

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Marble Contractors' Association, Charles C. Guenther, John Eberhardt, C. A. Powell, George Sibel, J. E. Crawford, Harry Butler, Star Marble & Tile Company, Pittsburgh Marble Company; Iron City Marble Company; Charles C. Guenther Marble Company, Inc.; Rampa Marble & Tile Company; R. E. Logan; G. C. Chirichigno; A. M. Danzilli; Pliny Ignelzi; Fleming Rampa., U.S. District Court, W.D. Pennsylvania, 1940-1943 Trade Cases ¶56,020, (Feb. 29, 1940)

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United States of America v. Marble Contractors' Association, Charles C. Guenther, John Eberhardt, C. A. Powell, George Sibel, J. E. Crawford, Harry Butler, Star Marble & Tile Company, Pittsburgh Marble Company; Iron City Marble Company; Charles C. Guenther Marble Company, Inc.; Rampa Marble & Tile Company; R. E. Logan; G. C. Chirichigno; A. M. Danzilli; Pliny Ignelzi; Fleming Rampa.

1940-1943 Trade Cases ¶56,020. U.S. District Court, W.D. Pennsylvania, February 29, 1940.

Civil proceedings under the Sherman Anti-Trust Act against associated marble contractors are terminated, upon agreement of all parties, by entry of a consent decree permanently enjoining concerted action by defendants involving maintenance of a price-fixing bid depository, refusal of union labor to non-acquiescing contractors and imposition of charges for procuring labor for contractors not affiliated with defendant trade association, and voiding all bylaws and agreements of the defendants that make provision for proscribed activities.

Thurman Arnold, Assistant Attorney General; M. Neil Andrews, Irving I. Axelrad, Special Assistants to the Attorney General; George Mashank, Acting United States Attorney; Attorneys for Plaintiff.

S. V. Albo; Attorney for Defendants.

Before Schoonmaker, District Judge.

Decree

SCHOONMAKER, D. J.: This cause came on to be heard on this 29th day of February 1940, the complainant being represented by George Mashank, Acting United States Attorney for the Western District of Pennsylvania and M. Neil Andrews and Irving I. Axelrad, Special Assistants to the Attorney General, and the defendants being represented by their counsel, said defendants having appeared voluntarily and generally and having waived service of process.

It appears to the Court that the defendants have consented in writing to the making and entering of this decree;

It further appears to the Court that this judgment will provide suitable relief concerning the matters alleged in the complaint, and that by reason of the aforesaid consent of the parties it is unnecessary to proceed with the trial of the cause, or to take testimony therein, or that any adjudication be made of the facts. Now, therefore, upon motion of complainant, and in accordance with said consent, it is hereby

Ordered, Adjudged, and Decreed

[*Jurisdiction*]

1. That the Court has jurisdiction of the subject matter set forth in the complaint and of all parties hereto with full power and authority to enter this judgment and that the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled: "An Act to protect trade and commerce against unlawful restraints and monopolies," and the acts amendatory thereof and supplemental thereto. That the

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defendants and each of them and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants or any of them, are hereby perpetually enjoined and restrained from engaging in, carrying out, maintaining, or extending, directly or indirectly, any combination or conspiracy in the Western District of Pennsylvania, to restrain interstate trade or commerce by the restriction and elimination of competitive bidding among marble contractors such as is alleged in the complaint, and by entering into or carrying out, directly or indirectly, by any means whatsoever any combination of like character or effect, and more particularly (but the enumeration following shall not detract from the inclusiveness of the foregoing) by doing, performing, agreeing upon, entering upon, or carrying out any of the following acts or things:

[*Activities Enjoined*]

(A) From in any way engaging in, maintaining, extending, continuing, or reviving, either directly or indirectly, in whole or in part, by any means whatsoever, combinations and conspiracies in restraint of trade and commerce in marble described in the complaint herein as follows:

21. Heretofore, to wit, during the months of September to December, 1936, inclusive, and during January, February, and March of 1937, certain of the individual defendants operating as the defendant Marble Contractors' Association of Pittsburgh commenced and maintained a bid depository plan which had the effect of interfering with the free and open competitive bidding on various construction projects in the Western District of Pennsylvania, and thereby hindered, burdened, and restrained interstate commerce as described in Paragraphs 19 and 20. (Of the complaint.)

22. Under this plan of procedure, the defendants and each of them agreed that at any time a contractor member wished thereafter to submit a bid in an amount in excess of \$300 upon a given construction project he would immediately notify the office of the association and submit to the defendant C. A. Powell, as Secretary of the aforesaid association, prior to the time fixed by the awarding authority for the receipt of the proposal, a summary of his estimated cost of labor and materials. The said Secretary of the Association acting in furtherance of said procedure, would, in conjunction with the members of the Association interested in bidding a particular project, determine the average of all said proposed cost estimates submitted and arbitrarily eliminate those cost estimates which fell within a fixed percentage of the lowest and a fixed percentage of the highest of said cost estimates. It was a further part of said procedure that those persons who submitted said eliminated cost estimates would thereafter be prohibited from submitting a bid for the same work at a figure lower than the lowest of the bidders who had not been eliminated. It was further agreed that the Association should choose one of its members to submit the lowest bid and assure him thereby of obtaining the contract for a particular project.

