

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Roofing, Metal and Heating Associates, Inc., U.S. District Court, E.D. Pennsylvania, 1973-2 Trade Cases ¶74,736, (Dec. 27, 1973)

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United States v. Roofing, Metal and Heating Associates, Inc.

1973-2 Trade Cases ¶74,736. U.S. District Court, E.D. Pennsylvania. Civil No. 73-2301. Entered November 13, 1973; amended December 27, 1973. Case No. 2344, Antitrust Division, Department of Justice.

## Sherman Act

**Restraint of Trade—Replacement Roofs—Fixing Prices and Guarantee Periods—Corrective Advertising—Consent Decree.**—An association of roofing contractors was prohibited by a consent decree from agreeing to fix the length or other terms of guarantees for the sale and installation of replacement roofs or to fix prices for these or related services. Suggesting guarantee periods or prices to the association's members was prohibited, as well as restrictive by-laws and punitive action against members. The association, was also required to run a series of advertisements in local newspapers retracting previous advertisements which stated that replacement roofs could not be guaranteed for more than two years. The advertisements also had to include statements that each member of the association was free to give or offer his customers guarantees of whatever length of time and other terms as he might have wished or as may have been acceptable to his customers.

**For plaintiff:** Thomas E. Kauper, Asst. Atty. General, Baddia J. Rashid, Charles F. B. McAleer, John J. Hughes, Stewart J. Miller and Robert J. Ludwig, Attys., Antitrust Div., Dept. of Justice, Philadelphia, Pa. **For defendant:** Joseph A. Tate and Ira P. Tiger, of Schnader, Harrison, Segal & Lewis, Philadelphia, Pa.

## Final Judgment

GREEN, D. J.: Plaintiff, United States of America, having filed its Complaint herein on September 11, 1973, and Plaintiff and Defendant by their respective attorneys, having consented to the making and entry of this Final Judgment, without admission by any party in respect to any issue and without this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

Now, Therefore, before any testimony has been taken herein, 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

#### [ Jurisdiction ]

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

#### [ Definitions ]

As used in this Final Judgment:

(A) "Person" means any individual, individual proprietorship, partnership, firm, corporation or any other form of legal entity; and

(B) "Other related services" include, but are not limited to, repairing of roofs, inspecting of roofs, or estimating the cost of repair or installation of roofs.

### III

#### [ *Applicability* ]

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

### IV

#### [ *Prices/Guarantees* ]

The Defendant is enjoined and restrained from, directly or indirectly, entering into any contract, agreement or understanding to:

- (A) Fix, establish, stabilize, or maintain the length, or other terms, of guarantees for the sale and installation of replacement roofs; and
- (B) Fix, establish, stabilize or maintain prices or other terms or conditions of sale in connection with the sale and installation of replacement roofs or for performing other related services.

### V

#### [ *Suggesting Guarantees* ]

The defendant is enjoined and restrained from:

- (A) Urging, recommending, or suggesting that any of its members or any other person adopt or adhere to any particular guarantee period or to any price or other term or condition of sale in connection with the sale and installation of replacement roofs or for performing other related services;
- (B) Adopting, suggesting, advertising, publishing or distributing any guarantee period or any price or other term or condition of sale in connection with the sale and installation of replacement roofs or for performing other related services;
- (C) Adopting, adhering to, maintaining, enforcing or claiming any rights under any by-law, rule, regulation, plan or program which restricts or limits the right of any of its members to give or offer, in accordance with his own business judgment, a guarantee period or any price or other term or condition of sale to any customer or prospective customer in connection with the sale and installation of a replacement roof or for performing other related services; and
- (D) Taking any punitive action against any of its members where such action is based upon the member's failure or refusal to adhere to any guarantee period or price or other term or condition of sale in connection with the sale and installation of replacement roofs or for performing other related services.

### VI

#### [ *Excision of Documents* ]

The Defendant is ordered and directed within ninety (90) days after the entry of this Final Judgment to eliminate from its charter, constitution and by-laws, 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.

### VII

#### [ *Newspaper Ads* ]

- (A) The Defendant is ordered and directed within sixty (60) days after the entry of this Final Judgment to publish on four (4) consecutive Sundays in *The Philadelphia Inquirer* and *The Sunday Bulletin*, advertisements reading as follows:

Statements in previous advertisements published by the Roofing, Metal and Heating Associates, Inc., that roofs placed on residential properties will be guaranteed for a maximum period of two years are hereby immediately revoked and declared to be of absolutely no effect whatsoever.

Each member of this organization is free to give or offer his customers guarantees of whatever length of time or upon such terms as he may wish and as may be acceptable to his customers.

Each member of this organization is free to charge, give or offer his customers whatever prices and other terms and conditions of sale for his services as he may wish and as may be acceptable to his customers.

(B) It is further ordered and directed that such advertisements shall contain the full name of the Defendant and its seal; that such advertisements shall be arranged in paragraphs as set out in subparagraph (A) of this Section VII; that the advertisements shall be printed in a rectangular setting, measuring at least three inches by three and one-half inches (3" by 3 ½"); that the advertisements shall be bordered by solid black lines of at least one-eighth of an inch (1/8") in width; that the full name of the defendant shall appear under the seal of the defendant; and that no other printing or matter of any sort shall be included in these advertisements and the legibility of the printed matter in the advertisements shall not be obscured, obliterated, lessened or diminished in any way."

#### VIII

##### [ Notification]

(A) The Defendant is ordered and directed to mail within sixty (60) 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, 1972 to the date of entry of this Final Judgment, and within ninety (90) days from the aforesaid date of entry to submit to the Plaintiff an affidavit setting forth the fact and manner of compliance with this Section VIII; and

(B) The 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

##### [ Reports]

For a period of ten (10) years from the date of entry of 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

##### [ Compliance Inspection]

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 of 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.

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 for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

**XI**

*[ Retention of Jurisdiction]*

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 or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith; and for the punishment of violations thereof.