

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

COMPOSITION ROOFERS & WATERPROOFERS :
EMPLOYERS ASSOCIATION OF NEW YORK :
CITY AND VICINITY; :

LONG ISLAND & BROOKLYN ROOFING & SHEET : Civil No. 75 C 1275
METAL CONTRACTORS ASSOCIATION, INC.; :

NASSAU & SUFFOLK ROOFING AND SHEET METAL : Filed: December 12, 1977
EMPLOYERS ASSOCIATION, INC.; :

SHEET METAL & AIR CONDITIONING CONTRACTORS' : Entered: March 22, 1978
NATIONAL ASSOCIATION, NEW YORK CITY :
CHAPTER, INC.; and :

SHEET METAL & ROOFERS EMPLOYERS :
ASSOCIATION OF SOUTHEASTERN NEW YORK, :
INC., :

Defendants. :

----- x

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on August 8, 1975; and Defendants, by their respective attorneys, having each appeared and filed its Answer to the Complaint denying the material allegations thereof and raising certain affirmative defenses, and Plaintiff and Defendants, by their respective attorneys, having 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 any evidence or admission by any of the parties 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 without this Final Judgment constituting any evidence or admission by any of the parties with respect to any such issue and upon the consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states claims

upon which relief may be granted against the Defendants under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Defendants" means Composition Roofers & Waterproofers Employers Association of New York City and Vicinity; Long Island & Brooklyn Roofing & Sheet Metal Contractors Association, Inc.; Nassau & Suffolk Roofing and Sheet Metal Employers Association, Inc.; Sheet Metal & Air Conditioning Contractors' National Association, New York City Chapter, Inc.; and Sheet Metal & Roofers Employers Association of Southeastern New York, Inc.;

(B) "Person" means any individual, individual proprietorship, firm, corporation or any other legal entity; and

(C) "Installation of roofs" means the construction of new and replacement roofs, the fabrication of sheet metal in conjunction with such construction, and includes such other related services as waterproofing, dampproofing, repairing of roofs, inspecting of roofs, and estimating the cost of repair or installation of roofs.

III

The provisions of this Final Judgment applicable to each Defendant shall also apply to its successors and assigns; to its directors, officers, agents, and employees; and to all persons, including members, in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Each Defendant is enjoined and restrained from, unilaterally or in concert with any other person:

(A) Fixing, establishing, stabilizing or maintaining the terms or length of any guarantee or any other term or condition of sale in connection with the installation of roofs;

(B) Urging, recommending, or suggesting that any of its members or any other person adopt or adhere to the terms or length of any guarantee in connection with the installation of roofs;

(C) Advertising, publishing or distributing information relating to the terms or length of any guarantee in connection with the installation of roofs;

(D) Adopting, publishing, distributing or recommending any printed form of contract or guarantee containing provisions relating to the terms or length of any guarantee for use in connection with the installation of roofs, provided, however, that neither the defendants nor any of their members shall be prohibited from recommending any bonds which are sold by national roofing manufacturers in connection with the installation of roofs purchased from them; and

(E) Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program which restricts or limits the right of any member to give or offer, in accordance with his own business judgment, any terms or length of guarantee or any other term or condition of sale in connection with the installation of roofs.

V

Each Defendant is ordered and directed within ninety (90) days after the entry of this Final Judgment to eliminate from its charter, constitution and bylaws, code of ethics, rules and regulations, and other documents governing its operations, any provision which is contrary to or inconsistent with any of the provisions of this Final Judgment.

VI

Within ninety (90) days after the entry of this Final Judgment, Defendants are ordered and directed to mail a copy of a letter in the form attached hereto as Exhibit A to:

(A) Each person who was sent a letter dated February 1968 or May 1968 addressed to "Architects, General Contractors, Specification Writers and Builders" by the "Committee for Roofing and Sheet Metal Guarantee;" and

(B) Each person who was sent a letter dated September 1971 addressed to "Construction Specifications Writers" or "To Whom it May Concern" by the "Committee for Roofing and Sheet Metal Guarantee".

VII

Within thirty (30) days following compliance with Section VI of this Final Judgment, Defendants are ordered and directed to take such action as may be necessary to dissolve the "Committee for Roofing and Sheet Metal Guarantee".

VIII

(A) Each Defendant is ordered and directed to mail within ninety (90) days after the date of entry of this Final Judgment, a copy of this Final Judgment to each of its members and to each person who was a member at any time from January 1, 1968 to the date of entry of this Final Judgment; and

(B) Each Defendant is ordered and directed to furnish a copy of this Final Judgment to each person who becomes a member of Defendant within five years after the date of the entry of this Final Judgment.

IX

Within one hundred and twenty (120) days from the date of entry of this Final Judgment, each Defendant is ordered and directed to file with the Clerk of this Court, an affidavit setting forth the fact and manner of compliance with Sections V, VI, VII and VIII (A) of this Decree.

X

For a period of five (5) years from the date of entry of this Final Judgment, each Defendant is ordered to file with the Plaintiff, on each anniversary date of such entry, a report setting forth the steps which it has taken during the prior year to advise the Defendant's directors, officers, agents, members, and employees of its and their obligations under this Final Judgment.

XI

(A) For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon 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, and subject to the right of such Defendant, if it so desires, to have counsel present:

1. Access during its office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such Defendant relating to any matters contained in this Final Judgment; and
2. Subject to the reasonable convenience of such Defendant, and without restraint or interference from it, to interview directors, officers, agents or employees of such Defendant, which persons if they wish may have counsel of their choosing present, relating to any matters contained in this Final Judgment.

Each Defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information or documents obtained by the means provided in this Section XI 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 United States, except in the course of legal proceedings to which the United States of America is a party or for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

If at any time information or documents are furnished by any Defendant to Plaintiff, and such Defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by Plaintiff to such Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which such Defendant is not a party.

XII

Jurisdiction is retained by this Court for the purpose of enabling any party 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 of any of the provisions hereof, for the enforcement of compliance therewith; and for the punishment of violations thereof.

XIII

Entry of this Final Judgment is in the public interest.

Dated: March 22, 1978

/s/ George C. Pratt

UNITED STATES DISTRICT JUDGE

EXHIBIT "A"

To: Architects, General Contractors, Specification
Writers, Builders and other Interested Parties

Gentlemen:

On August 8, 1975, the Department of Justice filed a civil antitrust action under Section 1 of the Sherman Act, United States v. Composition Roofers & Waterproofers Employers Association of New York City and Vicinity, et al., alleging that the undersigned Associations had entered into an agreement to eliminate competition in the offer of guarantees on roofing installations. We have denied the material allegations of the Complaint. Prior to the taking of any testimony and without admission by any party in respect to any issue, we consented to the entry of a Final Judgment terminating the lawsuit. The Court found that the settlement was in the public interest and entered a Final Judgment on 1978. A copy of that Final Judgment is available for inspection at the offices of any of the undersigned Associations.

In accordance with the provisions of the Final Judgment, we are informing all interested parties that any previous announcements made by the undersigned respecting the duration or terms of roofing and sheet metal guarantees are hereby withdrawn. Each of our members may give or offer guarantees of whatever length of time or upon such terms as he may wish.

(Names and addresses of Defendants)