

**APPENDIX A:  
FINAL JUDGMENTS**

UNITED STATES v. LEXINGTON TOBACCO BOARD OF TRADE

Civil No. 1310

Year Judgment Entered: 1958



## Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Lexington Tobacco Board of Trade., U.S. District Court, E.D. Kentucky, 1958 Trade Cases ¶69,131, (Sept. 3, 1958)

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United States v. Lexington Tobacco Board of Trade.

1958 Trade Cases ¶69,131. U.S. District Court, E.D. Kentucky. Civil Action No. 1310. Filed September 3, 1958. Case No. 1412 in the Antitrust Division of the Department of Justice.

### Sherman Antitrust Act

#### **Combinations and Conspiracies—Consent Decree—Practices Enjoined—Fixing Prices for Services.—**

A tobacco board of trade comprised of tobacco buyers and warehouse operators was prohibited by a consent decree from entering into any agreement (1) to fix warehouse fees and commissions, the price charged by tobacco warehouses for services or facilities furnished in connection with the sale of tobacco at auction, (2) to request any person to adhere to any warehouse fees and commissions, or (3) to suggest to any warehouseman the fees and commissions to be charged for such services or facilities. Also, the tobacco board of trade was enjoined from directly or indirectly suggesting any formula for arriving at such fees and commissions.

#### **Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Information**

**Exchange and Price Lists.—**A tobacco board of trade comprised of tobacco buyers and warehouse operators was prohibited by a consent decree from circulating or using, in any manner, any schedule or price list containing any warehouse fees and commissions to be charged by tobacco warehousemen in connection with the sale of tobacco at auction.

#### **Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Investigations**

**and Penalties.—**A tobacco board of trade comprised of tobacco buyers and warehouse operators was enjoined by a consent decree from directly or indirectly (1) policing or otherwise interfering with the warehouse fees and commissions charged by any person, (2) exacting any fines or other punitive damages from any of its members, based in whole or in part on the warehouse fees and commissions charged by such member, and (3) taking any punitive action against any person which was based in whole or in part on the warehouse fees and commissions charged by such person.

#### **Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Amendment of Bylaws.—**

A tobacco board of trade comprised of tobacco buyers and warehouse operators was directed by a consent decree to (1) cancel any rule, regulation, or bylaw which was inconsistent with any provision of the decree, and (2) to include in its bylaws a provision requiring the expulsion of any member who engaged in any activity inconsistent with the decree or who violated any bylaw of the board of trade which was designed to obtain compliance with the consent decree. The tobacco board of trade was also prohibited from adopting or enforcing any rule or bylaw which was contrary to any provision of the decree.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and Harry N. Burgess, Henry M. Stuckey, Charles F. B. McAleer, and William F. Costigan, Attorneys, Department of Justice.

For the defendant: Rufus Lisle for the Lexington Board of Trade.

### Final Judgment

[ *Consent Decree*]

H. CHURCH FORD, District Judge [ *In full text*]: The plaintiff, United States of America, having filed its complaint herein on September 3, 1958 and the Lexington Tobacco Board of Trade having appeared herein and the plaintiff and the defendant, by their respective attorneys, having severally 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's constituting evidence or admission by any party in respect of any such issue;

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Now, Therefore, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all the parties hereto, it is hereby

Ordered, Adjudged and De creed as follows:

I

[ *Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of all the parties hereto. The complaint states a claim upon which relief may be granted against the defendant 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," commonly known as the Sherman Act, as amended.

II

[ *Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean any individual, partnership, corporation, association, firm or other legal entity;
- (B) "Defendant Board" shall mean the defendant Lexington Tobacco Board of Trade, a Kentucky corporation;
- (C) "Warehouse fees and commissions" shall mean the amount or price charged by tobacco warehouses for services or facilities furnished in connection with the sale of tobacco at auction.

III

[ *Applicability*]

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

IV

[ *Specific Relief*]

(A) The Defendant Board is ordered and directed:

- (1) To terminate and cancel any rule, article, regulation or by-law which is contrary to or inconsistent with any provision of this Final Judgment;
  - (2) To include in its by-laws a provision requiring the expulsion of any member who engages in any activity contrary to or inconsistent with any provision of the Final Judgment or who violates any rule, article, regulation or by-law of Defendant Board designed to obtain compliance with this Final Judgment.
- (B) The Defendant Board is enjoined and restrained from adopting, entering into, adhering to or enforcing any by-law, rule, regulation, or article which is contrary to or inconsistent with any provision of this Final Judgment.

