

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA,	)	
Plaintiff	)	
v.	)	Civil Action
	)	No. 1533
PROVIDENCE FRUIT & PRODUCE	)	
BUILDING, INC., ET AL.,	)	
Defendants	)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on February 6, 1953, all the defendants having appeared and filed their answers to such Complaint denying the substantive allegations thereof, and said Complaint having been dismissed as to all defendants except those signatory hereto, and the undersigned defendants and plaintiff by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of law or fact herein and without admission by any of said defendants in respect of any such issue:

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

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the parties signatory to this Final Judgment and over the subject matter hereof. The Complaint states a cause of action against the undersigned defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890,

entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

## II

As used in this Final Judgment:

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

(B) "Company" shall mean the defendant, PROVIDENCE FRUIT & PRODUCE BUILDING, INC.;

(C) "Produce Building" shall mean the physical structure and facilities including parking areas and approaches, used, owned or leased by the Company;

(D) "Receiver" shall mean any person to whom fruits and vegetables are forwarded for resale at wholesale, whether such person is a consignee, commission merchant, a merchant buying and selling on his own account, or an agent of a grower or a shipper engaged in receiving and selling fruit and vegetable produce for the account of the grower or shipper;

(E) "Wholesaler" shall mean any person, including a receiver, who usually sells fruit and vegetable produce in wholesale lots of five or more boxes or packages;

(F) "Jobber" shall mean a person who sells fruit and vegetable produce to restaurants, grocery stores, and other retail outlets in less than wholesale lots;

(G) "Tenant" shall mean a person authorized to use the facilities of the Produce Building either as a tenant or sub-tenant;

(H) "Applicant" shall mean any person who files a written request with the Company to rent or lease space in the Produce Building;

(I) "Tenant defendants" shall mean the defendants T.A. BOYLE CO., A. M. TOURTELLOTT CO., NATHAN WARREN & SONS, and FELIX ROCCO CO., and each of them;

(J) "Space" shall mean space in the Produce Building;

(K) "Unit", as used herein, shall mean space on both floors of said Produce Building, fifteen feet in width and the full depth of the building, and shall include the cellar under the same and the space under the front platform in front of said cellar.

### III

The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant, its officers, directors, agents, servants, employees, subsidiaries, successors and assigns and to all other 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.

### IV

The Company is enjoined and restrained from:

(A) Refusing to lease or rent any space to any applicant desiring to act as a receiver, wholesaler or jobber at the Produce Building, except upon the grounds (1) that the applicant is not financially responsible, or (2) that all the space desired by the applicant in the Produce Building is already leased or rented to tenants, or is the subject matter of active negotiations pursuant to Section V (C) of this Final Judgment; or (3) that the applicant or a partner or the person in active control or management thereof has within three years prior to the application been convicted of a crime involving moral turpitude.

(B) Interfering with or restricting any tenant in the conduct of its business; provided, however, that the Company shall have the right to promulgate reasonable, uniform and non-discriminatory rules and regulations relating to the physical operation of the Produce Building;

(C) Excluding any person as a tenant or subtenant of the Produce Building because such person is a non-resident of the State of Rhode Island;

(D) Refusing to permit a tenant to assign its lease or sublet the whole or a part of its premises, except on the grounds that (1) the proposed assignee or sublessee proposes to conduct a business in the Produce Building other than that of a receiver, wholesaler, jobber, restaurant, telegraph office, or other business naturally incident, accessory to, and grouping itself with, a produce terminal, or (2) the proposed assignee or subtenant or a partner, or the person in active control or management thereof has, within three years prior to the application for such permission, been convicted of a crime involving moral turpitude;

(E) Consenting to the transfer or assignment of any lease or to the subletting of the whole or any part of its premises to any person who proposes to conduct a business in the Produce Building other than that of a receiver, wholesaler or jobber, if at the time the application for such transfer, assignment or subletting is made, there are any pending applications of any receiver, wholesaler or jobber for space;

(F) Granting to any tenant any preferential discount or rent because of the number of units leased or rented to a particular tenant, or because the tenant is a stockholder of the Company;

(G) Refusing to renew the lease of any receiver, wholesaler or jobber except on one of the grounds on which it may refuse a lease.

V

(A) Within ten (10) days from the date of the entry of this Final Judgment, the Company shall mail (registered mail) a copy of this Final Judgment to each person who had filed applications for space (and whose applications had not been previously withdrawn) to the last known address of such applicant. Such applicant shall be requested (a) to file a new application, or (b) to notify the Company it no longer desires space. If such applicant does not make a new application for space within sixty (60) days from the mailing of such notice, then its pending application shall be deemed to have been withdrawn. If such application is made, however, it shall be retroactive to the date of the original application in regards to preference to be given as hereinafter provided. Within one hundred twenty (120) days from the entry of this Final Judgment, the Company shall file a report with this Court, with a copy to the Attorney General, as to the disposition of all such applications for space pending as of the date of the entry of this Final Judgment;

(B) Within ten (10) days from the date of the entry of this Final Judgment, the Company shall mail (registered mail) a copy of this Final Judgment to each tenant and shall publish once in the legal advertisements in the Providence Journal and the Evening Bulletin a copy of Section V of this Final Judgment;

(C) (1) When space occupied by a receiver, wholesaler or jobber becomes available and is applied for in writing by a receiver, wholesaler or jobber, the Company is enjoined and restrained from denying such application except pursuant to Section IV (A) of this Final Judgment. If space occupied by a person who is not a receiver, wholesaler or jobber becomes available and a written application for such space is received from a receiver,

wholesaler or jobber and another person, preference in the renting of such space shall be given to the receiver, wholesaler or jobber; provided, however, that such space may be rented to such other applicant for the purpose of conducting a restaurant or a telegraph office (provided that there shall not be more than three restaurants and one telegraph office on the premises).

