

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Society of Professional Engineers., U.S. District Court, D. District of Columbia, 1978-2 Trade Cases ¶62,226, (Aug. 3, 1978)

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United States v. National Society of Professional Engineers.

1978-2 Trade Cases ¶62,226. U.S. District Court, D. District of Columbia, Civil Action No. 2412-72, Filed August 3, 1978.

Case No. 2287, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Professional Services: Engineers: Ban on Fee Bidding: Litigated Final Judgment.—

An association of professional engineers was barred by a final judgment from participating, adopting or disseminating any plan against competitive fee bidding. The association was ordered to amend its rules containing any references as to fee bidding prohibitions and fee schedules or guides. Affiliation to the association must be refused, under the provisions of the judgment, to any engineering society that prohibits in any way competitive fee bidding and a certification to that effect will be considered a prerequisite to affiliation.

For plaintiff: Richard J. Favretto, Washington, D. C. **For defendant:** Lee Loevinger, Washington, D. C.

Final Judgment

Smith, D. J.: Upon consideration of the previous proceedings and record herein, the Opinions of the Court of Appeals [[1977-1 Trade Cases ¶61,317](#)] and the Supreme Court [[1978-1 Trade Cases ¶61,990](#)] in this matter, the instructions of the Court of Appeals to modify in part the Judgment entered herein on November 26, 1975 [[1975-2 Trade Cases ¶60,604](#)], and the arguments of the parties concerning the withdrawal of the Court's previous Judgment and the entry of a modified Final Judgment, it is by the Court this 3rd day of August, 1978

Ordered, Adjudged, and Decreed that the Judgment entered herein on November 26, 1975, is withdrawn; and it is further

Ordered, Adjudged, and Decreed as the Final Judgment of the court that:

I

[*Jurisdiction*]

This Court has jurisdiction over the subject matter of this action and the parties hereto.

II

[*Sherman Act Sec. 1 Violation*]

The defendant is found to have violated [Section 1 of the Sherman Act](#) (15 U. S. C. §1) by combining and conspiring with its members and state societies to unreasonably restrain interstate trade and commerce in the sale of engineering services.

III

[*Applicability*]

The provisions of this Final Judgment which apply to the defendant shall also apply to the defendant's officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with the defendant who receive notice of this Final Judgment by personal service or otherwise.

IV

[*Ban on Fee Bidding by Engineers*]

The defendant is enjoined and restrained from participating in or adopting any plan, program or course of action which in any manner prohibits, discourages or limits members of the defendant from submitting price quotations for engineering services at such times and in such amounts as they may choose or which otherwise has the purpose or effect of suppressing or eliminating competition based upon engineering fees among members of the defendant.

V

[*Amendment of Association's Rules*]

The defendant is ordered and directed, within 60 days of the effective date of this Final Judgment, to amend its Code of Ethics, policy statements, opinions of its Board of Ethical Review, manuals, handbooks, rules, constitution, by-laws, resolutions and any other of its statements, guidelines or publications to eliminate therefrom any provisions, including Sections 9(a) [formerly Section 9(b)] and 11(c) of its Code of Ethics and any references thereto, which in any manner prohibit, discourage or limit the submission of price quotations for engineering services by members of the defendant or which state or imply that the submission of price quotations for engineering services or that competition by members of the defendant based upon engineering fees is unethical, unprofessional, contrary to the public interest or contrary to any policy of the defendant.

VI

[*Fee Schedules*]

The defendant is ordered and directed, within 60 days of the effective date of this Final Judgment, to amend its Code of Ethics, policy statements, opinions of its Board of Ethical Review, manuals, handbooks, rules, by-laws, resolutions and any other of its statements, guidelines or publications to eliminate therefrom all references to engineering fee schedules or guides published by any engineering society. The defendant is further enjoined and restrained from adopting, endorsing or promoting any engineering fee schedule or guide.

