

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

GREATER BUFFALO ROOFING AND SHEET METAL CONTRACTORS' ASSOCIATION, INC., :

Defendant. :

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Civil No. Civ. 75-334

Filed: January 6, 1977

Entered: April 27, 1977

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on August 8, 1975; Defendant, Greater Buffalo Roofing and Sheet Metal Contractors' Association, Inc., having appeared and filed its Answer to the Complaint denying the material allegations thereof and raising certain affirmative defenses; and Plaintiff and Defendant, 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 either party 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 either party 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 Defendant 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) "Person" means any individual, individual proprietorship, partnership, firm, corporation or any other legal entity; and

(B) "Installation of roofs" means the construction of new and replacement roofs and 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 the 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

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

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

(C) Advertising, publishing or distributing information relating to the terms or length of any guarantee, or any price, 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, or any price, for use in connection with the installation of roofs, provided, however, that neither Defendant nor any of its 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;

(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 price, or any other term or condition of sale, in connection with the installation of roofs; and

(F) Taking any punitive action against any of its members for such member's failure or refusal to adhere to any agreements with any other member or other competitor concerning the terms or length of guarantee, the price, or any other term or condition of sale, in connection with the installation of roofs.

V

The 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

The Defendant is ordered and directed to mail, within ninety (90) days after the date of entry of this Final Judgment, a letter in the form attached hereto as Exhibit A, addressed to each person who was notified of the adoption of Defendant's guarantee program in form letters mailed on or about September 1, 1970 and February 3, 1973.

VII

The Defendant is ordered and directed:

(A) 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, 1970 to the date of entry of this Final Judgment; and

(B) 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.

VIII

Within one hundred and twenty (120) days from the date of the entry of this Final Judgment, the 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 and VII (A) of this Decree.

IX

For a period of ten (10) years from the date of entry to this Final Judgment the 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.

X

(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 the Defendant made to its principal office, be permitted, subject to any legally recognized privilege, and subject to the right of Defendant, if it so desires, to have counsel present:

1. Access during its office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or

under the control of the Defendant relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the Defendant, and without restraint or interference from it, to interview directors, officers, agents or employees of the Defendant, which persons if they wish may have counsel of their choosing present, relating to any matters contained in this Final Judgment.

(B) Upon such written request, the Defendant shall submit such reports in writing, under oath if so requested, to the plaintiff, with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section X 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 Plaintiff, 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.

XI

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

XII

Entry of this Final Judgment is in the public interest.

Date: *April 27, 1977*

W. John J. Egan
UNITED STATES DISTRICT JUDGE

EXHIBIT A

**GREATER BUFFALO
ROOFING & SHEET METAL CONTRACTORS' ASSOCIATION, INC.**

President EDWARD R. ZETTEL West Roofing Co., Inc. 1122 Whitney Avenue Niagara Falls, N. Y. 14302	First Vice-President ARTHUR H. HILGER McGonigle & Hilger Roofing, Inc. 401 Locust Street Lockport, N. Y. 14094	Second Vice-President CLARENCE J. STIGLMEIER Weaver Metal & Roofing Co., Inc. 535 Duke Road Cheektowaga, N. Y. 14225	Office of the Secretary-Treasurer PAUL H. GILBERT H. C. & E. F. Gilbert, Inc. 11 Red Oak Drive Williamsville, New York 14221 716-689-8538
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TO: ARCHITECTS, ENGINEERS, GENERAL CONTRACTORS,
COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL USERS

Gentlemen:

On August 8, 1975, the Department of Justice filed a civil antitrust action under Section 1 of the Sherman Act, United States v. Greater Buffalo Roofing & Sheet Metal Contractors Association, Inc., alleging that the Association had entered into an agreement to eliminate competition in the offer of guarantees on roofing installations. Prior to the taking of any testimony and without admission by any party in respect to any issue, the Association 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 1976. A copy of that Final Judgment is available for inspection at the offices of the Association.

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 rescinded. Each of our members may give or offer guarantees of whatever length of time or upon such terms as he may wish. He is free to charge, give or offer whatever

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prices and other terms and conditions of sale for his services he may wish, in accordance with his own business judgment and which may be acceptable to his customers.

(Names of members as of date of Final Judgment who are engaged in roofing installation.)