department of Justice shall be permitted:

1 Final Judgment, for the modification of any of its provisions,
2 for the enforcement of compliance with it or for the punish-
3 ment of any violation of it.

4 IX

5 This Final Judgment shall be in effect for the
6 period of ten (10) years following the date of its entry.

7 IT IS SO ORDERED.

8 DATED this 16 day of December, 1981.

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11 C. A. Muecke, Chief Judge
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