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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Filed: June 16, 1987
)	
v.)	Civil No.: 870468ACK
)	
PAINTING & DECORATING CONTRACTORS)	
ASSOCIATION OF HAWAII)	ANTITRUST
)	
Defendant.)	
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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 defendant to obtain equitable relief and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted by the United States of America under Section 4 of the Sherman

Act, 15 U.S.C. § 4, to prevent and restrain the continuing violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, as hereinafter alleged.

2. Defendant has its principal place of business, transacts business, and is found in the District of Hawaii.

II.

DEFINITIONS

3. As used herein, the term:

- (a) "Awarding authority" means any governmental or private entity that contracts for the performance of construction projects;
- (b) "General contractor" means any person who contracts with awarding authorities for the performance of construction projects;
- (c) "Specialty contractor," also known as a subcontractor, means any person who supplies specialty contracting services (e.g., plumbing, electrical, painting and decorating) to general contractors for construction projects;
- (d) "Material supplier" means any person who supplies materials to general or specialty contractors for use on construction projects;
- (e) "Person" means any individual, partnership, firm, association, corporation or other business or legal entity;

- (f) "Prime bid" means an offer to an awarding authority by a general contractor for the purpose of obtaining a contract for a construction project;
- (g) "Sub-bid" means an offer to a general contractor by a specialty contractor to supply specialty contracting services for a construction project, or by a material supplier to supply materials for a construction project;
- (h) "Confirmation bid" means written confirmation of a sub-bid, which confirmation is filed by a specialty contractor or material supplier with a bid depository; and
- (i) "Bid depository" means a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, or that receives confirmation bids filed by specialty contractors and material suppliers.

III.

DEFENDANT

4. Painting & Decorating Contractors Association of Hawaii (hereinafter "PDCA") is made a defendant herein. PDCA is a Hawaii corporation with its principal place of business in Honolulu, Hawaii. PDCA is a specialty contractors association whose membership includes contractors specializing in painting

and decorating work. PDCA operates a bid depository in the State of Hawaii.

IV.

CO-CONSPIRATORS

5. Various persons, 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

6. A substantial number of construction projects in the State of Hawaii are undertaken through solicitation and acceptance by awarding authorities of prime bids from general contractors. In order to prepare such bids and to perform construction projects that they are awarded, general contractors in turn typically solicit and accept sub-bids from specialty contractors and material suppliers.

7. Three general contractor associations in the State of Hawaii operate bid depositories. Since 1949, the General Contractors Association of Hawaii (hereinafter "GCA") has operated a bid depository for construction projects on the Island of Oahu. Since 1972, the Hawaii Island Contractors' Association, formerly known as Hilo Contractors Association, has operated a bid depository for construction projects on the Island of Hawaii. Since 1977, the Maui Contractors Association has operated a bid depository for construction projects on the Island of Maui.

8. Six specialty contractor associations in the State of Hawaii operate bid depositories. These associations are the defendant PDCA, Gypsum Drywall Contractors of Hawaii, Pacific Electrical Contractors Association, Mason Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association.

9. GCA selects a substantial number of construction projects in the State of Hawaii that are being awarded through the solicitation and acceptance of prime bids from general contractors and publishes a list of the selected projects in the GCA Weekly Bid Bulletin (formerly the Builders Industry Digest). GCA selects almost exclusively government construction projects for inclusion in the GCA Weekly Bid Bulletin. All significant construction projects in the State of Hawaii that are awarded by federal, state, or local governmental entities are listed in the GCA Weekly Bid Bulletin.

10. Unless specified otherwise, the submission and acceptance of sub-bids, including sub-bids on painting and decorating work, on construction projects listed in the GCA Weekly Bid Bulletin are governed by certain rules and procedures established by the bid depositories operated by the relevant general and specialty contractors' associations. The selection by GCA of construction projects to be governed by bid depositories' rules and procedures occurs without the authorization and direction of the affected awarding authorities.

