

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

90 1567

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE AMERICAN INSTITUTE OF ARCHITECTS,

Defendant.

Civil Action No.

Filed:

Entered: October 31, 1990

FILED

OCT 31 1990

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

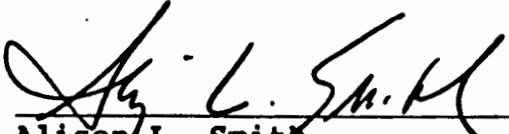
1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant and by filing that notice with the Court;

2. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever

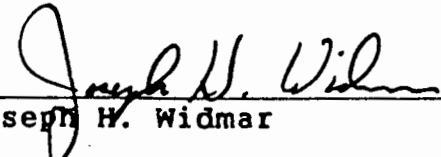
and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

FOR THE PLAINTIFF



Alison L. Smith
Acting Assistant Attorney General


Edward D. Eliasberg, Jr.


Joseph H. Widmar


Ann Lea Harding


Robert E. Bloch


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FOR THE DEFENDANT:


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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

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FINAL JUDGMENT

CLERK, U. S. DISTRICT COURT
DISTRICT OF COLUMBIA

Plaintiff, the United States of America, having filed its complaint on July 5, 1990, and plaintiff and defendant, by their respective attorneys, having each consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting evidence or admission by any party with respect to any issue of fact or law:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter of and parties to this action. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II.

The provisions of this Final Judgment shall apply to defendant, to defendant's state and local organizations and chapters (hereafter "components") in the United States and territories thereof, to the officers, directors, agents, employees, successors, and assigns of defendant and its components, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

III.

Defendant and its components are enjoined from:

(A) Directly or indirectly initiating, adopting, or pursuing any plan, program, or course of action that has the purpose or effect of prohibiting or restraining AIA members from engaging in the following practices: (1) submitting, at any time, competitive bids or price quotations, including in circumstances where price is the sole or principal consideration in the selection of an architect; (2) providing discounts; or (3) providing free services (hereafter "practices identified in Section III(A)").

(B) Directly or indirectly adopting, disseminating, publishing, or seeking adherence to any code of ethics, rule, bylaw, resolution, policy, guideline, standard, or statement made or ratified by an official of defendant or any of its components that has the purpose or effect of prohibiting or restraining AIA members from engaging in any of the practices identified in Section III (A) above, or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to any policy of the AIA or any of its components.

IV.

(A) Nothing in this Final Judgment shall prohibit any individual architect or architectural firm, acting alone and not on behalf of defendant or any of its components, from refusing to engage in any of the practices identified in Section III(A) above, or from expressing an opinion regarding those practices.

(B) Nothing in this Final Judgment shall prohibit defendant or its components from advocating or discussing, in accordance with the doctrine established in Eastern Railroad Presidents Conference v. Noerr Motor Freight Inc., 365 U.S. 127 (1961) and its progeny, legislation, regulatory actions, or governmental policies or actions, relating to the practices identified in Section III(A) above.

V.

(A) Defendant and its components are ordered, within sixty (60) days from the date of entry of this Final Judgment in the case of defendant and within ninety (90) days in the case of the components, to review their codes of ethics, rules, bylaws, resolutions, guidelines, manuals, and policy statements and to eliminate therefrom, so far as it may be necessary to do so, any provision that violates Section III above.

(B) Defendant and its components are ordered to publish in their current codes of ethics within one hundred and twenty (120) days from the date of entry of this Final Judgment, and in all subsequent editions during the term of this Final Judgment, a prominently placed statement that the practices identified in Section III(A) above are not, in themselves, unethical, unprofessional, or contrary to any policy of defendant or its components.

(C) Defendant is ordered to submit for review and to require each component to submit for review to the Decree Committee, established pursuant to Section VIII below, each proposed code of ethics, rule, bylaw, resolution, guideline, manual, or written policy that deals with the practices identified in Section III(A) above, except that no statement permitted pursuant to Section IV above need be submitted. No proposal required to be reviewed by the Decree Committee pursuant to this Section may be disseminated, beyond those persons responsible for drafting or issuing the proposal, without prior approval by the Decree Committee.

VI.

Defendant is ordered:

(A) To send, within forty-five (45) days from the date of entry of this Final Judgment, a copy of this Final Judgment to each component and to each AIA member, together with a written statement that AIA members are free to engage in the practices identified in Section III(A) above regardless of anything defendant or its components may have said about these practices in the past;

(B) To cause the publication of this Final Judgment in the three consecutive issues of the AIA Memo following the date of entry of this Final Judgment; and

(C) For a period of ten (10) years following the date of entry of this Final Judgment:

(1) to send a copy of this Final Judgment to each new AIA member no later than ten (10) days after membership in the AIA is granted;

(2) to provide annually to each director, officer, and Executive Management Committee member of defendant, each non-clerical employee of defendant's Component Affairs and Governmental Affairs Departments, the president of each of defendant's components, and each member of the Council of Architectural Components Executives, a copy of this Final Judgment, and to obtain an

annual written certification from those persons that they received, read, understand, and agree to abide by this Final Judgment and that they have been advised and understand that noncompliance with the Final Judgment may result in disciplinary measures and also may result in conviction of the person for criminal contempt of court;

(3) to obtain annually from an official of each component a written certification, to the best of the certifying official's knowledge and belief, that copies of this Final Judgment have been distributed to the board and officers of the component, that each member of the board and each officer has read, understands, and agrees to abide by this Final Judgment, and that the programs required by Section VII(C) below have been conducted; and

(4) to require annually an official of each component to report in writing any violation or potential violation of this Final Judgment to the Decree Committee established under Section VIII below.

VII.