V

[ *Price Fixing Agreements Prohibited*]

The Defendant Board is enjoined and restrained from entering into, adhering to, maintaining, or enforcing with any tobacco warehouseman or central agency for such warehousemen any contract, agreement, understanding, plan or program, to directly or indirectly:

- (A) Fix, establish, maintain or adhere to warehouse fees and commissions;

(B) Request, urge, compel, or attempt to request, urge or compel any person to adhere to or maintain any warehouse fees and commissions;

(C) Urge, influence or suggest, or attempt to urge, influence or suggest, to any tobacco warehousemen warehouse fees and commissions to be charged.

## VI

### [ *Price Lists—Policing Prices*]

Defendant Board is enjoined and restrained from directly or indirectly:

(A) Suggesting or recommending any warehouse fees and commissions or formula for arriving at such fees and commissions;

(B) Circulating, exchanging or using, in any manner, any schedule or price list containing any warehouse fees and commissions;

(C) Policing or otherwise interfering with warehouse fees and commissions charged by any person;

(D) Exacting or attempting to exact any fines or other punitive damages from any of its members, based in whole or in part on the warehouse fees and commissions charged by such member;

(E) Taking any punitive action whatsoever against any person which action is based in whole or in part on the warehouse fees and commissions charged by such person.

## VII

### [ *Notice*]

Within forty-five (45) days from the date of entry hereof, Defendant Board is ordered and directed to:

(A) Furnish to each of its members a true copy of this Final Judgment;

(B) File with the Clerk of this Court, with a copy to the Attorney General, an affidavit listing the names and addresses of the persons to whom copies of the Judgment were furnished and the manner of service under Section (A) hereof.

## VIII

### [ *Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on 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, (A) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment, and (B) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding any such matters. Upon such written request said defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

## IX

### [ *Jurisdiction Retained*]

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Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction and carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and punishment of violations thereof.

UNITED STATES v. FIRST NATIONAL BANK AND TRUST COMPANY

Civil No. Lex. 1424

Year Judgment Entered: 1967



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 EASTERN DISTRICT  
 OF KENTUCKY

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF KENTUCKY  
 AT LEXINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

FIRST NATIONAL BANK AND TRUST COMPANY  
 OF LEXINGTON, SECURITY TRUST COMPANY,  
 and FIRST SECURITY NATIONAL BANK AND  
 TRUST COMPANY OF LEXINGTON,

Defendants

*Filed 12-29-67*

CIVIL NO. LEX. 1424

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on March 1, 1961, pursuant to Section 4 of the Sherman Act seeking to enjoin alleged violations of Sections 1 and 2 of the Sherman Act, and defendant First Security National Bank and Trust Company of Lexington, having appeared and filed its answer to such complaint, denying the substantive allegations thereof, this Court (Judge Ford) on July 30, 1962, after trial, having entered judgment for defendants holding that no violation of the Sherman Act had been shown (208 F. Supp. 457), plaintiff having appealed to the Supreme Court of the United States, the Supreme Court having on April 6, 1964 reversed the judgment of this Court and having held that the merger of the defendants First National Bank and Trust Company of Lexington and Security Trust Company violated Section 1 of the Sherman Act and having declined to review the questions posed by the complaint under Section 2 of the Sherman Act, and having remanded the case to this Court for further proceedings in conformity with its opinion (376 U.S. 665), the Bank Merger Act (Public Law 86-463, 74 Stat. 129) having been amended on February 21, 1966 (Public Law 89-356, 80 Stat. 7), plaintiff on April 28, 1966 having filed its motion in this Court for



an adjudication that the aforesaid merger violates Section 2 of the Sherman Act, this Court on February 1, 1967, having filed its order denying said motion and having filed its opinion upholding said merger, plaintiff on March 30, 1967, having filed its notice of appeal to the Supreme Court of the United States, plaintiff and defendant First Security National Bank and Trust Company of Lexington, by their respective attorneys, having each consented to the making and entry of this Final Judgment without this Final Judgment constituting any evidence or an admission by either party hereto with respect to any issue of fact or law herein, and this Court having considered the matter and being duly advised.

Now, therefore, upon the consent of the parties hereto, it is hereby

Ordered, adjudged and decreed, as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against First Security National Bank and Trust Company of Lexington under Section 2 of the Act of Congress of July 2, 1890 (15 U.S.C. §2), commonly known as the Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "First Security" means defendant First Security National Bank and Trust Company of Lexington which is a consolidation of defendant First National Bank and Trust Company of Lexington and defendant Security Trust Company.

