

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

UNITED STATES OF AMERICA,
Plaintiff,
v.
CLARK MECHANICAL CONTRACTORS,
INC., et al.,
Defendants.

Civil No. 7264

Entered: Sept. 13, 1973

FINAL JUDGMENT

The Plaintiff, United States of America, having filed its Complaint herein on May 22, 1972, and the Defendants, having appeared by their respective attorneys and having filed their Answers to such Complaint denying the substantive allegations thereof; and Plaintiff and Defendants, by their respective attorneys, having consented to the making and entry of this Final Judgment herein, without trial or adjudication of, or finding on, any issues of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any such issues;

NOW, THEREFORE, without any testimony having been taken herein, and without trial or adjudication of or finding on any issues 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 of the subject matter herein and of the parties hereto, and the Complaint states

claims upon which relief may be granted against the Defendants under Section I of the Act of Congress of July 2, 1890 entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," (15 U.S.C. §1) commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

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

(B) "Mechanical contracting services" shall mean the contracting for, and the installation of, all phases of plumbing, pipefitting and sheet metal work in or at job sites for new construction or for renovation purposes;

(C) "Mechanical contracting supplies" shall mean products, such as pipe, sanitary plumbing fixtures, valves, faucets, fittings, hangers, connectors, and heating and air conditioning units, sold and installed by companies rendering mechanical contracting services;

(D) "Mechanical contractors" shall mean those persons engaged in the business of purchasing mechanical contracting supplies for resale and installation at job sites.

III

The provisions of this Final Judgment applicable to any Defendant shall also apply to its subsidiaries, successors, assigns, officers, directors, agents, servants

and employees, and to all persons in active concert or participation with any such Defendant who shall have received actual notice of this Final Judgment by personal service or otherwise, provided, however, that this Final Judgment shall not apply to transactions or activities solely between a Defendant and its directors, officers, employees, parent companies, subsidiaries or any of them when acting in such capacity.

IV

Each Defendant is enjoined and restrained, individually and collectively, from entering into, adhering to, participating in, maintaining, furthering, enforcing or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan or program with any other person, to:

(1) Fix, maintain, establish, determine, stabilize or adhere to prices, discounts or other terms or conditions for the sale or installation of mechanical contracting supplies, or the rendering of mechanical contracting services to any third person;

(2) Allocate or divide customers, territories or markets for the sale or installation of mechanical contracting supplies, or the rendering of mechanical contracting services;

(3) Determine or designate the low bidder on specific mechanical contracting projects;

(4) Submit collusive or rigged bids for the sale or installation of mechanical contracting supplies, or the rendering of mechanical contracting services;

(5) Eliminate or suppress bid or price competition in the sale or installation of mechanical contracting supplies, or the rendering of mechanical contracting services;

(6) Submit intentionally high or complementary bids on specific mechanical contracting projects;

(7) Discuss the submission of prospective bids on specific mechanical contracting projects on which each party has submitted or intends to submit a bid.

V

Each Defendant is enjoined and restrained from furnishing to or exchanging with each other or with any other mechanical contractor any information concerning the prices, terms or other conditions of sale contained in any bid which such Defendant has submitted, or intends to submit to any customer prior to the opening of such bid by that customer, or prior to the release of such bid information to the public or to the trade generally.

VI

Nothing contained in this Final Judgment shall be deemed to prohibit a Defendant from (a) entering into any bona fide and arm's length purchase or sale negotiations

between any Defendant and any other person, or (b) entering into, participating in, or maintaining with any other person a joint venture or subcontract agreement whereby a single bid will be submitted and the assets and facilities of each of the parties thereto will be combined for the sale or installation of mechanical contracting supplies and the rendering of mechanical contracting services; provided that the job in question is of such size or nature, or performable at such time, that in good faith the Defendant believes that it is undesirable to handle the entire job alone and the transaction is denominated as or is known to the customer to be a joint venture or subcontract agreement; Provided, however, that any such joint venture or subcontract agreement shall not be used or permitted to circumvent or evade any of the provisions of this Final Judgment or to implement other activities in derogation hereof.

VII

Each Defendant is ordered and directed for a period of five (5) years from the date of entry of this Final Judgment to affix to every sealed bid for the sale of mechanical contracting supplies or mechanical contracting services a written certification, signed by an officer of such Defendant, that such bid was not in any way the result, directly or indirectly, of any agreement, understanding, plan or program, whether formal or informal, between the Defendant and any other mechanical contractor, except as specifically permitted by Paragraph VI of this Final Judgment.

VIII

Each Defendant is ordered and directed within 60 days from the date of entry of this Final Judgment to furnish a copy of the Final Judgment to each of its officers, directors, sales managers and service managers, and to each of their successors, within 60 days of such successor's appointment.

IX

For a period of ten (10) years from the date of entry of this Final Judgment each Defendant is ordered to file with the Plaintiff on each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the prior year to advise the Defendant's appropriate officers, directors, and employees of its and their obligations under this Final Judgment.

X

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives 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 any Defendant made to its principal office, be permitted, subject to any legally recognized privilege (a) access during the office hours of such Defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such Defendant relating to any matters

contained in this Final Judgment; and (b) subject to the reasonable convenience of such Defendant and without restraint or interference from it, to interview officers, directors, servants or employees of such Defendant, who may have counsel present, regarding any such matters. Any Defendant, upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such reports in writing with respect 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 X shall be divulged by any representatives of the Department of Justice to any persons 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 for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI

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 or 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 hereof, and for the enforcement of compliance herewith and the punishment of violations hereof.

Entered: Sept. 13, 1973

Date:

/s/ CHARLES M. ALLEN
UNITED STATES DISTRICT JUDGE