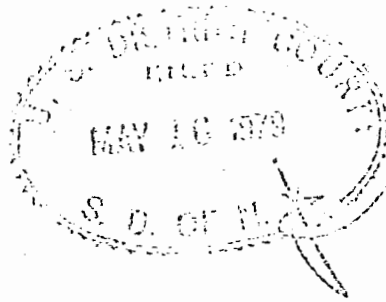


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
UNITED STATES OF AMERICA,

Plaintiff,

v.

HEALTHCO, INC.,

Defendant.
-----x

70 Civ. 1312 (IBW)

SECOND AMENDED FINAL JUDGMENT

Plaintiff, having filed its complaint herein on April 2, 1970, and after a full trial on all issues and the Court having rendered its opinion, findings of fact and conclusions of law herein on January 14, 1975, and having entered a Final Judgment herein on April ⁴/₃, 1975, and an Amended Final Judgment on March 29, 1976, and Plaintiff and Defendant, by their respective attorneys, having consented to the making and entry of this Second Amended Final Judgment;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and the parties hereto.

The effect of the acquisitions by Healthco, Inc. (Healthco) of the assets of General Dental Supply Co., Inc. (General), M.A. Sechter Dental Equipment & Supply Co., Inc. (Sechter), Hebard Dental Supply Co., Inc. (Hebard Dental) and Hebard-Metro Dental Co., Inc. (Hebard-Metro) may be substantially to lessen competition in the sale of dental equipment by dental dealers in Metropolitan New York, in violation of Section 7 of the Clayton Act (15 U.S.C. § 18), as amended.

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II

As used in this Second Amended Final Judgment:

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

(B) "Dental products" shall mean dental equipment, dental sundries, artificial teeth and dental precious metals; and

(C) "Metropolitan New York" shall mean the City of New York, the Counties of Westchester, Rockland, Nassau and Suffolk in the State of New York and Bergen, Essex, Hudson, Passaic, Union, Morris, Somerset and Middlesex Counties in the State of New Jersey.

III

The provisions of this Second Amended Final Judgment shall apply to Defendant, its officers, directors, agents and employees, and to each of its subsidiaries, successors, and assigns, and to each of their respective officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Second Amended Final Judgment by personal service or otherwise.

IV

(A) Defendant is ordered and directed, within ninety (90) days from the date of entry of this Second Amended Final Judgment, to re-establish to the extent necessary and to operate the businesses formerly operated by Sechter, Hebard Dental, and Hebard-Metro as separate, viable dental product retailers, independent of each other and of Defendant.

(B) The companies established pursuant to subsection (A) of this Section IV shall consist of substantially those assets utilized in the conduct of the business of Sechter, Hebard Dental, and Hebard-Metro, respectively, at the time of their acquisition by Defendant, together with such improvements,

to the assets, equipment, and all other assets which have been added to each business by Defendant. In any event, the re-established companies shall include substantially all personnel and assets utilized in the conduct of the business of Healthco's Sechter, Hebard Dental and Hebard-Metro divisions on March 29, 1976.

(C) Within sixty (60) days of the date of entry of this Second Amended Final Judgment, Defendant shall file with the Court and provide Plaintiff with a copy of a detailed report setting forth the steps taken to comply with Sections IV(A) and (B) of this Second Amended Final Judgment.

V

Defendant is ordered and directed, subject to the terms and conditions of this Second Amended Final Judgment, to divest Sechter, Hebard Dental and Hebard-Metro within twelve (12) months of the date of entry of this Second Amended Final Judgment. A Trustee shall be appointed by the Court to effect such divestiture. Appointment of the Trustee shall be made at the time of entry of this Second Amended Final Judgment pursuant to a Special Order of Appointment which shall be entered along with this Second Amended Final Judgment. The Trustee shall be entitled to reasonable compensation and actual expenses to be set by the Court and paid by Defendant. The Trustee shall submit a report in writing to the parties every sixty (60) days, the first report to be filed sixty (60) days from the date of its appointment, indicating the efforts made in seeking to divest Sechter, Hebard Dental and Hebard-Metro. The Trustee may at any time submit to the Court such additional reports as ^{he} it may consider warranted. The Trustee shall advise the parties of all significant matters arising in the negotiations. Upon

the reaching of an understanding in principle on the basic terms and conditions of a prospective sale and at least forty-five (45) days before any proposed consummation date, the Trustee shall advise the Court with notice to Defendant and Plaintiff identifying the prospective purchaser or purchasers and describing the terms and conditions of the prospective sale. Within thirty (30) days of said notice to Defendant and Plaintiff, any party may file a statement of objections to the proposed sale. Defendant will not be ordered to execute an agreement of sale by the Court until Defendant and Plaintiff have had an opportunity to present views and recommendations on any issue presented and shall have a right to be heard thereon. In the event that divestiture of any of the companies has not been effected within the twelve-month period following the Trustee's appointment, and at the end of such period the Trustee is engaged in negotiations which the Trustee believes may result in divestiture, the Trustee shall so notify the parties and the Court. The Court may extend the Trusteeship for such additional time as may be necessary to permit the Trustee to complete such negotiations.