(B) "Trust account" means any account held in the Trust Department of a commercial bank or trust company in Fayette County, Kentucky in its capacity as (1) trustee; (2) executor; or (3) custodian of securities or other property.

(C) "Non-testamentary trust account" means any account held in the Trust Department of a commercial bank or trust company in Fayette County, Kentucky in its capacity as trustee or custodian of securities or other property in which the trusteeship or custodianship was not created by Last Will and Testament.

III.

Defendant First Security is enjoined and restrained for ten (10) years from the effective date of this Final Judgment from acquiring control over or merging with any other commercial bank having one or more offices in Fayette County, Kentucky.

IV.

Defendant First Security is enjoined and restrained for five (5) years from the effective date of this Final Judgment from establishing any additional branch banking offices in Fayette County, Kentucky if, as a result of the establishment of such branch, defendant First Security would own or control more than one third of the total number of offices conducting a commercial banking business in Fayette County, Kentucky.

V.

Defendant First Security is enjoined and restrained for ten (10) years from the effective date of this Final Judgment from acting as trustee or custodian of any non-testamentary trust account created subsequent to the effective date of this Final Judgment; provided, however, that nothing in this Final Judgment shall prevent defendant First Security from acting as trustee or custodian of any assets pursuant to an agreement executed at any time by any person (or spouse of any person) who is or at any time hereafter becomes an officer, director (including advisory directors) or employee of defendant First Security.

VI..

Defendant First Security may petition this Court at any time for times after January 1, 1969 to modify this Final Judgment by striking Section V therefrom and any such petition shall be granted if

defendant First Security shall show to the satisfaction of this Court that in the year preceding the filing of such petition, it was acting as trustee, executor and/or custodian of either less than 25% by number, or less than 50% by dollar value of total assets (or both), of all trust accounts held by commercial banks in Fayette County, Kentucky. Plaintiff shall cooperate with defendant First Security in obtaining statistics showing the number and dollar value of trust accounts.

VII.

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to First Security at its principal office, be permitted:

(1) Reasonable access, during office hours of First Security, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of First Security relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of First Security and without restraint or interference from it, to interview officers or employees of First Security, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, First Security, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division,

and upon reasonable notice made to its principal office, shall submit such reasonable reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may, from time to time, be requested for the enforcement of this Final Judgment. No information obtained by the means provided in this Section VII 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 court 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.

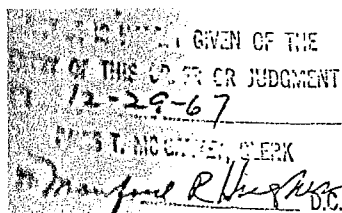
VIII.

Jurisdiction is retained by this Court for the purpose stated in the Section VI of this Final Judgment and for the purposes 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 or carrying out of this Final Judgment, the modification or termination of any provision thereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

MAC SWINFORD

United States District Judge

Dated: December 29, 1967



A True Copy Attest

Davis T. McGarvey, Clerk  
U. S. District Court

By Manfred R. Hester  
D. C.

FILED  
DEC 3 1971

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
AT LEXINGTON

UNITED STATES OF AMERICA,	)
	)
Plaintiff	)
	)
v.	)
	)
	)
	)
FIRST NATIONAL BANK AND TRUST COMPANY	)
OF LEXINGTON, SECURITY TRUST COMPANY,	)
and FIRST SECURITY NATIONAL BANK AND	)
TRUST COMPANY OF LEXINGTON,	)
	)
Defendants	)
	)

Civil No. Lex. 1424

O R D E R

Final Judgment was entered in this matter by order of this Court dated December 29, 1967, pursuant to the consent of the parties hereto. Upon the request of Defendant, First Security National Bank and Trust Company of Lexington, and with the consent of the Plaintiff, United States of America, it is hereby

ORDERED, ADJUDGED AND DECREED, that Paragraph V of said Final Judgment be, and the same hereby is, amended by changing the period at the end thereof to a comma and adding the following new language:

"or by the spouse of any person who was a director of First Security on March 1, 1961."

*W. S. Smith*

United States District Judge

Dated: \_\_\_\_\_, 1971

The United States of America, Plaintiff in this action, hereby consents to the entry of the foregoing Order.

*Frank A. B. Mc...*

Attorney, Department of Justice