

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. : 80 Civ. 6129 (LBS)

NEW YORK COUNTY LAWYERS' : Entered: October 14, 19

ASSOCIATION, :

Defendant. :

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FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on October 28, 1980, and Defendant, New York County Lawyers' Association, having appeared by its attorneys and answered, and the parties hereto, by their respective attorneys, having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or any admission by either party in respect to any such issue:

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

ORDERED, ADJUDGED AND DECREED as follows:

I

This court has jurisdiction over the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

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

(B) "Defendant" means the New York County Lawyers' Association.

(C) "Corporate fiduciary" means any bank, trust company or other corporation which is authorized under Federal law or

the law of the State of New York to serve as executor of a decedent's estate or as the trustee of a trust.

III

This Final Judgment applies to Defendant and to each of its officers, directors, committees, other organizational units, agents, employees, successors and assigns, and to all persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. For purposes of this Section III, a member of Defendant shall not be deemed to be in active concert or participation solely by virtue of his or her membership.

IV

Defendant is enjoined and restrained from directly or indirectly:

A. Proposing, entering into, adhering to, implementing, or enforcing any contract, combination, conspiracy, agreement, understanding, plan, or concert of action with any corporate fiduciary or any representative thereof which, directly or indirectly, relates to the activities of a corporate fiduciary or any other person in (1) being or seeking to be appointed, providing services or acting as an executor of a decedent's estate or a trustee of a trust, or (2) advertising, or furnishing materials about, its availability to be appointed, provide services or act as an executor of a decedent's estate or a trustee of a trust.

B. Adopting, promulgating, publishing or seeking adherence to any statement of principles, code of ethics or other guide, rule or standard which restricts or governs, or delineates as proper or improper, practices or activities of corporate fiduciaries with respect to (1) being or seeking to be appointed, providing services or acting as executor of a decedent's estate or trustee of a trust or (2) advertising, or furnishing materials about, their availability to be appointed, provide services or act as executor of a decedent's estate or trustee of a trust.

V

Nothing in this Final Judgment shall be construed to prevent:

(A) A lawyer or firm, acting alone, from giving legal advice to a client, or from otherwise expressing an opinion, concerning unlawful practice of the law; or

(B) Defendant from (1) exercising any of its powers under the statutes of the State of New York and the Rules of Practice of the Appellate Division, First Department, of the Supreme Court of the State of New York; (2) entering into any settlement of or otherwise compromising any lawsuit brought by or against Defendant relating to the unlawful practice of law; (3) stating in response to a specific inquiry from a person engaged in particular activities that Defendant does not intend to make a complaint or file an action alleging that such activities constitute the unlawful practice of law, or stating that it is unable to state that it does not intend to make such a complaint or bring such an action; (4) expressing its views on any matter to the legislature, executive branch, administrative agencies, courts and other governmental bodies of the State of New York or any other jurisdiction; or (5) stating or expressing its opposition to any actions by corporate fiduciaries or any other persons which are expressly prohibited by the law of the State of New York or which are held by the Supreme Court or any appellate court of the State of New York to constitute the unlawful practice of law.

VI

Defendant is ordered and directed:

(A) Within sixty (60) days from the date of entry of this Final Judgment,

(1) To send a copy of this Final Judgment to each current member of the Corporate Fiduciaries Association of New York City; and

(2) To deliver a copy of this Final Judgment to each of its officers, directors, and committee chairpersons, and for a period of ten (10) years from the date of its entry, to each successor to any one of these officers and directors and to each successor to the chairpersons of Defendant's Committee on Unlawful Practice of the Law and Committee on the Surrogate's Court and any successor committees.

(B) To publish the text of this Final Judgment, in the type size normally used for major articles, in Defendant's newsletter, no later than the first issue published within ninety (90) days after the date of entry of this Final Judgment.

(C) To file with this Court and serve upon Plaintiff within ninety (90) days from the date of entry of this Final Judgment an affidavit as to the fact and manner of compliance with subsection (A) and (B) of this Section VI.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant made to its principal office, be permitted:

(1) Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Defendant, and without restraint or interference from it, to interview officers, directors, employees and agents of Defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Defendant's principal office, Defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice 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.

(C) If at the time information or documents are furnished by Defendant to Plaintiff, Defendant represents and identifies in writing the material in any such information or documents to which a claim for protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendant is not a party.

VIII

This Final Judgment shall have full force and effect for a period of ten (10) years from the date of its entry. 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 direction as may be necessary or appropriate for the construction or carrying out of the Final Judgment, for the modification of any of the provisions hereof, for the enforcement or compliance therewith, and for the punishment of violations thereof.

IX

Entry of this Final Judgment is in the public interest.

Entered: October 14, 1981

/s/ Judge Leonard Sand
Judge, United States District Court