

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Funeral Directors Association of the United States, Inc., U.S. District Court, E.D. Wisconsin, 1968 Trade Cases ¶72,529, (Aug. 19, 1968)

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United States v. National Funeral Directors Association of the United States, Inc.

1968 Trade Cases ¶72,529. U.S. District Court, E.D. Wisconsin. Civil Action No. 67 C 395. Entered August 19, 1968. Case No. 1977 in the Antitrust Division of the Department of Justice.

## Sherman Act

**Trade Associations—Price Advertising—Consent Decree.**—A national funeral association was prohibited by a consent decree from agreeing on or maintaining any plan to limit or restrict the advertising by any person of prices for funeral services, except as state or local law permits. The decree's provisions require the group to eliminate restrictive provisions from its constitution and by-laws, exclude from membership any group that limits advertising or has members limiting advertising, and to request its member groups to offer to readmit to membership any funeral director who had been expelled or suspended or who had withdrawn because of any prohibition involving restrictions on advertising.

For the plaintiff: Edwin M. Zimmerman, Assistant Attorney General, Antitrust Div., Robert B. Hummel, William D. Kilgore, Jr., Robert J. Ludwig, John E. Sarbaugh, Ralph M. McCareins, and Theodore T. Peck, Attys., Department of Justice, Chicago, Ill.

For the defendant: Thomas H. Clark, of Clark, Robinson & Hellebush, Cincinnati, Ohio.

## Final Judgment

GORDON, D. J.: Plaintiff, United States of America, having filed its complaint herein on November 24, 1967, and defendant having filed its answer thereto denying the substantive allegations thereof, and plaintiff and defendant by their respective attorneys having consented to the making and entry of this Final Judgment without admission by either party in respect to any issue;

Now, Therefore, before any testimony has been taken herein, 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

### [ Jurisdiction ]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

### [ Definitions ]

As used in this Final Judgment, "funeral services" shall mean any and all personal services, merchandise, and facilities customarily used in the trade by funeral directors in the preparation and conduct of funerals.

III

### [ Applicability ]

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The provisions of this Final Judgment applicable to the defendant shall also apply to its Board of Governors, and to each of its officers, agents, employees and members, 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.

#### IV

##### **[ Notification]**

Defendant is ordered and directed, within sixty (60) days after entry of this Final Judgment, to mail a copy thereof to each of its member associations and thereafter, within sixty (60) days after granting membership to any new member association, to mail a copy thereof to such member, and to maintain for a period of ten years a written certification by an official of defendant that defendant has complied herewith. Further, defendant is ordered and directed to publish within sixty (60) days after the date of entry hereof a full and complete copy of this Final Judgment in its monthly trade magazine currently known as "The Director." The copy of the judgment in said magazine shall be published as prominently as featured articles are regularly published in it, and the monthly issue containing the said copy shall be sent to each of the addressees on the regular mailing list of said magazine including, but not limited to, all funeral directors who are affiliated with the defendant, all officers, agents, and employees of the defendant, and all others whose connection in any way with "The Director" normally entitles them to receive a copy thereof.

#### V

##### **[ Price Advertising]**

Defendant is enjoined and restrained from directly or indirectly entering into, maintaining, or engaging in any conspiracy, combination, practice, plan, or program to limit or restrict the advertising by any person of prices for funeral services, except as the defendant may lawfully petition appropriate State and local governmental agencies or regulatory authorities for laws or regulations which may so limit or restrict such advertising.

#### VI

##### **[ Constitution and By-laws]**

Defendant is directed to eliminate all provisions in its constitution, by laws, code of ethics or other rules or regulations which limit or restrict the advertising of prices for funeral services, and is enjoined from adopting or renewing any such provisions, or following any practice, plan or program having a similar purpose or effect.

#### VII

##### **[ Membership]**

Defendant is directed to exclude from membership and to refuse to admit to membership:

- (A) Any association of funeral directors which limits or restricts the advertising by funeral directors of prices for funeral services; and
- (B) Any State, local, or other association which has among its members any association of funeral directors which limits or restricts the advertising by funeral directors of prices for funeral services.

For the purpose of carrying out the provisions of this Section VII, defendant shall require, as a prerequisite for membership or continued membership, that each association which is a member of defendant or applies for membership, submit to defendant within sixty (60) days after the date of entry hereof a written certification by an official of such association that neither it nor any of its member associations limits or restricts the advertising by funeral directors of prices for funeral services. The defendant shall retain each such certification during the membership of the association submitting it.

#### VIII

**[ *Readmission of Members* ]**

Defendant is ordered and directed to request its member associations to offer to readmit to membership any funeral director who has either been expelled or suspended, or who has resigned, or who has withdrawn from membership in whole or in part because of any prohibition of defendant or any of its affiliated associations limiting or restricting the advertising by funeral directors of prices for any funeral services.

Defendant is further enjoined and restrained from having as a member any association which does not comply with defendant's request set forth in the preceding paragraph or refuses to readmit to membership any such funeral director, or any association which has among its members any association which, because of the advertising of prices of any funeral services, refuses to readmit such funeral director to membership.

For the purpose of carrying out this Section VIII, defendant shall require as a prerequisite for membership or continued membership that each association which applies for membership submit at the time of its application, and each association which is a member of defendant on the date of entry hereof submit within 60 days after such date of entry a written certification by an official of such association that it and, to the best of his knowledge, all of its member associations have offered in writing to readmit to membership all such funeral directors who have been expelled or have resigned or withdrawn from membership because of any prohibition of defendant or any of its affiliated associations against funeral price advertising, and, if such funeral directors or any of them have not been readmitted, the reasons therefor. All such written certifications will be submitted to the defendant which shall retain them for a period of ten years.

**IX**

**[ *State and Local Requirements* ]**

This Final Judgment shall not be deemed to prohibit defendant or any of its member associations from complying with requirements imposed upon it by State or local law or by any governmental body or instrumentality acting pursuant to State or local law.

**X**

**[ *Inspection and Compliance* ]**

For the purpose of 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 defendant, which may have counsel present, made through its principal office, be permitted, subject to any legally recognized privilege, (1) access during reasonable office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of the defendant relating to any of the subject 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 or employees of the defendant, who may have counsel present, regarding any such matters; and upon such request, defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice 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 representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

**XI**

**[ *Jurisdiction Retained* ]**

Jurisdiction is retained for the purpose of enabling either 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 or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.