Defendant is ordered to maintain an antitrust compliance program which shall include the following:

(A) An annual briefing of defendant's Board of Directors, Executive Management Committee, officers, and non-clerical employees on this Final Judgment and the antitrust laws;

(B) A program conducted for all participants at each annual Grassroots convention on this Final Judgment and the antitrust laws; and

(C) Programs conducted annually at a general membership meeting of each of defendant's components, and at each regularly scheduled regional meeting of defendant's components, on this Final Judgment and the antitrust laws. These programs, and the programs conducted pursuant to Section VII(B) above, need not be conducted by defendant's own personnel.

VIII.

(A) Defendant shall establish a Decree Committee consisting of at least two attorneys within the General Counsel's office. The Decree Committee shall institute the actions set forth in this Section with the purpose of achieving compliance with this Final Judgment. The Decree Committee shall, on a continuing basis, supervise the review of the current and proposed activities of defendant and its components to seek to ensure that defendant and its components comply with this Final Judgment.

(B) The Decree Committee shall maintain reasonable records of all its deliberations and meetings. The Decree Committee, however, need not keep records of those activities that are clearly insignificant to the implementation of or compliance with this Final Judgment.

(C) Not later than one hundred and twenty (120) days after the date of entry of this Final Judgment, the Decree Committee shall certify to the Department of Justice ("the Department") whether to the best of its knowledge and belief defendant and its components have complied with the provisions of Sections V(A) and (B) and VI(A) and (B) above to the extent compliance is required within the time periods indicated therein.

(D) For a period of ten (10) years following the date of entry of this Final Judgment, the Decree Committee shall certify annually to the Department whether to the best of its knowledge and belief defendant and its components have complied with the provisions of Sections VI(C) and VII above.

(E) If, in the course of obtaining the information necessary to provide the certifications set forth in Section VIII(C) and (D) above, or at any other time, any member of the Decree Committee learns of any actual or proposed activity that violates or if implemented would violate Section III of this Final Judgment, defendant shall, within forty-five (45) days after such knowledge is obtained, undertake appropriate action

to terminate or modify the activity in order to comply with this Final Judgment. If the actual or potential violation is not cured within this forty-five (45) day period, defendant shall submit a written report to the Department no later than fifteen (15) days after the end of this period. Such written report shall describe the relevant activity, identify the relevant provisions of the Final Judgment, describe the relevant legal issues under the Final Judgment, state when the activity began, state when the activity first came to the attention of the Decree Committee, and state the steps that defendant has taken or plans to take to terminate or modify the activity in order to comply with this Final Judgment.

IX.

If, after the entry of this Final Judgment, defendant or any of its components violates or continues to violate Section III above, the Court may, after notice and hearing but without any showing of willfulness or intent, impose upon defendant and/or upon its components a civil fine for such violation in such amount as may be reasonable in light of all surrounding circumstances. Such a fine may be levied upon defendant and/or upon its components for each separate violation of Section III above. Such a fine may not be levied, however, on any natural person.

X.

Nothing in this Final Judgment shall bar the United States from seeking or the Court from imposing against defendant or

any person, in addition to or in lieu of the civil penalties provided for in Section IX above, any other relief available under any other applicable provision of law for violation of this Final Judgment.

XI.

During the term of this decree, Defendant is enjoined and restrained from allowing the 1984 President of the Chicago Chapter to hold any office, sit on any board of directors or chair or serve on any committee or subcommittee of defendant or any of its components (except that the foregoing shall not prevent maintenance of a general membership or participation in AIA as a general member).

XII.

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant or any component, be permitted:

- (1) access during office hours of defendant or any component to inspect and copy all records and documents in the possession or control of defendant or any component relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of defendant or any component, and without restraint or interference from defendant or its components, to interview officers, employees, and agents of defendant or any component, who may have counsel present, regarding any such matters.

(B) Defendant shall not assert against the Department any claim of privilege with respect to any records or documents maintained by the Decree Committee, except those records or documents (or portions thereof) relating solely to compliance by defendant or its components with Section III of this Final Judgment. This exception, however, shall not apply, and no privilege may be asserted against the Department, with respect to any records or documents (or portions thereof) relating to any activity reported to the Department pursuant to Section VIII(E) above. This provision does not constitute a waiver of any privilege as to parties other than the United States.

(C) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, defendant and its components shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested.

(D) No information or documents obtained by the means provided in this Section shall be divulged by any representative of the Department to any person other than a

duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XIII.

This Final Judgment shall expire ten (10) years from the date of entry.

XIV.

This Final Judgment shall supersede and terminate the final judgment in United States v. The American Institute of Architects, Civil Action No. 992-72, entered on June 19, 1972, which shall henceforth have no force or effect.

XV.

In settlement of all claims of the United States against defendant arising from this action, defendant is ordered and directed to pay to the United States the costs of the investigation in this matter in the amount of \$50,000 upon entry of this Final Judgment.

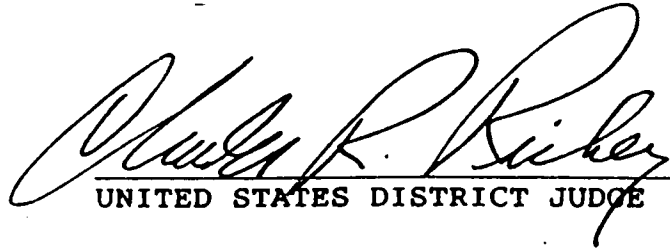
XVI.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of its provisions, for its enforcement or

compliance, and for the punishment of violations of any of its provisions.

XVII.

Entry of this Final Judgment is in the public interest.


UNITED STATES DISTRICT JUDGE

Dated: *October 31, 1990*