

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Nassau & Suffolk County Retail Hardware Association, Inc., et al., U.S. District Court, E.D. New York, 1959 Trade Cases ¶69,345, (Apr. 24, 1959)

United States v. Nassau & Suffolk County Retail Hardware Association, Inc., et al.

1959 Trade Cases ¶69,345. U.S. District Court, E.D. New York. Civil Action No. 17768. Filed April 24, 1959. Case No. 1346 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Trade Associations—Association Membership as Means of Trade Restraint—Price-Fixing—Boycotts—Exclusion from Trade—Refusal to Deal.—A retail hardware dealers' trade association and its former president were enjoined by a consent decree from entering into or enforcing any agreement to fix prices or other terms or conditions for the sale of hardware and housewares to consumers, restrict price competition between discount houses and retailers, and hinder or prevent any discount house or other person from selling to consumers. The decree also enjoined the association and its former president from advising or inducing suppliers to discontinue business relations with any discount house, hinder or prevent distributors or wholesalers from reselling to any discount house, and boycotting or refusing to deal with any manufacturer of products resold in discount houses or any supplier of such discount houses. In addition, the decree prohibited membership or participation in the activities of any trade association or other organization whose activities were inconsistent with the provisions of the judgment.

Department of Justice Enforcement: and Procedure—Consent Decree—Specific Relief—Dissolution of Hardware Retailers' Trade Association.—The dissolution of a hardware retailers' trade association was ordered by a consent decree.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General; and Baddia J. Rashid, Harry N. Burgess, Richard B. O'Donnell, Augustus A. Marchetti, Joseph T. Maioriello, Paul D. Sapienza, and Donald A. Kinkaid.

For the defendants: William E. Woods for Nassau and Suffolk Retail Hardware Assn., Inc. The decree was also signed by Murray M. Pearlstein, the individual defendant.

Final Judgment

[Consent Decree]

MATTHEW T. ABRUZZO, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on June 27, 1957, and each of the said defendants having appeared herein and the plaintiff and the defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or admission by any party in respect of any such issue;

Now, Therefore, before any testimony or evidence 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 hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

The Court has jurisdiction of the: subject matter hereof and all the parties hereto. The complaint states a claim upon which relief may be granted against the defendants and each of them 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, firm association, corporation or other legal entity:
- (B) "Defendant, association" shall mean the defendant Nassau & Suffolk County Retail Hardware Association, Inc.,:
- (C) "Retailer" shall mean any person who sells for profit goods and merchandise to consumers:
- (D) "Discount house" shall mean a retailer who solicits the favor of consumers chiefly on the basis of price.

III

[*Applicability*]

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

IV

[*Specific Relief—Dissolution of Association*]

The defendants are ordered and directed:

- (A) To institute such action as may be necessary to dissolve the defendant association under the laws of the State of New York within 90 days from the signing of this Judgment, and to complete such dissolution with 120 days from the date of the signing of this Judgment.
- (B) Upon completion of such dissolution of the defendant association, to file an affidavit with this Court and with the plaintiff setting forth the fact of compliance with this Section IV.

V

[*Price-Fixing—Exclusion from Trade*]

The defendants are jointly and severally enjoined and restrained from, directly or indirectly, entering into, adhering to, enforcing, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any retailer or with any association or central agency of or for retailers:

- (A) To fix, determine, establish, maintain or stabilize prices, pricing methods, discounts, mark-ups or other terms or conditions for the sale of hardware and housewares to consumers:
- (B) To limit, restrict, eliminate or reduce price competition between discount houses and retailers:
- (C) To hinder, restrict, limit or prevent any discount house or other person from selling hardware and housewares to consumers.

VI

[*Boycotting—Refusal to Deal*]

The defendants are jointly and severally enjoined and restrained from, directly or indirectly:

- (A) Advising, suggesting or inducing or attempting to advise, suggest or induce, any or all suppliers of hardware and housewares to discontinue business relations with any discount house:
- (B) Hindering, restricting, limiting or preventing or attempting to hinder, restrict or prevent distributors, jobbers or wholesalers of hardware and housewares from reselling such products to any discount house:

(C) Boycotting or refusing to deal, or attempting to boycott or refuse to deal, with any manufacturer of products resold in discount houses or with any supplier of merchandise to discount houses:

(D) Being a member of, contributing anything of value to, or participating in any of the activities of, any trade association or other organization, the activities of which are inconsistent in any manner with any of the provisions of this Final Judgment.

VII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally-recognized privilege, (A) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment, and (B) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding any such matters. Upon such written request said defendant 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 VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court, 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 for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith and punishment of violations thereof.