

U. S. v. GYPSUM INDUSTRIES ASSOCIATION, ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF NEW YORK.

EQUITY No. E-25-215.

UNITED STATES OF AMERICA, PETITIONER,

VS.

GYPSUM INDUSTRIES ASSOCIATION, ET AL., DEFENDANTS.

FINAL DECREE.

This cause came on to be heard at this term, and upon consideration thereof, and upon motion of the petitioner by William Hayward, United States Attorney for the Southern District of New York, for relief in accordance with the prayer of the petition, and no testimony or evidence having been taken, and all the defendants therein having appeared by their attorneys Scott, Bancroft, Martin and MacLeish, Lyman M. Bass, Montague Lessler, George A. True, Roger I. Wykes and Frederick J. Powell and having consented thereto in open court; and upon the reading and filing of the petition herein, and upon the consent of the several defendants, and upon motion of the petitioner for relief in accordance with the prayer of the petition.

NOW, THEREFORE, it is ORDERED, ADJUDGED and DECREED, as follows, viz:

(1) That the combination and conspiracy in restraint of trade and commerce, the acts, regulations, rules, resolutions, agreements, contracts and understandings in restraint of trade and commerce and the restraint of such trade and commerce obtained thereby as complained of in this petition to declare illegal and in violation of

the Act of Congress, approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" and the acts amendatory thereof and supplemental or additional thereto.

(2) That the said defendants and their officers, agents, servants and employees and all persons acting under, through, by or in behalf of them or any of them, or claiming so to act, be and hereby are, ordered and directed to dissolve and forever discontinue said Gypsum Industries Association and be and hereby are perpetually enjoined, restrained and prohibited directly or indirectly from engaging in or forming any like association or from making any express or implied agreement of association or arrangement similar to or like said agreement or arrangement the effect of which would be to restrain or monopolize said trade and commerce in Gypsum products among the several States of the United States or in the District of Columbia, and from carrying out or continuing in effect the agreements described herein or making any express or implied agreements or arrangements together or with one another, like those hereby alleged to be illegal, or using any other means or methods the effect of which would be to prevent the free and unrestrained flow of such interstate trade and commerce in said Gypsum products, or to monopolize the same. Provided however that the said defendants are not restrained or enjoined from jointly organizing and maintaining a corporation, the charter or articles of incorporation of which shall be expressly limited to the following defined objects and purposes or any of them;

(a) To advance or promote the use of Gypsum products by all legitimate and lawful means, including research, publicity, advertisement and any other activities of like character.

(b) To deal with engineering and trade problems pertinent to the industry for the purpose of advancing the use of Gypsum products.

(c) To carry on educational work pertinent to the industry by fellowships in various schools and colleges

for research; experimental and research work in and through institutions of learning, scientific bureaus and societies; and to provide for lectures and the writing and reading of papers upon subjects pertaining to the industry.

(d) To maintain a traffic bureau to furnish traffic information upon specific requests from published freight tariffs lawfully issued by the carriers and to assist the industry in transportation questions before Federal and State commissions and other bodies dealing with questions of transportation and with common carriers.

(e) To deal with improved methods of plant and mine operation including sanitation, safety appliances, accident prevention, labor, plant and mine development, housing conditions, insurance and methods of accounting.

(f) To maintain a credit bureau for the sole purpose of furnishing credit information.

(3) That the said defendants, their officers, agents, servants and employees and all persons acting under, through, by or in behalf of them or any of them, or claiming so to act, be perpetually enjoined, restrained and prohibited directly or indirectly from

(a) Agreeing to fix or establish by agreement among themselves the prices to be charged for said Gypsum products.

(b) Agreeing among themselves in any manner whatsoever to charge purchasers of said Gypsum products uniform prices or doing by agreement any act or acts which will result in maintaining uniform prices.

(c) Agreeing among themselves in any manner whatsoever to advance or decrease prices for their products to purchasers thereof.

(d) Agreeing among themselves in any manner whatsoever to advise or communicate with one another as to proposed advances or decreases in prices for their products to purchasers thereof or agreeing among themselves in any manner whatsoever to circulate among themselves in any way information concerning or relating to such

proposed advances or decreases, or to the prices charged or to be charged.