VII

[*Dissemination of Prohibited Activities*]

The defendant is enjoined and restrained from adopting or disseminating in any of its publications or otherwise, any Code of Ethics, opinion of its Board of Ethical Review, policy statement, rule, by-law, resolution or guideline which in any manner prohibits, discourages or limits the submission of price quotations for engineering services by members of the defendant or which states or implies that the submission of price quotations for engineering services or that competition by members of the defendant based upon engineering fees is unethical, unprofessional, contrary to the public interest or contrary to any policy of the defendant.

VIII

[*Notice*]

The defendant is ordered and directed, within 60 days of the effective date of this Final Judgment, to send a copy of this Final Judgment to each of its affiliated state engineering societies and local chapters and to each State Board of Engineering Registration in the United States and territories thereof, and to cause the publication of this Final Judgment in the magazine *Professional Engineer*, in such a fashion and as prominently as feature articles

are regularly published in said magazine, and to send a copy of such magazine to each member of NSPE. The defendant is further ordered and directed to send a copy of this Final Judgment to each new members of NSPE and to state prominently in any publication of its Code of Ethics the following: that, by order of the Court, Section 11(c) of the NSPE Code of Ethics prohibiting competitive bidding, and all policy statements, opinions, rulings or other guidelines interpreting its scope, have been rescinded as unlawfully interfering with the legal right of engineers, protected under the antitrust laws, to provide price information to prospective clients; and that nothing contained in the NSPE Code of Ethics, policy statements, opinions, rulings or other guidelines prohibits the submission of price quotations or competitive bids for engineering services at any time or in any amount. The text of such statement shall first be approved by the plaintiff.

IX

[*Affiliation*]

The defendant is ordered and directed to revoke the NSPE charter of and to refuse NSPE affiliation to:

(A) any state engineering society which in any manner prohibits, discourages or limits its members from submitting price quotations for engineering services at such times and in such amounts as they may choose or which otherwise participates in or adopts any plan, program or course of action which has the purpose or effect of suppressing or eliminating competition among its members based upon engineering fees; and,

(B) any state engineering society which has within its organization any local chapter which in any manner prohibits, discourages or limits its members from submitting price quotations for engineering services at such times and in such amounts as they may choose or which otherwise participates in or adopts any plan, program or course of action which has the purpose or effect of suppressing or eliminating competition among its members based upon engineering fees.

For the purpose of carrying out the provisions of this section, the defendant is ordered and directed to require, as a prerequisite for an NSPE charter or continued NSPE affiliation of any state engineering society, that such state engineering society submit to the defendant within 60 days of the effective date of this Final Judgment a written certification by an official of such state engineering society that neither it nor any of its local chapters in any manner prohibit, discourage or limit their members from submitting price quotations for engineering services at such times and in such amounts as they may choose and neither it nor any of its local chapters participate in or have any plan, program or course of action which has the purpose or effect of suppressing or eliminating competition among their members based upon engineering fees. The defendant is further enjoined and restrained from granting or continuing an NSPE charter or NSPE affiliation to any state engineering society which does not comply with the defendant's request for the certification required herein. The defendant shall retain each such certification during the period of the NSPE charter or NSPE affiliation of the state engineering societies submitting it.

X

[*Reports*]

The defendant is ordered and directed to file with the plaintiff 90 days from the effective date of this Final Judgment and on each anniversary date of the effective date of this Final Judgment for a period of five years, a report setting forth the steps it has taken to comply with the provisions of this Final Judgment.

XI

[*Compliance*]

For the purpose of securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, made to its principal office, be permitted:

(A) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant relating to any of the matters contained in this Final Judgment; and,

(B) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview the officers and employees of said defendant, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, the defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports relating to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this section 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 plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XII

[*Costs*]

The plaintiff shall recover the costs of this action from the defendant.

XIII

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of ordering other specific and further relief herein as the Court upon application of the plaintiff may determine to be necessary or appropriate and consistent with the Opinion of the Court and its Findings of Fact and Conclusions of Law. Jurisdiction is also retained for the purpose of enabling either of the parties to this Final Judgment to apply to the Court at any time for any further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of the violation of any of the provisions contained therein or subsequently ordered upon the application of the plaintiff.