

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO.:
)	80-CIV-5520
v.)	
)	Filed: September 30, 1980
ASSOCIATION OF SHIP BROKERS AND)	
AGENTS (U.S.A.), INC. and)	
WORLDSCALE ASSOCIATION (NYC),)	
INC.,)	
)	
Defendants.)	

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 against the above named defendants to obtain equitable relief and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants by the United States of America under Section 4 of the Sherman Act, as amended (15 U.S.C. §4), in order to prevent and restrain continuing violation, as hereinafter alleged, by the defendants of Section 1 of the Sherman Act, as amended (15 U.S.C. §1).

2. Each of the defendants has its principal place of business, transacts business and is found in the Southern District of New York.

II

DEFINITIONS

3. As used herein, the term:

(a) "Person" means any individual, partnership, firm, association, corporation or other entity.

(b) "Tanker" means an oceangoing ship designed and used for the carriage of liquids, primarily petroleum and petroleum products.

(c) "Tanker owner" means any person who owns or otherwise controls a tanker.

(d) "Charterer" means a person who enters into an agreement for the use of a tanker for a specified voyage or a specified period of time.

(e) "Fixture" means an agreement between a tanker owner and a prospective charterer for the chartering of a tanker for a specified period of time, or for a specified voyage. Fixtures for specified voyages are said to be "spot market" fixtures.

(f) "Oil tanker broker" or "broker" means a person regularly engaged in arranging and negotiating fixtures on behalf of tanker owners or prospective charterers.

(g) "Oil tanker broker services" means the provision of services by oil tanker brokers to tanker owners or potential tanker charterers in the negotiations concerning spot market fixtures, and associated services.

III

DEFENDANTS

4. The Association of Ship Brokers and Agents (U.S.A.), Inc., (hereinafter "ASBA") is made a defendant herein. ASBA is an incorporated association organized under the laws of New York. Its approximately 130 members consist primarily of ship brokerage firms, ship agent firms, and individuals working in these fields. ASBA's principal place of business is at 17 Battery Place, New York, New York. Virtually every brokerage firm in the United States that provides oil tanker brokerage services is a member of ASBA.

5. Worldscale Association (NYC), Inc., (hereinafter "Worldscale Assn.") is made a defendant herein. Worldscale

Assn. is an incorporated association organized under the laws of Delaware. Worldscale Assn.'s principal place of business is at 17 Battery Place, New York, New York. Worldscale Assn. is the American sponsor and issuer of the Worldwide Tanker Nominal Freight Scale (hereinafter "Worldscale").

IV

CO-CONSPIRATORS

6. Various firms and individuals, not made defendants in this complaint, have participated as co-conspirators in the violation alleged herein and have performed acts and made statements in furtherance thereof.

V

TRADE AND COMMERCE

7. Oil tankers transport petroleum and petroleum products from oil producing regions of the world to the United States and its territories. Oil tankers also transport petroleum and petroleum products from locations in the United States and its territories to other such locations.

8. Oil tanker brokers represent tanker owners and prospective tanker charterers in locating and negotiating a suitable fixture. A tanker owner with a tanker available makes the availability of his tanker and its location known to a broker or brokers. A potential charterer makes his need for a tanker known to a broker or brokers. Brokers representing tanker owners and brokers representing potential charterers communicate with one another and negotiate fixtures.

9. Rates charged for spot market oil tanker fixtures are commonly calculated by use of Worldscale rates. Worldscale establishes base rates between some 50,000 port pairs worldwide on a dollar per ton basis. The base rate is determined by calculating the cost of travel between any two ports for a hypothetical vessel with assumed costs. A book containing these Worldscale rates is a standard industry reference source.

10. Worldscale includes a brokerage fee of 2 1/2% in all rate calculations. This brokerage fee has been an element of Worldscale since its inception in 1969. It is republished each time a new Worldscale rate book is issued. The fixed brokerage fee is also included in the Worldscale calculations of demurrage and canal or seaway differentials.

11. Brokers are compensated by commissions paid on the amount of money due under a fixture they have arranged. Oil tanker owners pay brokers in excess of \$12 million in commissions on spot market fixtures each year.

12. Throughout the period of time of the violation alleged herein, transactions between oil tanker owners and brokers who are members of ASBA and use Worldscale were in interstate and foreign commerce and affected such commerce. Such transactions involved payments for goods and services that are in and affect interstate and foreign commerce. Oil tankers chartered through the services of brokers transport petroleum in foreign commerce to the United States and in interstate commerce among the various States.

VI

VIOLATION ALLEGED

13. Commencing in or about the year 1967, and continuing until the date of this complaint, defendants and their co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1). The combination and conspiracy is continuing and will continue unless the relief hereinafter prayed for is granted.

14. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which have been to fix, stabilize, and maintain

the brokerage fees charged by members of defendant ASBA for rendering oil tanker brokerage services.

15. In effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things that they have combined and conspired to do, including, among other things:

(a) Defendants and their co-conspirators adopted, published, circulated, promoted, and used, as a part of Worldscale, a fixed brokerage commission figure for arranging oil tanker fixtures; and

(b) Defendant ASBA and its co-conspirators maintained a Code of Ethics which includes a canon that "[u]nless otherwise agreed in advance, a member's compensation shall not exceed that which is customary for the services rendered." All applicants for ASBA membership must agree in writing to abide by the Code of Ethics.

VII

EFFECTS

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

(a) the commission charged for oil tanker brokerage services involved in the arrangement of oil tanker fixtures has been fixed, stabilized, and maintained at artificial and non-competitive levels;

(b) price competition in the provision of oil tanker brokerage services has been restrained;

(c) purchasers of oil tanker brokerage services have been deprived of the benefits of free and open competition in the market for such services.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendants 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 defendants, their officers, directors, employees, agents, successors, and assigns, and all other persons acting or claiming to act on their behalf, be perpetually enjoined and restrained from in any manner, directly or indirectly, continuing, maintaining, or renewing the combination and conspiracy hereinbefore alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding, or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

3. That defendant ASBA be required to distribute to each of its members a copy of the complaint and final judgment or decree within 60 days of the date of the entry of such judgment or decree.

4. That defendant ASBA notify all of its members that brokerage fees are freely negotiable among the parties to any transaction in which oil tanker broker services are used and that ASBA takes no position concerning what constitutes an appropriate brokerage fee.

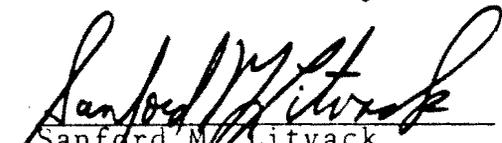
5. That defendant Worldscale Assn. remove the brokerage element from the computation of all Worldscale rates in the interstate and foreign commerce of the United States.

6. That defendant Worldscale Assn. notify all persons in the United States who have purchased, within the last three years, a Worldscale publication, that brokerage fees are freely negotiable among the parties to any transaction in which a fixture is negotiated and that Worldscale Assn. takes no

position concerning what constitutes an appropriate brokerage fee.

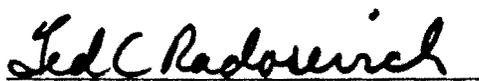
7. That the plaintiff have such other and further relief as the nature of the case may require and the court may deem just and proper.

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


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