(e) Doing any act or acts by agreement among themselves which will result in advising or communicating with one another as to proposed advances or decreases in prices for their products to purchasers thereof or in circulating by agreement among themselves information concerning or relating to such proposed advances or decreases.

(f) Agreeing among themselves in any manner whatsoever to limit, curtail, restrict or otherwise control the amount of said product to be produced for manufacture at any time by any or all of the defendants or by doing by agreement among themselves any act or acts which will limit, curtail, restrict or otherwise control the production or manufacture of said products by any or all of the said defendants, such as the withdrawal of salesmen from a certain territory over stipulated periods.

(g) Agreeing among themselves in any manner whatsoever as to the territory in which any or all of the defendants may sell or otherwise dispose of their products.

(h) Agreeing among themselves in any manner whatsoever to effect any discrimination of any character, whether in prices charged or otherwise in favor of or against any purchaser of their products by reason of the fact that such purchaser is a mail order house, purchasing agency, co-operative buying association or so-called "Dealer," or for any other reason or doing any act by agreement among themselves to effectuate any such discrimination in favor of or against any purchaser for any reason, except of course that each defendant may independently of the other defendants select his or its own trade and dispose of his or its products to such persons and on such terms as he or it may choose.

(i) Agreeing among themselves to use a published credit list and credit information for the purpose of blacklisting an undesirable purchaser or for the purpose of putting the name of the purchaser on such list with

the intent of the manufacturer who submits the name reserving the purchaser's business for himself.

(j) Agreeing to fix, establish, or maintain by agreement among themselves the terms, differentials, discounts or prices which should be followed by a dealer, jobber or other middleman upon his re-sale to a consumer or by any such agreement the uniform discounts which should be subtracted by each manufacturer, as an inducement for cash payment.

(k) Agreeing among themselves to adopt or follow any price list, published or complied, or caused to be published or complied by themselves or by any newspaper, trades paper or periodical as a fixed price.

(l) Agreeing among themselves to enforce any arbitrary freight rates in excess of those lawfully made.

(m) Agreeing among themselves that certain individual manufacturers engaged in the manufacture of a certain Gypsum product of a certain definite composition, and that all other manufacturers desist from manufacturing a product of such composition.

(n) Aiding or abetting or assisting individually or collectively others to do all or any of the matters herein set forth and enjoined and restrained herein.

(4) That nothing herein contained shall be construed to restrain or interfere with the action of any of the said defendants acting with respect to his or its own corporate or individual business property or affairs, or from furnishing necessary information to their own customers in connection with bona fide sales of such products; or from doing individually any of the said act or acts done in good faith to meet competition when such action or the furnishing of such information is not made or done in concert or as the result of any agreement among themselves; or to save any patent rights of any of said defendants; and that this decree and any its provisions or the entry thereof shall be without prejudice to the rights or interests of any of the said defendants in any proceedings which may be brought by or against

them or any of them, except only any proceedings in this cause to enforce the terms of this decree.

(5) That jurisdiction of this cause be and hereby is retained for the purpose of enforcing this decree, and for the purpose of enabling any of the parties to apply to the Court for modification hereof if it be shown to the satisfaction of the Court, that by reason of changed conditions or changes in the statute law of the United States or in the interpretation of said law by the courts, or by reason of any new or different activities other than those hereby specifically authorized to be maintained and deemed necessary or desirable by the said defendants for the welfare of the Gypsum Industry or for any other reason, the injunctions hereby allowed have become inadequate, the provisions hereof have become inappropriate or unnecessary to maintain competitive conditions in interstate trade or commerce in Gypsum products, or have become unduly oppressive to the defendants and no longer necessary to secure or maintain competitive conditions in such interstate trade.

(6) That the defendants Ebsary Gypsum Co. and Colorado Portland Cement Company not having consented to the foregoing decree, are in consequence, not bound by its terms and provisions.

JNO. C. KNOX,
United States District Judge.

JANUARY 3, 1923.