If more than one written application for space is received from receivers, wholesalers or jobbers, preference shall be given to such applicants in the order in which their applications have been received by the Company. As applications for space are received by the Company, they shall be numbered consecutively in the order of their receipt and shall be kept on file by the Company. If an application for space which has become available is refused, the Company shall notify the applicant in writing of its refusal and state the grounds for such refusal. Any application refused for lack of available space, however, shall remain on file as set forth above and shall be considered at the time of any subsequent vacancy and shall be accorded the preference as herein provided;

(2) When space is vacated by a tenant and thus becomes available, such space shall be offered by the Company pursuant to the provisions of Section V (C) (1) to each applicant, who is a receiver, wholesaler or jobber, in the order in which written applications have been received by the Company from receivers, wholesalers or jobbers;

(D) Notwithstanding the foregoing, the Company may renew the lease or tenancy of (1) any tenant as of the date of the entry of this Final Judgment, or (2) any person who may thereafter become the tenant in accordance with the terms of Section V (C) above;

(E) No tenant shall be permitted to lease or rent, directly or indirectly, more than seven (7) units without prior approval of the Attorney General;

(F) The Company is ordered and directed, within ten (10) days from the date of entry of this Final Judgment to terminate and cancel any contract or agreement inconsistent with any of the provisions of this Final Judgment.

#### VI

(A) The Company may require evidence of financial responsibility of any applicant or tenant, and, in connection therewith, may require an applicant or tenant to furnish a financial statement, statement of ownership of the applicant or tenant, which shall include a list of partners, stockholders and/or other principals. The Company may at its option require, as a condition of renting or leasing space, that a bond be furnished in an amount not to exceed one year's rent;

(B) The Company may provide in its lease that, without the written consent of the Company, a tenant may not assign or transfer its lease or sublet the whole or any part of its premises; provided, however, that the Company's consent shall not be withheld except on the grounds that (1) the proposed assignee or sublessee proposes to conduct a business in the Produce Building other than that of a receiver, wholesaler, jobber, restaurant, telegraph office or other business naturally incident, accessory to, and grouping itself with, a produce terminal, or (2) the proposed assignee or subtenant or a partner or the person in active control or management thereof has, within three years prior to the filing of the application for such permission, been convicted of a crime involving moral turpitude;

(C) To prevent circumvention on the part of any tenant of any such restrictions against assignment or subletting, the Company

may provide in its lease that without the written consent of the Company a tenant may not transfer any interest in its business, or, if it is a corporation, transfer any of its stock; provided, however, that the Company's consent shall not be withheld except on one of the grounds on which it may refuse to consent to an assignment or subletting, as hereinbefore provided;

(D) If, contrary to the above-mentioned provisions prohibiting assignment, subletting or transfer of stock without the written consent of the Company, a tenant makes such assignment, sublease or transfer of stock without applying to the Company for consent, the Company may terminate the lease, and such termination shall not be a violation of this Final Judgment; provided, however, that if the failure of the tenant to apply for such consent is due to an oversight, the Company may not terminate the lease unless the Company would have had the right to refuse permission to the tenant to assign, sublet or transfer its stock had such permission been requested by the tenant.

#### VII

Each of the tenant defendants is enjoined and restrained from filing any application for additional space within seventy (70) days after the publication provided for herein in Section V.

#### VIII

Each of the tenant defendants is enjoined and restrained from entering into any agreement or understanding with each other or with any other person to limit or restrict any tenant in the operation or conduct of its business or to limit or restrict the person to which any such tenant may sublet its premises; provided, however, that this Section VIII shall not prohibit any of the tenant defendants, their officers, directors



or agents who might be officers or directors of the Company from performing their duties as officers or directors of the Company.

#### IX

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant, made to its principal office, shall be permitted access, during office hours, to all books ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the said defendant relating to any matters contained in this Final Judgment, and, subject to its reasonable convenience, and without restraint or interference from it, to interview any of its officers or employees, who may have counsel present, regarding any such matters and, upon request, the said defendant shall submit such written reports as from time to time may be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, 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.

#### X

Jurisdiction is retained 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 this Final Judgment, for the modification of any of the provisions thereof,

and for the purpose of the enforcement of compliance therewith  
and the punishment of violations thereof.

Dated:

EDWARD W. DAY

October 18, 1954

United States District Judge

We hereby consent to the entry of the foregoing Final  
Judgment:

For the Plaintiff:

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FELIX ROCCO CO.

By their Attorneys

/s/ ANDREW P. QUINN

Andrew P. Quinn

/s/ CHRISTOPHER DEL SESTO

Christopher Del Sesto

/s/ FRANK LICHT

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/s/ A. PETER QUINN, JR.

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