

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CLOVIS RETAIL LIQUOR DEALERS)
 TRADE ASSOCIATION;)
 AZTEC BOWLING CORPORATION;)
 CHAPARRAL LIQUORS, INC.;)
 GOLD LANTERN LOUNGE AND)
 PACKAGE, INC.;)
 TOWER HOTEL CORPORATION;)
 JOHNNIE MACK GOODMAN,)
 d.b.a. BOOT HILL LIQUORS;)
 EDDIE P. WATSON,)
 d.b.a. MABRY DRIVE LOUNGE;)
 FRED W. JOHNSTON,)
 d.b.a. SUNSET LOUNGE &)
 PACKAGE STORE;)
 KIT PETTIGREW,)
 d.b.a. PRINCE LOUNGE &)
 PACKAGE STORE; and)
 JAMES E. FOSTER,)
 d.b.a. LAVISTA LOUNGE AND)
 PACKAGE STORE,)
)
 Defendants.)
)

Civil Action No. 74-477
Filed: December 30, 1977
Entered: March 31, 1978

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on September 26, 1974 and the plaintiff and the defendants, by their respective attorneys, having each 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 an admission by any party with respect to any such issue of fact or law herein:

NOW, THEREFORE, upon a determination by this Court that entry of this Judgment will be in the public interest, and without any testimony being taken herein and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of each of the parties hereto. The Complaint states claims upon which relief may be granted against the defendants and any 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," as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

A. "Person(s)" shall mean any individual, partnership, corporation, firm, association, or other business or legal entity.

B. "Retail dealer" shall mean any person engaged in the business of selling alcoholic beverages at retail to consumers.

C. "Wholesaler" shall mean any person engaged in the sale of alcoholic beverages, purchased from the manufacturers, to a retail dealer.

D. "Alcoholic beverages" shall mean beverages containing alcohol, such as beer, wine, whiskey, scotch or other forms of liquor or distilled spirits, whether sold or intended for sale by the drink or in container.

E. "Markup" shall mean that amount added to the cost price by the retail dealer to determine the retail selling price.

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

IV

Each defendant shall require, as a condition of a sale or other disposition of any liquor license or other permit to operate as a retail dealer occurring within a period of five (5) years from the date of entry of this Final Judgment, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

V

Each of the defendants is enjoined and restrained from directly or indirectly, entering into, adhering to, maintaining, furthering, enforcing, or claiming any rights under any contract, agreement, understanding, plan, program, combination, or conspiracy to:

A. Raise, fix, stabilize, maintain, determine, or adhere to prices, markups, or any other terms or conditions at which alcoholic beverages are sold or offered for sale by retail dealers; or

B. Induce, persuade, compel, or coerce any person to establish, adopt, issue, adhere to, or to police or enforce adherence to any prices, markups, terms, or conditions at which alcoholic beverages shall be sold or offered for sale by any retail dealer.

VI

Each of the defendants is enjoined and restrained from directly or indirectly:

A. Communicating to or exchanging with any retail dealer any information concerning any price or markup which any retail dealer utilizes or proposes to utilize in formulating any existing or proposed price, price change, discount, or other term or condition of sale at, or upon which, alcoholic beverages are to be sold;

B. Suggesting, in any manner, to any retail dealer that such retail dealer establish any markup or price, or utilize any published retail price list in formulating any retail price, on any alcoholic beverage offered for sale or to be offered for sale by such retail dealer;

C. Causing, attempting to cause, or threatening to cause physical or economic harm or property damage to any actual or potential retail dealer, to any of its owners, officers, directors, agents, partners or employees or to any family members of such owners, officers, directors, agents, partners or employees;

D. Threatening to put any retail dealer out of business;

E. Hindering, limiting, preventing, or attempting to hinder, limit, or prevent any wholesaler of alcoholic beverages from selling alcoholic beverages to any retail dealer;

F. Advocating, suggesting, urging, compelling, coercing, or attempting to influence any wholesaler to take any action to compel, advise, or encourage any retail dealer to advertise to sell alcoholic beverages at any particular price;

G. Exchanging with, or divulging to, any wholesaler of alcoholic beverages information concerning or relating to the refusal of any retail dealer to charge or adhere to any particular price; or

H. Causing, attempting to cause, or encouraging any individual to whom, by reason of age or otherwise, the sale of alcoholic beverages is prohibited by the laws of the State of New Mexico, to purchase any alcoholic beverage from any other retail dealer.

VII

A. The defendants are ordered within sixty (60) days after this Final Judgment is entered to dissolve the defendant Clovis Retail Liquor Dealers Trade Association, and, within sixty (60) days after the date of entry of this Final Judgment the defendants shall file with this Court and serve upon plaintiff an affidavit as to the fact and manner of their compliance with this subsection A of Section VII.

B. The defendants are enjoined and restrained from directly or indirectly organizing, joining, participating in the activities of, or contributing anything of value to any trade association, organization, or other group of retail dealers, the purposes or activities of which relate to the distribution or sale of alcoholic beverages contrary to any provision of this Final Judgment; and, for a period of five (5) years from the date of entry of this Final Judgment, the defendants are enjoined and restrained from organizing or maintaining, directly or indirectly, any association of retail dealers pertaining to the retailing of alcoholic beverages in the Clovis, New Mexico, area.

VIII

For a period of five (5) years from the date of entry of this Final Judgment, each defendant shall take the affirmative steps enumerated below to insure compliance with each provision of this Final Judgment and to advise each of its officers, directors, partners, managing agents, and employees who has responsibility for or authority over the establishment of prices of their obligations under this Final Judgment and of the criminal penalties for violations of this Final Judgment:

A. At least once each year, each defendant shall formulate and circulate to its officers, directors, partners, managing agents and pricing employees written directives to effect compliance with this Final Judgment.

B. At least once each year, each defendant shall call and conduct meetings of officers, directors, partners, managing agents and pricing employees to review the terms of this Final Judgment and the methods of compliance therewith.

C. Each defendant shall prepare and maintain for a period of five (5) years a record of each contact between said defendant, any officer, director, partner, managing agent or pricing employee of said defendant and any officer, director, partner, proprietor, managing agent or pricing employee of any other retail dealer doing business in Clovis, or Portales, New Mexico at which the business of the retail sale of alcoholic beverages was discussed. Such record shall identify the date and location of such contact, all parties to said discussion and the subject matter discussed.

IX

For a period of five (5) years from the date of entry of this Final Judgment, each defendant is ordered to file, with this Court and the plaintiff on each anniversary date of this Final Judgment, a sworn statement setting forth the steps it has taken during the prior year to comply with paragraphs VII and VIII of this Final Judgment together with copies of all directives and records made or formulated pursuant to subsections A, B, or C of paragraph VIII. Any defendant who has engaged in no activity relating to the sale of alcoholic beverages during the preceding twelve (12) months may comply with the provisions of paragraphs VIII and IX by so stating in the sworn statement required by this paragraph.

X

A. For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative 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:

1. Access during the office hours of such defendant 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 officers, directors, agents, partners, or employees of such defendant, who may have counsel present, regarding any such matters.

B. A 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 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 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 a defendant to plaintiff, 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 said 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 ten (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 the defendant is not a party.

XI

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

XII

Entry of this Final Judgment is in the public interest.

DATED: March 31, 1978

Howard Bratton

UNITED STATES DISTRICT JUDGE