23. It was a further part of said procedure to coerce the various contractor members of said Association to adhere thereto by the imposition of fines and by threats of withdrawal and actual withdrawal of union workmen from the employ of those contractor members who should refuse to obey the rules of the defendant Association.

24. The aforesaid procedure or plan was discontinued in March or April of 1937 and a new form of bid depository was substituted. It was a part of the plan of the second bid depository to organize the Joint Arbitration Board for the Marble Industry with the defendant, C. A. Powell, as secretary. The said Joint Arbitration Board consisted of three representatives of the Stone and Marble Masons Local No. 33 affiliated with the Bricklayers, Masons and Plasterers International Association of America, and three members of the aforesaid Marble Contractors' Association of Pittsburgh.

25. It was a further part of the plan of the second bid depository to require that all contractors in order to secure union marble setters must join the Joint Arbitration Board for the Marble Industry and to do so, pay an initiation fee varying from \$25.00 to \$100.00 and a fixed percentage of the gross business done by each of said marble contractors. Each contractor was required to belong to the said Joint Arbitration Board notwithstanding the fact that some of them were not members of the Marble Contractors Association

and were actually refused membership therein, and accordingly had no voice in the policy of the Joint Arbitration Board.

26. The aforesaid Joint Arbitration Board maintained a bid depository and it was the rule of the Arbitration Board that any time a contractor member wished to submit a bid in an amount in excess of \$300.00 upon a given construction project he would immediately notify the office of the Joint Arbitration Board and mail to said office before midnight of the day before the date set for bids to be closed by the awarding authority, a copy of his proposal.

27. A tabulation of the bids as submitted to the Joint Arbitration Board as aforesaid was sent to each of the contractor members submitting a bid on a given project and a copy of the tabulation was also sent to Robert Mill, Business Agent of the Stone and Marble Masons Local No. 33, affiliated with the Bricklayers, Masons and Plasterers International Association of America.

28. It was a further part of the bid depository plan as administered by the Joint Arbitration Board that if the awarding authority consummated a contract for marble on a given project with any contractor other than one who was the low bidder, as shown by the records of the bid depository, that contractor would not be permitted to use union men on the project and that the marble contractor would further be subjected to fines and penalties by the Marble Contractors' Association.

29. Pursuant to the above described plan for enforcing the rules of the Joint Arbitration Board, penalties or fines were actually imposed and there were threats of withdrawal and actual withdrawal of union workmen from the employ of those contractor members who should refuse to obey the rules of the Joint Arbitration Board.

(B) From entering into or carrying out, directly or indirectly, by any means whatsoever, any combination or conspiracy of like or similar character or effect; and

[*Maintenance of Bid Depository*]

(C) From doing, performing; agreeing upon, entering upon, or carrying out (without limitation of the foregoing) any of the following things:

1. Creating, operating, or participating in the operation of any association of marble contractors maintaining a bid depository or similar device designed to maintain or to fix the price of marble and marble installation or to limit competition in bidding on marble installations, or having the effect of limiting the free choice of the awarding authority of the firm to be the successful marble contractor on a given project.

2. Agreeing to limit or limiting employment of members of Local No. 33 to contractors, builders, or other persons who are members of an association of marble contractors or an arbitration board or otherwise discriminating against any contractor, builder, or other person who is not a member of such an association or board and who in all other respects is willing and able to comply with the minimum labor requirements agreed to by the members of such association or board.

3. Demanding, accepting, or contracting for any fees, dues, monies, payments, or other property, the consideration for which is the procurement of or a promise to procure labor for contractors or others who are not members of the Joint Arbitration Board or of the Marble Contractors' Association of Pittsburgh or of any other like or similar association.

[*Nullification of By Laws and Agreements*]

2. That all constitutions, bylaws, resolutions, and agreements of the Marble Contractors' Association of Pittsburgh and the Joint Arbitration Board for the Marble Industry insofar as they authorize, provide for, or relate to a bid depository, or authorize, provide for, or relate to any limitations of employment of members of Local No. 33 to members of the Marble Contractors' Association of Pittsburgh or to the members of the Joint Arbitration Board for the Marble Industry, are hereby declared illegal, void, and of no force and effect.

[*Application of Decree*]

3. That the terms of this judgment shall be binding upon and shall extend to each and every one of the successors in interest of any and all of the defendants herein, and to any and all corporations, partnerships, firms, and individuals who may acquire the ownership or control, directly or indirectly, of the property, business, and assets of the defendants or any of them, whether by purchase, merger, consolidation, reorganization or otherwise.

[*Access to Records*]

4. That for the purpose of securing compliance with this decree, authorized representatives of the Department of Justice shall, upon the request of the Attorney General or an Assistant Attorney General, be permitted access, within the office hours of the defendants, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in this .decree; that any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the defendants, be permitted to interview officers or employees of defendants, without interference, restraint, or limitation by defendants; that defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this decree as may from time to time be necessary for the purpose and enforcement of this decree.

[*Retention of Jurisdiction*]

5. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance therewith, and for the further purpose of making. such other and further orders and decrees or taking such other action as may from time to time be necessary.

[Signatures of parties consenting are omitted.]