For a period of two years from the date of divestiture, Defendant shall use its best efforts to assure that all suppliers of dental products with whom it does business shall continue to offer their products, other than products bearing Defendant's proprietary names, for sale to each company divested pursuant to this Second Amended Final Judgment. If during such period any such divested company becomes unable, for any reason other than failure of credit, to purchase such products from any such supplier and such supplier continues to supply such products to Defendant, Defendant shall offer to sell such products to the divested company during such period at cost, including a reasonable handling cost.

VII

Defendant is ordered and directed to agree, upon the request of the purchaser of a divested company, that it will not, for a period of one (1) year from the date of any divestiture made pursuant to the Second Amended Final Judgment, without the consent of the purchaser, employ any personnel who at the time of such divestiture or at any time within two (2) months prior thereto were employed at the divested company; provided, however, that Defendant may employ any personnel who are terminated by the divested company during such one (1) year period.

VIII

For a period of five (5) years from the date of entry of this Second Amended Final Judgment, Defendant is enjoined and restrained from renewing or extending any exclusive contract with any dental college which is doing business with Sechter, Hebard Dental or Hebard-Metro; provided, however, that Defendant shall be free to compete for the business of any dental college in the future, on a bid basis or otherwise.

IX

Defendant is enjoined and restrained for a period of five (5) years from the date of entry of this Second Amended Final Judgment from acquiring, directly or indirectly, any financial or other interest in a dental product dealership which is located and sells primarily within the Metropolitan New York area without prior approval of this Court and upon thirty (30) days prior notice to Plaintiff.

X

A. For the purpose of determining or securing compliance with this Second Amended Final Judgment, any duly authorized representative 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 Defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of Defendant, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendant, who may have counsel present, relating to any matters contained in this Second Amended Final Judgment; and

(2) Subject to the reasonable convenience of Defendant and without restraint or interference from it, to interview officers, directors, agents, partners or employees of Defendant, any of whom may have counsel present, regarding any such matters.

B. 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 with respect to any of the matters contained in this Second Amended 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 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 Second Amended Final Judgment, or as otherwise required by law. If at the time information or documents are furnished by

Defendant to Plaintiff, Defendant represents and warrants in writing the material in any such information or documents to which a claim of protection may be asserted under 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 10 days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which Defendant is not a party.

XI

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

Dated: May 16 1979

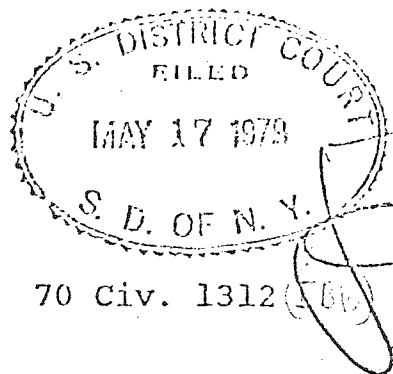
New York, N.Y.

Inger Bleeck
UNITED STATES DISTRICT JUDGE

JUDGMENT ENTERED - 5/18/79

Rafmona T. Singlet
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



- - - - - X
UNITED STATES OF AMERICA, :
Plaintiff, :
v. :
HEALTHCO, INC., :
Defendant. :
- - - - - X

SPECIAL ORDER OF APPOINTMENT
OF TRUSTEE

1. Pursuant to Section V of the Second Amended Final Judgment entered herein on May 16, 1979, the Court hereby appoints Martin J. Whitman ^{of 115 Broadway, New York, N.Y. 10006} (hereinafter referred to as "the Trustee") to sell and dispose of M. A. Sechter Dental Equipment & Supply Co., Inc. ("Sechter"), Hebard Dental Supply Co., Inc. ("Hebard Dental") and Hebard-Metro Dental Co., Inc. ("Hebard-Metro") including all assets utilized in the conduct of the business of Sechter, Hebard Dental and Hebard-Metro, together with such improvements, betterments, replacements and all other assets which have been added to such businesses (hereinafter called the "Trust Property") by Healthco, Inc.

