

[Trade Regulation Reporter - Trade Cases \(1932 - 1992\), United States v. Reno Merchant Plumbing and Heating Contractors, Inc.; Automatic Heat Service, Inc.; Heating and Air Conditioning Supply, Inc.; Savage & Son, Inc.; Saviers Electrical Products Corporation; J. J. Pellizari; Harry Gindes, doing business as Liberty Plumbing Company; William C. Bright; Charles L. Clark, doing business as Clark Plumbing & Heating; Earl L. Gottschalk; John F. Kuenzli, doing business as Hillcrest Plumbing Company; D. A. Humes, C. E. Humes, and H. D. Humes, doing business as Humes Plumbing & Heating Company and as Humes Bros. Plumbing & Heating; Tom C. Ivers, doing business as Ivers & Son; Gus Jensen; John Lukey, doing business as Nevada Plumbing & Heating; Carl Stevens; Edwin W. Storm; and Charles C. Smith., U.S. District Court, D. Nevada, 1952-1953 Trade Cases ¶67,361, \(Nov. 14, 1952\)](#)

Federal Antitrust Cases

868

Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶67,361

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United States v. Reno Merchant Plumbing and Heating Contractors, Inc.; Automatic Heat Service, Inc.; Heating and Air Conditioning Supply, Inc.; Savage & Son, Inc.; Saviers Electrical Products Corporation; J. J. Pellizari; Harry Gindes, doing business as Liberty Plumbing Company; William C. Bright; Charles L. Clark, doing business as Clark Plumbing & Heating; Earl L. Gottschalk; John F. Kuenzli, doing business as Hillcrest Plumbing Company; D. A. Humes, C. E. Humes, and H. D. Humes, doing business as Humes Plumbing & Heating Company and as Humes Bros. Plumbing & Heating; Tom C. Ivers, doing business as Ivers & Son; Gus Jensen; John Lukey, doing business as Nevada Plumbing & Heating; Carl Stevens; Edwin W. Storm; and Charles C. Smith.

1952-1953 Trade Cases ¶67,361. U.S. District Court, D. Nevada. No. 868, Filed November 14, 1952. Case No. 1027 in the Antitrust Division of the Department of Justice.

Headnote

Sherman Antitrust Act

Consent Decrees—Practices Enjoined—Duplicate Bids—Breaking Down Bids— Plumbing and Heating Suppliers and Association.—An association of plumbing and heating contractors and its members are enjoined by a consent decree from submitting copies of duplicate bids or otherwise disclosing such bids to any person except a bid depository; from transmitting copies of duplicate bids to a bid depository prior to the submission of the originals thereof to an awarding authority; and from breaking down any bid into its component elements, except where the awarding authority requires that such a breakdown be made.

Consent Decrees—Agreements Prohibited—Bid Depository—Revision of Bids—Duplicate Bids— Assessment of Penalties.—An association of plumbing and heating contractors and its members are enjoined by a consent decree from entering into any agreement or plan which provides that bids shall be submitted to a bid depository prior to transmitting them to an awarding authority; that any person shall submit a bid only at a

specific time or place; that any person who has not previously submitted a bid shall not, after bids are opened, submit a bid; that after bids have been opened no participant shall revise his bid, or revise his bid within a stated time or only upon specified conditions; that any bid depository shall disclose, in advance of the opening of the original bids by the awarding authority, whether any person has indicated an intention to bid, the identity of any person who has so indicated or has submitted a duplicate bid, or the bid of any participant; that each participant shall pay the bid depository a percentage of the price he receives under each contract; that duplicate bids shall be deposited with any person connected with the plumbing and heating industry; or that penalties shall be assessed or any action be taken against any person disagreeing with any system for the transmission of bids to a bid depository.

Consent Decrees—Practices Enjoined—Fixing Prices or Conditions of Sale—Bids—Agreements Not to Sell or Not to Work.—An association of plumbing and heating contractors and its members are enjoined from entering into any understanding to fix prices, discounts, or other terms or conditions for the sale, installation, or repair of plumbing supplies to third persons; to coerce any awarding authority (1) not to seek lower prices for the sale, installation, or repair of plumbing supplies after bids are received, (2) to return uninvited bids, (3) to award a contract to any participant only at the price contained in such participant's bid, (4) to discriminate against any person; to coerce any journeyman plumber or apprentice not to work for any master plumber; or to coerce any seller of plumbing supplies not to sell such supplies to any person.

