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16 UNITED STATES DISTRICT COURT
17 DISTRICT OF ARIZONA

18 UNITED STATES OF AMERICA,)
19) NO. CIV. 80-769-PHX-EHC
20 Plaintiff)
21) Filed: September 23, 1980
22 v.)
23)
24 TITLE INSURANCE RATING)
25 BUREAU OF ARIZONA, INC.,) COMPLAINT FOR INJUNCTIVE RELIEF
26)
27 Defendant)

28 The United States of America, plaintiff, by its attorneys,
29 acting under the direction of the Attorney General of the United
30 States, brings this civil action to obtain equitable relief against
31 the above-named defendant, and complains and alleges as follows:

32 I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are in-
stituted under Section 4 of the Sherman Act, 15 U.S.C. § 4, to
prevent and restrain the violation by the defendant of Section 1
of the Sherman Act, 15 U.S.C. § 1, as hereinafter alleged.

2. The defendant is found and does business in the District
of Arizona.

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II

THE DEFENDANT

3. The Title Insurance Rating Bureau of Arizona, Inc. (hereinafter TIRBA) is made a defendant herein. TIRBA is organized and exists under the laws of the state of Arizona and has its principal office in Phoenix, Arizona. TIRBA is the only licensed title insurance rating organization in the state of Arizona and has 13 members and a greater number of subscribers. Under TIRBA rules, TIRBA membership is limited to title insurers doing business in the state of Arizona. Each title insurer doing business in Arizona is a TIRBA member. Each TIRBA member is represented by one director on the TIRBA Board of Directors, which conducts TIRBA affairs. Title insurance agents may be subscribers. Subscribers have no voting powers. Prior to September 1977, the corporate name of TIRBA was Title Insurance Rating Bureau of Arizona.

4. Some of the TIRBA members do business in Arizona exclusively through company owned and operated offices in Arizona, some do business exclusively through title insurance agents, and some do business through both their own offices and title insurance agents. Many of the title insurance agents are not owned, either in whole or part, by their title insurer principals.

III

CO-CONSPIRATORS

5. Various other persons, organizations, entities and corporations not made defendants herein have participated as co-conspirators with the defendant in the violation hereinafter alleged, and have performed acts and have made statements in furtherance thereof. Such co-conspirators include, but are not limited to, past and present TIRBA members and subscribers.

1 IV

2 TRADE AND COMMERCE

3 6. Escrow is a transaction in which property, money, written
4 instrument, evidence of title or possession, or any other thing of
5 value is delivered to a third party (known as the escrow agent) to
6 be held by the third party until the happening or nonhappening of
7 a specified event or performance or nonperformance of a prescribed
8 act when it is then delivered to a designated party. The escrow
9 agent, sometimes known as the escrowee, is a fiduciary, and acts
10 pursuant to the parties' instructions.

11 7. In Arizona, escrows are performed in connection with a
12 variety of real estate and other transactions, including, among
13 other things, the sale or lease of new or used residential, com-
14 mercial, and industrial property, real property related loans,
15 leaseholds, subdivisions, subdivision trusts and account servicing
16 transactions. Some escrows concern personal property. Escrows are
17 performed for a variety of persons, including, but not limited to,
18 individual buyers and sellers of real estate, builders, developers,
19 lending institutions, governmental bodies, and commercial and in-
20 dustrial concerns. A majority of real estate sales transactions in
21 Arizona are closed through the use of escrow.

22 8. Escrow agents perform a variety of services (known as
23 escrow services) in the course of the various types of escrows. In
24 a typical residential real estate sale escrow, the escrow agent
25 begins or "opens" the escrow by taking delivery of a signed sales
26 agreement and earnest money. At some later time, upon receipt of
27 the necessary funds from the buyer, the deed from the seller, and
28 the fulfillment of all other conditions, the escrow agent ends or
29 "closes" the escrow by transferring the deed to the buyer, or
30 causing it to be recorded on his behalf and paying the remaining
31 proceeds to the seller. In the course of the escrow, the escrow
32 agent may perform a number of services on behalf of the parties,

1 including, but not limited to: drafting documents; obtaining
2 information on encumbrances, various types of insurance coverage,
3 and other things; making disbursements out of the funds deposited
4 in escrow to pay taxes, outstanding liens, commissions due real
5 estate brokers and agents; and conducting other matters. The
6 escrow agent may also order a title search and title insurance
7 commitment.

8 9. In loan and leasehold escrows, the escrow agent may, in
9 addition to other things, hold and distribute loan proceeds and rent
10 payments, respectively. In a subdivision escrow, the escrow agent
11 performs individual escrows for units developed in a common promo-
12 tional plan of contiguous properties.