2. The Trustee is directed to discharge his duties in accordance with the terms of this Order.

3. The right to manage the Trust Property as dental products retail outlets shall remain with Healthco, but the Court may order that such right to manage be transferred to the Trustee when the Trustee shall make a showing that such transfer will facilitate the divestiture ordered by the Second Amended Final Judgment. Once the management of the Trust Property has been transferred to the Trustee, Healthco shall convey such rights, title, interests and obligations in the Trust Property or any portion thereof to the Trustee as the Court shall order. Such conveyance shall be absolute and unqualified.

4. The Trustee shall endeavor to ensure that the Trust Property is managed so as to maintain and enhance its value and competitive effectiveness as a going concern.

5. The Trustee shall have full authority to retain such accountants, appraisers, consultants, attorneys or other persons as he deems necessary to assist him in the disposition of the Trust Property.

6. The Trustee shall dispose of the Trust Property pursuant to the terms of the Second Amended Final Judgment. Such disposition shall be made on terms and conditions that are reasonable under all the circumstances. In making efforts to dispose of the Trust Property and in considering prospective purchasers, the Trustee shall give due attention to avoiding unnecessary disruption of the business affairs of the Trust Property in such a manner as to maintain and enhance its competitive effectiveness. Any arrangements for disposition of the Trust Property by the Trustee shall be subject to the approval of the Court, and the Trustee shall file with the Court and deliver to Healthco and to the Antitrust Division of the Department of Justice the complete details of any proposed plan of disposition intended to implement Section V of the Second Amended Final Judgment (including the identity of any person or persons to whom the divested property is to be transferred). Following the receipt of such plan, any party shall have thirty (30) days in which to file a statement of objections thereto with the Court, with a copy thereof to the other party. If no party objects to the proposed plan, the plan may be consummated. However, if objection is made, the proposed plan shall not be implemented until the Trustee obtains the approval of the Court or until the objection is withdrawn.

7. The Trustee shall be entitled to serve without giving bond or other security, and to use its best judgment in exercising the powers, rights and discretions in performing the duties imposed by the Second Amended Final Judgment or by law, and to be exempt from personal liability to the maximum extent permitted by law, for any action taken or omitted in good faith.

8. For the purpose of carrying out his duties under this Order, the Trustee shall be entitled, upon reasonable notice, to access to those records and documents in the possession or under the control of Healthco which relate to the Trust Property, and to interview officers, directors and employees of Healthco regarding such matters.

9. In addition to those reports which the Trustee is required to file pursuant to the Second Amended Final Judgment, the Trustee may at any time submit to the Court such reports as he may consider warranted and such reports as the Court shall direct. Copies of these reports shall be submitted to the parties. If the Trustee requests that any report be held under seal by the Court and in confidence by the parties, such report shall be so held unless the Court directs otherwise.

10. If the Trustee for any reason fails or ceases to act, the Court, upon application by the Department of Justice and after all parties have had the right to be heard, shall appoint a successor Trustee who shall have all the powers, rights, discretions and duties conferred or imposed herein upon the Trustee.

11. To the extent not inconsistent with or covered by this Order or any future Order of the Court, the Trust to be created by this Order shall be construed and regulated by the laws of the State of New York.

12. The Trustee shall be entitled to reasonable fees to be set by the Court and paid by Healthco. The Trustee shall also be entitled to reimbursement from Healthco for reasonable expenses incurred by the Trustee in carrying out his duties.

13. Healthco shall execute and deliver to the Trustee any necessary and appropriate instruments deemed advisable by the Trustee to effectuate the purposes hereof, and Healthco shall instruct its officers, employees, directors, accountants and legal counsel to cooperate with the Trustee in performing his duties hereunder.

14. Pending confirmation of a sale, the price, terms, and other conditions of any offer shall be treated as confidential and not subject to disclosure to a third party without prior approval by the Court. The Trustee shall not disclose financial or production information or the identity of particular Sechter, Hebard Dental and Hebard-Metro customers to persons other than prospective purchasers and shall only disclose such information to prospective purchasers after having entered into a nondisclosure agreement with such prospective purchasers.

15. This Trust shall be binding upon and inure to the benefit of the successors and assigns of Healthco.

IN WITNESS WHEREOF, Healthco and the Trustee have hereunto set their respective hands and seals.

Healthco, Inc.

By Steven S. Marcus
VICE-PRESIDENT

Attest:

Stephen Dunn

Trustee

By Martin J. Whitman

Attest:

Robert Haiman

Dated May 17 1979

Judge B. Goyall
UNITED STATES DISTRICT JUDGE w-
(PMT - ONE)