Consent Decrees—Specific Relief—Amendment of By-Laws—Association of Plumbing and Heating Contractors.—An association of plumbing and heating contractors is required by a consent decree to institute and complete such proceedings as may be necessary to amend its by-laws to comply with the provisions of the decree, and to furnish to each of its present members and to each of its future members a copy of the decree and require as a condition of membership that all such members agree to comply with the provisions of the decree.

For the plaintiff: Newell A. Clapp, Acting Assistant Attorney General; Miles N. Pike, United States Attorney, by Robert L. McDonald, Assistant United States Attorney; Edwin H. Pewett and Wallace Howland, Special Assistants to the Attorney General; and Daniel B. Britt and Lyle L. Jones, Trial Attorneys.

For the defendants: Sidney W. Robinson and Harlan L. Heward for Reno Merchant Plumbing and Heating Contractors, Inc.; Automatic Heat Service, Inc.; Heating and Air Conditioning Supply, Inc.; Savage & Son, Inc.; Saviers Electrical Products Corp.; J. J. Pellizari; Harry Gindes, d.b.a. Liberty Plumbing Co.; William C. Bright; Charles L. Clark, d.b.a. Clark Plumbing & Heating; Tom C. Ivers, d.b.a. Ivers & Son; Gus Jensen; John Lukey, d.b.a. Nevada Plumbing & Heating; Edwin W. Storm; and Charles C. Smith. T. L. Withers for John F. Kuenzli, d.b.a. Hillcrest Plumbing Co.

Final Judgment

[*Consent to Entry of Judgment*]

FOLEY, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 5, 1950, and the undersigned defendants having filed their several answers to said complaint denying the substantive allegations thereof; and the plaintiff and the said defendants, 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 admission by any of the parties in respect to any such issue; and the Court having considered the matter and being duly advised;

Now, therefore, before any testimony has been taken and 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

[*Corporate and Individual Defendants*]

The defendants who are parties to this Final Judgment are:

(A) The following named corporate defendants:

Reno Merchant Plumbing and Heating Contractors, Inc.
Automatic Heat Service, Inc.
Heating and Air Conditioning Supply, Inc.
Savage & Son, Inc.

Saviors Electrical Products Corporation. Each of said corporate defendants is a corporation organized and existing under Nevada laws, and each has its office and principal place of business in Reno, Nevada.

(B) The following named individual defendants:

J. J. Pellizari.
Harry Gindes, doing business as Liberty Plumbing Company.
William C. Bright.
Charles L. Clark, doing business as Clark Plumbing & Heating.
John F. Kuenzli, doing business as Hill-crest Plumbing Company.
Tom C. Ivers, doing business as Ivers & Son.
Gus Jensen.
John Lukey, doing business as Nevada Plumbing & Heating.
Edwin W. Storm. Charles C. Smith.

Each of said individual defendants is a resident of Reno, Nevada.

II

[*Cause of Action Under Sherman Act*]

The Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action against the undersigned defendants 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" as amended.

III

[*Definitions*]

As used in this Final Judgment:

- (A) "Association" shall mean the defendant Reno Merchant Plumbing and Heating Contractors, Inc., an incorporated association organized and existing under the laws of the State of Nevada, and having its principal place of business in Reno, Nevada;
- (B) "Defendants" shall mean those defendants who consent to the entry of this Final Judgment;
- (C) "Person" shall mean an individual, partnership, firm, association, corporation, or other business or legal entity;
- (D) "Plumbing supplies" shall mean materials and fixtures utilized in the installation or repair of water, gas or waste disposal systems, steam and hot water systems, air conditioning systems involving split systems using

coil surfaces, oil burners, and refrigeration, in houses, buildings, and other structures and includes, among other items, pipe, fittings, valves, trim, lavatories, sinks, bathtubs, water closets, and furnaces;

(E) "Awarding authority" shall mean any person who solicits and receives bids and awards contracts for the sale, installation or repair of plumbing supplies;

(F) "Participant" shall mean any person who submits a bid to an awarding authority;

(G) "Bid" shall mean the price for which a participant offers to sell, install or repair plumbing supplies, or the basis of his total charges therefor, as for example, cost plus or time and materials, and includes both the original submission of a price and all subsequent re-submissions of price;

(H) "Bid depository" shall mean any disinterested person not connected with the plumbing industry to whom copies of duplicate bids are transmitted at the same time the originals are deposited with the awarding authority and who opens and publishes such duplicate bids only after the originals have been opened by the awarding authority.