13 10. In an account servicing escrow, the escrow agent essen-
14 tially acts as a collection agent for the parties. In a typical
15 arrangement, the escrow agent holds a security document or promis-
16 sory note, receives payments from the debtor, and transmits the
17 payments to the creditor or some other designated payee. When the
18 obligation is paid off, the escrow agent causes the conveyance of
19 the deed or satisfaction of the debt to be recorded. In the course
20 of an account servicing escrow the escrow agent may perform any of
21 a number of other services, including, but not limited to, directing
22 payments to another designated party, and notifying the debtor of
23 the creditor's intent to retake possession. Account servicing
24 escrows range in duration from a period of less than six months to
25 as long as twenty years.

26 11. A subdivision trust escrow is frequently used to facil-
27 itate the subdivision, development, or sale of a large tract of
28 land. In a common arrangement, the seller of the property conveys
29 title to the property to the escrow agent. The buyer of the
30 property is given certain rights in the property, including the
31 right to develop it and cause the sale of individual parcels.
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1 In the course of the subdivision trust, the escrow agent may
2 perform a number of other services, including, but not limited to,
3 receiving and distributing payments, including payments from the
4 sale of individual lots, executing documents, and delivering title
5 for specific parcels. Subdivision trust escrows range in duration
6 from a period of less than six months to as long as twenty years.

7 12. Escrow services are performed in Arizona by a variety of
8 persons, including, but not limited to, independent escrow com-
9 panies, mortgage companies, lending institutions, attorneys, real
10 estate brokers, title insurers, and title insurance agents. A
11 majority of escrows related to real estate transactions are per-
12 formed by title insurers and title insurance agents. When a title
13 insurance agent performs the escrow, the title insurance agent acts
14 as a third party to the escrow transaction and independently of the
15 title insurer. Title insurance agents retain all of the fees paid
16 to them for the provision or sale of escrow services; no portion of
17 such fees is paid to their title insurer principals.

18 13. Each title insurer doing business in Arizona is directed
19 by Arizona law to file its escrow rates with the director of
20 insurance of the State of Arizona Department of Insurance (here-
21 inafter the director). A title insurer may file its escrow rates
22 directly, or it may, at its option, have rates filed on its behalf
23 by a licensed title insurance rating organization. A rate filing
24 becomes effective after a 15-day waiting period, unless the director
25 orders and conducts a hearing, and after the hearing, disapproves
26 the filing. The director may extend the waiting period or may
27 authorize a filing to become effective before the expiration of the
28 waiting period.

29 14. Each title insurer may, under Arizona law, permit all or
30 certain of its title insurance agents to make escrow rate filings
31 directly or to become a subscriber to a title insurance rating
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1 organization. A title insurer may also choose to have its escrow
2 rate filings govern all or certain of its title insurance agents.

3 15. Title insurers and title insurance agents are directed
4 by Arizona law to charge the escrow fees filed by them or on their
5 behalf. Any member or subscriber of a licensed title insurance
6 rating organization may file a deviation from the rates filed by
7 such rating organization, and may withdraw its filing or any part
8 of it. State law forbids the use of a combined rate for title
9 insurance and escrow.

10 16. In October and November 1977, the TIRBA Board of
11 Directors held a series of meetings at which escrow rates and
12 services were discussed, classified, and agreed upon. On
13 November 9, 1977, the TIRBA Board of Directors approved the
14 "Schedule of Escrow Service Rates, Manual of Classifications, and
15 Rules and Plans Relating Thereto" (hereinafter Schedule of Escrow
16 Service Rates) and authorized its submission to the director. The
17 Schedule of Escrow Service Rates defined, classified, and fixed
18 rates for a variety of escrow services. The document was there-
19 after submitted to the director on behalf of all of the then 12
20 TIRBA members and 16 subscribers. On December 14, 1977, and
21 January 27, 1978, TIRBA filed amendments to the Schedule of Escrow
22 Service Rates. On April 4, 1978, TIRBA filed a correction of
23 certain earlier filed rates. All filings were made on behalf of
24 all the then TIRBA members and subscribers.

25 17. In December 1978, TIRBA filed a revised Schedule of
26 Escrow Service Rates, Manual of Classifications, and Rules and
27 Plans Relating Thereto (hereinafter Revised Schedule) with the
28 director. The Revised Schedule recoded certain escrow classifi-
29 cations but did not change the previously filed classifications or
30 rates. TIRBA has made no escrow rate filings since the December
31 1978 Revised Schedule. The Revised Schedule has fixed the escrow
32 rates contained therein for all TIRBA members and subscribers.