11. Since 1963, defendant PDCA has operated a bid depository in conjunction with bid depositories operated by general contractor associations in the State of Hawaii. All significant painting and decorating subcontractors in the State of Hawaii are members of PDCA and abide by the rules and procedures of PDCA's bid depository (hereinafter the "PDCA bidding procedure") with respect to construction projects in the State of Hawaii that are listed in the GCA Weekly Bid Bulletin. To obtain an adequate number of sub-bids from qualified painting and decorating subcontractors for construction projects in the State of Hawaii that are listed in the GCA Weekly Bid Bulletin, general contractors must obtain bids from PDCA members that are submitted pursuant to the PDCA bidding procedure. On construction projects to which the PDCA bidding procedure applies, in almost all instances the only bids received by awarding authorities from general contractors are bids based on sub-bids submitted in accordance with that procedure.

12. The PDCA bidding procedure provides, among other things, that:

- (a) Confirmation bids for painting and decorating subcontracts or material supplies must be filed with the PDCA bid depository as well as with the relevant general contractor association bid depository;

- (b) Filed bids may not be altered or changed after the deadline for their filing;
- (c) A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor; and
- (d) Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository.

13. Substantial amounts of the construction materials that are bid and contracted in accordance with the PDCA bidding procedure are shipped from various states of the United States to the State of Hawaii in a continuous and uninterrupted flow of interstate commerce.

14. The activities of the defendant and co-conspirators, which are the subject of the violation hereinafter alleged, are within the flow of, and have a substantial effect on, interstate commerce.

VI.

VIOLATION ALLEGED

15. Beginning at least as early as 1963 and continuing until the date of this complaint, defendant PDCA and co-conspirators have 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, 15 U.S.C. § 1. This combination and conspiracy is continuing

and will continue unless the relief hereinafter prayed for is granted.

16. The aforesaid combination and conspiracy has consisted of an agreement among the defendant and co-conspirators, the substantial terms of which were to:

- (a) Assure that a substantial number of construction projects in the State of Hawaii would be governed by the PDCA bidding procedure and other rules and procedures established by bid depositories operated by other associations of contractors in the State of Hawaii;
- (b) Restrain and prohibit the negotiation of sub-bids on painting and decorating subcontracts governed by the PDCA bidding procedure by, among other things, inhibiting the seeking of lower prices by general contractors or the offering of lower prices by painting and decorating contractors or material suppliers; and
- (c) Restrain and prohibit the offering of sub-bids, or the acceptance of subcontracts, by painting and decorating contractors or material suppliers that do not comply with the PDCA bidding procedures.

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

VII.

EFFECTS

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

- (a) Competition among painting and decorating contractors and material suppliers in the sale of painting and decorating contracting services and materials to general contractors on construction projects governed by the PDCA bidding procedure has been unreasonably restrained, suppressed, and eliminated; and
- (b) Competition among general contractors in negotiating sub-bids for painting and decorating contracting services and materials for construction projects governed by the PDCA bidding procedure has been unreasonably restrained, suppressed, and eliminated.

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PRAYER

WHEREFORE, plaintiff prays that:

1. The Court adjudge and decree that the defendant and co-conspirators have engaged in an unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act.

2. The defendant, its officers, directors, employees, agents, successors, assigns, subsidiaries, members, and all other persons acting or claiming to act on its behalf be enjoined from, in any manner, directly or indirectly, continuing, maintaining, or renewing the combination and conspiracy hereinbefore alleged, and 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. The defendant be enjoined from maintaining or adopting any and all specific rules, procedures, or practices that unreasonably restrain or prohibit the offer, receipt, or negotiation of sub-bids on painting and decorating subcontracts, or otherwise restrain price competition among painting and decorating contractors or material suppliers.

4. The plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

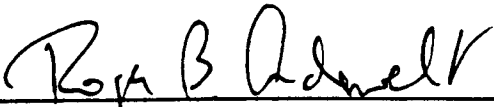
5. The plaintiff recover the costs of this action.

Dated:



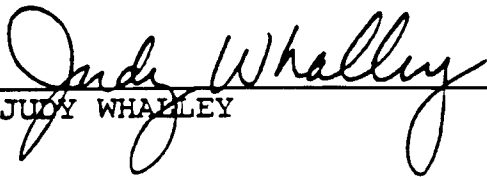
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