IV

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons acting or claiming to act under, through or for such defendant.

V

[*Bidding Practices Prohibited*]

Each of the defendants is enjoined and restrained from:

(A) Submitting copies of duplicate bids or otherwise disclosing such bids to any person except a bid depository;

(B) Transmitting or submitting copies of duplicate bids to a bid depository prior to the submission of the originals thereof to an awarding authority, except that where copies of duplicate bids are sent by mail to a bid depository located outside of the State of Nevada, such copies may be sent by mail, other than air mail, not more than twelve (12) hours prior to the time set for receipt of bids by the awarding authority.

(C) Breaking down any bid into its component elements, except where the awarding authority requires that such a breakdown be made, provided, however, that the submission of separate bids for plumbing, heating, and air-conditioning shall not be deemed to be a violation of this sub-paragraph (C).

VI

[*Common Action Concerning Bidding Practices Prohibited*]

Each of the defendants is jointly and severally enjoined and restrained from entering into, adhering to, renewing, maintaining or furthering, directly or indirectly, or inducing others to enter into, any contract, agreement, understanding, plan or program or common course of action, which provides;

(A) That bids shall be submitted to a bid depository prior to transmitting them to an awarding authority; or

(B) That any person shall submit a bid only at a specific time or place except where such time or place is designated by an awarding authority for receiving bids; or

(C) That any person who has not previously submitted a bid on a particular job shall not, after bids are opened, submit a bid on said job; or

(D) That after bids have been opened no participant shall change or revise his bid; or

(E) That after bids have been opened no participant shall change or revise his bid within a stated time or only upon specified conditions; or

- (F) That any bid depository shall disclose, in advance of the opening of the original bids by the awarding authority, whether any person has indicated an intention to bid, the identity of any person who has indicated an intention to bid or has submitted a duplicate bid, or the bid of any participant; or
- (G) That each participant shall pay the bid depository or any other person a percentage of the price he receives under each contract; or
- (H) That duplicate bids shall be deposited with any person connected, directly or indirectly, with the plumbing and heating industry; or
- (I) That penalties shall be assessed or any action be taken against any person disagreeing with or not joining in or failing to adhere to any system for the transmission of bids to a bid depository, or similar understanding, plan or program.

VII

[*Other Practices Prohibited*]

Each of the defendants is jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program to:

- (A) Fix, establish, maintain or adhere to prices, discounts, interest rates or other terms or conditions for the sale, installation or repair of plumbing supplies to third persons;
- (B) Urge, advise, induce or coerce any awarding authority:

- (1) Not to seek lower prices for the sale, installation or repair of plumbing supplies after bids are received on a particular job;
- (2) To return uninvited bids;
- (3) To award a Contract to any participant only at the price contained in such participant's bid;
- (4) To discriminate against any person or group of persons in the receiving of bids or the awarding of contracts;

- (C) Urge, induce, advise or coerce any journeyman plumber or apprentice not to work for or prevent any such person from working for any master plumber;
- (D) Urge, induce, advise or coerce any seller of plumbing supplies not to sell such supplies to any person or group of persons.

VIII

[*Amendment of By-Laws Ordered*]

(A) Defendant Association, within sixty (60) days from the date of entry of this Final Judgment, shall institute and complete such proceedings as may be appropriate and necessary to amend its by-laws, rules and regulations to comply with the provision of this Final Judgment.

Within ninety (90) days from the date of entry of this Final Judgment, defendant Association shall notify this Court and the Attorney General of the United States in writing of the action taken by it to comply with this Section VIII(A);

(B) Defendant Association shall furnish to each of its present members and to each of its future members a copy of this Final Judgment and require as a condition of membership that all such members agree to comply with the provisions thereof.

IX

[*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 any defendant, made to its principal office, be permitted, (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 from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters. Upon such request, the 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 the enforcement of this Final Judgment. No information obtained by the means permitted in this Section IX 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.

X

[*Jurisdiction Retained*]

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