

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.)

ORDER

WHEREAS, a Final Judgment was entered herein by this Court on October 18, 1954 requiring the defendant Providence Fruit & Produce Building, Inc. to lease available space in the Produce Building to applicants therefor in the chronological order in which such applications were received; and

WHEREAS, plaintiff on December 3, 1974 filed its Motion for Interpretation and Enforcement of said Final Judgment requesting the Court to require the defendant to lease such available space in accordance with the provisions of that Judgment, and further requesting that the Judgment be modified so that all applicants be considered in their chronological order when a tenant desires to assign or sublease a whole or part of his leased premises; and

WHEREAS, a hearing having been held on plaintiff's said motion on February 20, 1975 and the Court being fully apprised of the facts therein; it is hereby

ORDERED, ADJUDGED and DECREED:

I. Sections IV(D) and VI(B) of the 1954 Final Judgment are hereby modified by adding thereto the following language:

. . . or (3) applicants having a written application on file with the Company for space in the Produce Building have not been given an opportunity, in the chronological order in which such applications were received, to sublease the premises or to receive an assignment from such tenant.

Section IV(D), as modified, will then read:

IV

The Company is enjoined and restrained from;

* * * *

(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, or (3) applicants having a written application on file with the Company for space in the Produce Building have not been given an opportunity, in the chronological order in which such applications were received, to sublease the premises or to receive an assignment from such tenant.

Section VI(B), as modified, will then read:

VI

* * * *

(B) The Company shall 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 of management thereof has, within three years prior to the filing of the application for such permission, been convicted of a crime involving moral turpitude, or (3) applicants having a written application on file with the Company for space in the Produce Building have not been given an opportunity, in the chronological order in which such applications were received, to sublease the premises or to receive an assignment from such tenant.

II. Section V of the 1954 Final Judgment is hereby modified by adding thereto a subsection (G) as follows:

V

* * * *

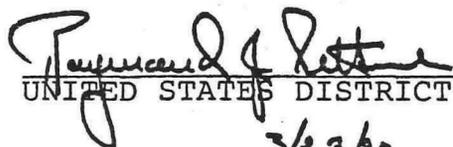
(G) For purposes of this Final Judgment, space shall be deemed available for leasing by the Company when it is vacated by a tenant, when it is offered by a tenant for transfer, assignment or sublease, or when it is otherwise available for occupancy by an applicant.

III. Section V(C) of the 1954 Final Judgment is hereby modified by adding a new subsection (3) as follows:

(C) (3) Notwithstanding the provisions of Section V(C) (1) and V(C) (2), the Company may offer to lease or may refuse to lease available space to any applicant, and such offer or refusal shall not be a violation of this Final Judgment if irreparable harm or extreme hardship, either to such applicant or to the Company, would otherwise result. For purposes of this subsection, the burden of proof to show irreparable harm or extreme hardship shall be on the Company.

IV. All other provisions of the Final Judgment shall remain in full force and effect.

SO ORDERED:


UNITED STATES DISTRICT JUDGE
3/23/79

Dated: