

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. New Jersey Auto Glass Dealer Association., U.S. District Court, D. New Jersey, 1960 Trade Cases ¶69,764, (Jun. 29, 1960)

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United States v. New Jersey Auto Glass Dealer Association.

1960 Trade Cases ¶69,764. U.S. District Court, D. New Jersey. Civil Action No. 575-60. Dated June 29, 1960. Case No. 1547 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Price Fixing—Group Boycott—Coercion.—An association of auto replacement glass dealers was prohibited by a consent decree from entering into any agreement to (1) fix prices for the sale or installation of such glass, (2) investigate or report prices charged, (3) hinder the sale of replacement glass to any person, (4) restrict the free and independent selection of customers or dealers, (5) cause or bring about boycotts, (6) prevent any person from purchasing, or having installed, replacement glass, or (7) prevent any person from vertising the prices charged by him. The association also was prohibited from circulating t o any insurance company any membership list, unless such list names every member and contains a notice that prices are determined by each member, and from picketing any insurance company, purchaser, or user of such glass.

Consent Decree—Specific Relief—Association Membership.—An auto replacement glass dealer's association was required by a consent decree to admit to membership any qualified auto glass dealer doing business it its area.

For the plaintiff: Robert A. Bicks, Paul A. Owens, W. D. Kilgore, Jr., Richard B. O'Donnell, John D. Swartz, Walter W. K. Bennett, and Francis E. Dugan, Attorneys, Department of Justice.

For the defendant: Hyman Siegendorf.

Final Judgment

HARTSHONNE, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on June 29, 1960, and the parties hereto, by their respective attorneys, having consented to the entering of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party hereto with respect to any such issue:

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby Ordered, adjudged and decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof 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:

- (A)"Person" shall mean any individual, partnership, corporation or any other business or legal entity;
- (B)"NJAGDA" shall mean the defendant New Jersey Auto Glass Dealers' Association.

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(C)“Defendant” shall mean the defendant NJAGDA and those members of NJAGDA who have received notices of this Final Judgment pursuant to Section IV(A) hereof;

(D)“Replacement glass” shall mean laminated, tempered, and other types of glass suitable for installation in automobiles, trucks, or other vehicles as windshields, back lites (i. e., rear vision windows), or side windows. The term shall include molded or bent glass, fiat, and uncut, as well as precut, or preformed glass;

(E) “Installation of replacement glass” shall mean the necessary fitting, glazing, cutting or grinding, as well as the actual installing of glass in an automobile, truck or other vehicle.

(F) “Automobile glass dealer” shall mean any person engaged in the business of selling at retail and installing replacement glass.

III

[*Applicability*]

The provisions of this Final Judgment applicable to defendant shall apply to its members, officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service, or otherwise.

IV

[*By-Laws—Incorporation of Provisions*]

(A) Defendant is ordered and directed to mail a copy of this Final Judgment to each of its members within sixty days after the date of the entry hereof.

(B) Defendant is ordered and directed within ninety days from the date of entry of this Final Judgment to institute and complete such proceedings as may be appropriate and necessary to amend its Charter and By-Laws so as to incorporate therein Sections V, VI and VII of this Final Judgment, and to require as a condition of membership that all present and future members be bound by such sections of this Final Judgment;

(C) Promptly after compliance therewith defendant shall file with this Court and with the Assistant Attorney General an affidavit of compliance with subparagraphs (A) and (B) of this Section IV attaching copies of the documents used to effect such compliance.

V

[*Prohibited Agreements*]

The defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing, or claiming any rights under any contract, agreement, understanding, plan or program with any other person to:

(A) Fix, suggest, establish, determine or maintain prices, terms or conditions to be charged or imposed by any other person for the sale or installation of replacement glass;

(B) Prepare, publish, circulate, or suggest prices, price lists, including discounts from prices, or other terms or conditions to be charged or imposed by any other person in connection with the sale or installation of replacement glass;

(C) Urge, suggest, coerce, require, or attempt to influence such person to boycott, threaten to boycott, or refuse or threaten to refuse to do business with any third person;

(D) Interfere or threaten or attempt to interfere with the business of any person by picketing or other similar activity;

(E) Investigate and report to others, or police, the prices or terms charged or imposed by any person in connection with the sale or installation of replacement glass. This subsection shall not be construed to prohibit an individual automobile glass dealer from independently ascertaining competitive prices;

(F) Hinder, restrict or prevent, or attempt or threaten to hinder, restrict or prevent in any manner, the sale of replacement glass by any manufacturer, distributor or wholesaler to any person, except pursuant to the exercise of such lawful rights as an automobile glass dealer may have under a distributor ship agreement with any manufacturer;

(G) Hinder, restrict or limit or attempt or threaten to hinder, restrict or limit any other person in the free and independent selection of customers or automobile glass dealers;

(H) Hinder, restrict or prevent, or attempt or threaten to hinder, restrict or prevent any person from purchasing replacement glass from, or procuring the installation of replacement glass by, any other person;

(I) Hinder, restrict or prevent, or attempt or threaten to hinder, restrict or prevent any Person from advertising prices, terms or other conditions for the sale or installation of replacement glass to be sold or installed by such person.

