

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 v.) Civil Action No. F 79-0042
) Entered: October 7, 1980
 ALLEN COUNTY INDIANA BAR)
 ASSOCIATION, INC.,) Filed: July 8, 1980
)
 Defendant.)

FINAL JUDGMENT AS TO DEFENDANT, ALLEN
COUNTY INDIANA BAR ASSOCIATION, INC.

Plaintiff, United States of America, having filed its Complaint herein on March 2, 1979, and Defendant, Allen County Indiana Bar Association, Inc., having appeared by its attorneys, 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 evidence or admission by either party in respect to any issue of fact or law herein;

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 herein and of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendant under Sections 1 and 2 of the Sherman Act.

II

As used in this Final Judgment:

(A) "Person" shall mean any individual, partnership, firm, association, corporation, or other business or legal entity;

(E) "Defendant ACBA" means the Defendant, Allen County Indiana Bar Association, Inc;

(C) "Title Insurance" shall mean a policy of insurance, insuring against loss or damage on account of encumbrances upon or defects in the title to residential real property, subject to stated terms and conditions; and

(D) "Attorney's Opinion" shall mean a statement by an attorney, determining the validity or marketability or extent of the title to residential real property, subject to stated terms and conditions.

III

The provisions of this Final Judgment shall apply to the Defendant ACBA and to each of its officers, directors, committees, other organizational units, agents, employees, successors, and assigns, 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. For purposes of this Section III, a member of Defendant ACBA shall not be deemed to be in active concert or participation solely by virtue of his or her membership.

IV

(A) Defendant ACBA is enjoined and restrained from directly or indirectly:

(1) Initiating, implementing, entering into, carrying out or furthering any conspiracy, agreement, understanding, plan, or concert of action with any person which has the purpose or effect of discouraging the use or acceptance of Title Insurance.

(2) Adopting, promulgating, publishing, or seeking adherence to any resolution, statement of principle, rule, standard, or any collective statement which has the purpose or effect of discouraging the use or acceptance of Title Insurance.

(B) For the purpose of this Section IV, conduct deemed to have the purpose or effect of discouraging the use or acceptance of Title Insurance includes, but is not limited to, conduct by Defendant ACBA which encourages, recommends or requires that Title Insurance be based upon an Attorney's Opinion.

(C) Nothing in this Final Judgment shall prohibit:

(1) An attorney or firm, acting alone, from giving legal advice to a client, or from otherwise expressing an opinion, concerning the use or acceptance of Title Insurance; or

(2) Defendant ACBA, for the purpose of assisting its members in discharging their professional responsibilities, from conducting educational seminars which present the individual views of the participants or from publishing and disseminating its Standards of Marketability of Abstracts of Title as they existed on December 1, 1979.

V

The Defendant ACBA is ordered and directed:

(A) Within thirty (30) days from entry of this Final Judgment,

(1) To send a copy of this Final Judgment to each member of the Defendant and to cause the publication of this Final Judgment in Defendant's newsletter;

(2) To send a copy of this Final Judgment, together with a letter identical in text to that attached to this decree as Appendix A, to each real estate firm and association, title insurance company, abstract of title company, savings and loan association, bank, and mortgage company with offices located in Allen County, Indiana; and

(3) To cause a copy of this decree to be published in a daily newspaper of general circulation in Allen County, Indiana.

(B) To serve a copy of this decree upon all of its future members at such time as they become members.

(C) To file with this Court and serve upon the Plaintiff within sixty (60) days after the date of entry of this Final Judgment an affidavit as to the fact and manner of compliance with subsections (A) and (B) of this Section V.

VI

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 the Defendant ACBA 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 ACBA, which may have counsel present, regarding any matters contained in this decree; and

(2) Subject to the reasonable convenience of such Defendant and without restraint or interference from it, to interview officers, employees, and agents of such 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 the Defendant ACBA's principal office, the Defendant ACBA shall submit such written reports, under oath if requested, with respect to any of the matters contained in this decree as may be requested.

(C) No information or documents obtained by the means provided in this Section VI 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.

VII

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 directions 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 of compliance therewith, and for the punishment of violations thereof.

VIII

Entry of this Final Judgment is in the public interest.

Entered: October 7, 1980

Judge Allen Sharp

Judge, United States District Court

APPENDIX A

Re: United States v. Allen County Indiana Bar Association, Inc., No. F 79-0042 (N.D. Ind., Final Judgment Entered , 1980)

Dear :

Recently, the Department of Justice filed a civil complaint against the Allen County Indiana Bar Association, Inc. ("ACBA") alleging that certain of its acts or pronouncements with respect to the use of title insurance amounted to a violation of the Sherman Antitrust Act. One such act or pronouncement was the adoption of a particular "Rule of Marketability," which the Government alleged was intended to and had the effect of discouraging the use of title insurance except where based on a lawyer's examination of an abstract of title. As you may know, ACBA has consistently denied that the rule in question was so intended or had such effect, but nevertheless ACBA rescinded the rule prior to the filing of the Government's complaint.

Enclosed is a copy of a Final Judgment entered , 1980, in United States v. Allen County Indiana Bar Association, Inc., Civil Action No. F 79-0042, to which the parties have voluntarily consented. The terms of this decree require that ACBA provide you with a copy of this judgment as well as this letter of explanation of the decree.

Basically, the decree enjoins ACBA, as such, from entering into any agreement or plan, or passing or adhering to any resolution, statement of principle, rule, standard, or other similar collective statement, which has the purpose or effect of discouraging any company, organization, or person from using title insurance in residential real estate transactions. The decree also provides that nothing therein shall prohibit an attorney or firm, acting alone, from giving legal advice to a client, or from otherwise expressing an opinion, concerning the use or acceptance of title insurance in residential real estate transactions, nor does it prohibit ACBA, for the purpose of assisting its members in discharging their professional responsibilities, from conducting educational seminars which present the individual views of the participants or from publishing and disseminating its Standards of Marketability of Abstracts of Title as they existed on December 1, 1979.

As a result of this decree, no committee of ACBA takes any position on the use of title insurance in residential real estate transactions, and no lawyer or other person is authorized to assert any such position on ACBA's behalf. The decision as to what is an appropriate way of protecting interested parties in any particular transaction, whether by way of title insurance, abstracts and attorney's opinions, or otherwise, is a matter for their own judgment as to what will adequately protect their interests.

Sincerely yours,

ALLEN COUNTY INDIANA BAR ASSOCIATION, INC.

By: Thomas D. Logan, President