1 18. The director has never disapproved a filed escrow rate,
2 nor held a hearing concerning any proposed or filed escrow rate.
3 No TIRBA member, subscriber, or other title insurance agent of any
4 TIRBA member has filed its own escrow rates, or filed a deviation
5 from the escrow rates filed by TIRBA.

6 19. There is a regular, continuous and substantial flow in
7 interstate commerce of funds moving from other states of the United
8 States to escrow agents in the state of Arizona and from escrow
9 agents in the state of Arizona to locations in other states of the
10 United States in connection with the provision and sale of escrow
11 services in the state of Arizona by TIRBA members and their title
12 insurance agents. Escrow services performed by TIRBA members and
13 their title insurance agents in the state of Arizona involve and
14 affect persons located outside the state of Arizona in other states
15 of the United States. Escrow services performed by TIRBA members
16 and their title insurance agents in the state of Arizona facilitate
17 the conduct of interstate business and contribute directly to the
18 flow of persons, money, goods, and services into and out of the
19 state of Arizona. Interstate mails and wire services are often
20 used in connection with escrow services performed in the state of
21 Arizona by TIRBA members and their title insurance agents.

22 20. The escrow services performed in the state of Arizona by
23 TIRBA members and their title insurance agents have a substantial
24 effect on appreciable activities in interstate commerce, including,
25 but not limited to, the real estate market and various components
26 of real estate transactions. TIRBA members and their title in-
27 surance agents often perform escrow services for persons moving
28 from the state of Arizona to other states of the United States and
29 from other states of the United States to the state of Arizona.

30 21. The escrow activities of the defendant and co-conspirators
31 are within the flow of interstate commerce and have a substantial
32 effect on interstate commerce.

1 (e) agreed to issue correspondence among themselves
2 stating that said Schedules of Escrow Service
3 Rates were to apply throughout the state of
4 Arizona; and

5 (f) exchanged information concerning past, present,
6 and potential prices for escrow services.

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8 VI

9 EFFECTS

10 26. The aforesaid combination and conspiracy has had the
11 following effects, among others:

12 (a) Price competition among TIRBA members, sub-
13 scribers, and other title insurance agents in the
14 sale of escrow services has been suppressed and
15 eliminated;

16 (b) Consumers have been deprived of the benefits of
17 free and open competition in the sale of such
18 services; and

19 (c) Prices for the sale of escrow services have been
20 fixed at artificial and noncompetitive rates.

21 PRAYER

22 WHEREFORE, the plaintiff prays:

23 1. That this court adjudge and decree that the defendant
24 and co-conspirators have engaged in an unlawful combination and
25 conspiracy in unreasonable restraint of the aforesaid interstate
26 trade and commerce in violation of Section 1 of the Sherman Act.

27 2. That the defendant, its members, and each of their
28 officers, agents, servants, employees, successors, assigns, and
29 all persons acting or claiming to act on their behalf, be perpet-
30 ually enjoined and restrained from, directly or indirectly:
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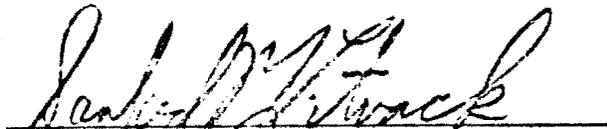
- 1 (a) continuing, maintaining, or renewing the
2 combination and conspiracy hereinbefore alleged,
3 or from engaging in any other combination or
4 conspiracy having a similar purpose or effect,
5 or from adopting or following any practice, plan,
6 program, or device having a similar purpose or
7 effect;
- 8 (b) entering into any combination, conspiracy, agreement,
9 arrangement, plan, understanding or concert of
10 action to fix, stabilize or maintain prices for
11 escrow services; and
- 12 (c) communicating information concerning past, present,
13 or potential prices for escrow services to any other
14 person engaged in the provision or sale of escrow
15 services.

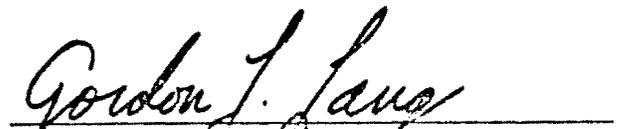
16 3. That TIRBA be required to withdraw, cancel, and rescind
17 all escrow rate filings made by it with the director of insurance
18 and all resolutions, rules, regulations, letters of clarification,
19 and any other statement of practice or policy concerning the
20 pricing of escrow services.

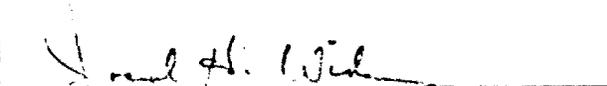
21 4. That the plaintiff have such other and further relief
22 as the court may deem just and proper.

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


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