Subject to the injunctive provisions here in contained, this Section B is not intended to prevent defendant from engaging in the joint or collective solicitation of business on behalf of its members as a whole.

VI

[*Prohibited Practices*]

Defendant is enjoined and restrained from directly or indirectly:

(A) Preparing, suggesting, publishing or circulating prices, price lists, price catalogues or discounts therefrom for the sale or installation of replacement glass; provided, however, nothing herein contained shall prevent any automobile glass dealer from preparing, negotiating, publishing or circulating his own prices and price lists or price catalogues containing his own prices for the sale or installation of replacement glass which prices have been individually determined by him. in the normal course of his business;

(B) Preparing, publishing or circulating to any insurance company or any other person any list of the membership of defendant unless such list contains the name of every member and contains a legend in a form, first approved by the Assistant Attorney General in charge of the Anti-trust Division, to the effect that NJAGDA makes no representation as to the price or prices to be charged for replacement glass sold or work performed by any such member and that such prices are determined by each individual member;

(C) Suggesting, or attempting to suggest, to any automobile glass dealer, the price or prices or terms to be charged or imposed by such automobile glass dealer for the sale or installation of replacement glass;

(D) Picketing or threatening to picket any insurance company, purchaser, or user of replacement glass;

(E) Hindering, restricting or preventing, or attempting or threatening to hinder, restrict or prevent, the sale in any manner of replacement glass by any manufacturer, distributor or wholesaler to any person; except pursuant to the exercise of such lawful rights as an automobile glass dealer may have under a distributorship agreement with any manufacturer;

(F) Suggesting or attempting to suggest, to any automobile glass dealer that he should purchase or offer to purchase from any person any materials to be used for automobile glass replacement upon the condition or understanding that such person will refrain from selling any of such materials to any other person.

VII

[*Opening of Membership*]

(A) Defendant is ordered and directed to admit to and continue in membership therein, upon application, any automobile glass dealer doing business within the State of New Jersey, or within any other area served by its members, who is technically qualified to engage in the business of installation of replacement glass as defined in Section 11(E) of this Final Judgment. In the event defendant rejects any application for membership, it shall (1) advise the applicant, and the Assistant Attorney General, in writing, of the specific reasons for such rejection and

(2) on request of the applicant, submit the question of the applicant's qualifications for membership to arbitration under the rules of the American Arbitration Association, whose decision shall be final and binding on the parties thereto, the fee of the American Arbitration Association to be borne by the losing party;

(B) Defendant is enjoined and restrained from expelling from membership or otherwise taking any punitive action against any member; provided, however, nothing herein shall prevent defendant from expelling any member for (1) failure to pay dues; (2) failure to comply with this Final Judgment or (3) for cause unconnected with such member's competitive or pricing activities. In the event of any such expulsion, defendant shall notify the expelled member in writing of the specific grounds for such expulsion and, if the expulsion is for grounds stated in (3) above, shall, upon request of the expelled member, submit the justification for such expulsion to arbitration under the rules of the American Arbitration Association, whose decision shall be final and binding upon the parties thereto, the fee of the American Arbitration Association to be borne by the losing party;

(C) Defendant is ordered and directed to send, within sixty days from the date of entry of this Final Judgment, a letter, in a form first approved by the Assistant Attorney General in charge of the Antitrust Division, to the claim supervisors of all insurance companies to whom price lists and price catalogues have heretofore been sent cancelling such price lists, and setting forth the substantive provisions of this Final Judgment.

VIII

[*Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to defendant at its principal office, subject to any legally recognized privilege, be permitted:

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

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

For the purpose of securing compliance with this Final Judgment, defendant, upon the 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 written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VIII 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

IX

[*Jurisdiction Retained*]

Jurisdiction of this Court is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate of the provisions thereof, for the enforce-for the construction or carrying out of this ment of compliance therewith, and for the Final Judgment, for the modification of any punishment of violations thereof.