

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

SIOUX SALES/SIOUX CITY NIGHT)No: 00-4013 DEO
PATROL, INC., DESCRIBED AS)
SIOUX SALES COMPANY,)
)
Petitioner)
)
v.)
)
MARVIN N. PRICE, JR.,)
ROSEMARY SIMOTA THOMPSON,)
DONNA ALBERTS PEEL, AND,)
UNITED STATES OF AMERICA)
)
Respondents)

GOVERNMENT’S MOTION TO DISMISS PETITION
BY SIOUX SALES COMPANY TO
SET ASIDE CIVIL INVESTIGATIVE DEMAND NO. 19806
ISSUED TO SIOUX SALES COMPANY ON DECEMBER 9, 1999

The Government hereby moves the Court to dismiss Sioux Sales/Sioux City Night Patrol, Inc.’s (hereinafter “Sioux Sales”) petition to set aside the Civil Investigative Demand (“CID”) issued to it on December 9, 1999, on the grounds that the petition was not timely filed.¹

On February 3, 2000, Sioux Sales filed a petition to set aside the CID issued to Sioux Sales on December 9, 1999 pursuant to the Antitrust Civil Process Act (15 U.S.C. §§ 1311-1314). The Antitrust Civil Process Act was enacted in 1962 to provide a method for the Department of Justice to

¹ While the petition filed by Sioux Sales names three individuals as well as the United States, as respondents, the individuals were acting in their official capacity with respect to this CID and are not necessary parties to the resolution of this matter.

obtain information relevant to its investigations of possible violations of the antitrust laws, prior to the institution of civil or criminal proceedings. Pursuant to 15 U.S.C. § 1312(a), CIDs may be issued to any person who the Assistant Attorney General of the Antitrust Division of the Department of Justice believes:

may be in possession, custody, or control of any documentary material, or may have any information relevant to a civil antitrust investigation.

The CID issued to Sioux Sales was signed by Joel I. Klein, Assistant Attorney General of the Antitrust Division of the Department of Justice, and states on its face that it was issued in connection with an investigation of a possible violation of Section One of the Sherman Act, 15 U.S.C. § 1 relating to a “boycott of the GSA Law Enforcement Equipment Procurement Program and participants of the program.”

When issued, the CID called for the production of documents and responses to interrogatories on January 7, 2000. After issuance, the deputy custodians, Rosemary Simota Thompson and Donna Alberts Peel, agreed on behalf of the Government to extend the due date for Sioux Sales’ production to February 4, 2000. They also repeatedly expressed a willingness to discuss modifications to the CID to alleviate the burden to Sioux Sales’ and still obtain the information and materials needed to conduct the investigation.

On February 3, 2000, Sioux Sales filed a petition to set aside the CID pursuant to 15 U.S.C. § 1314. 15 U.S.C. § 1314(b)(1) provides that a recipient of a Civil Investigative Demands may petition to modify or set aside the demand:

Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such

period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand.
...

[emphasis added].

The CID in question was served on Sioux Sales by certified mail (as provided by 15 U.S.C. § 1312(e)(1)(C)) on December 15, 1999. (A copy of the certified mail return receipt is attached hereto as Attachment A.) No extensions of the twenty day time limit were “prescribed in writing. . . by any antitrust investigator. . .” Therefore, in order to be timely, Sioux Sales’ petition to set aside had to be filed no later than January 4, 2000.

Based on the above, THE GOVERNMENT HEREBY MOVES THE COURT to dismiss the petition to set aside the CID issued to Sioux Sales. THE GOVERNMENT ALSO MOVES THE COURT to dismiss as moot Sioux Sales discovery requests (Petitioner’s Request for Production of Documents; Petitioner’s Interrogatories under Rule 33; and Petitioner’s Request for Admissions under Rule 36) filed in connection with the petition to set aside the CID. A draft order is attached hereto.²

Sioux Sales filed an answer to the interrogatories propounded by the CID, except for Interrogatories 7 and 8, on February 3, 2000. On February 8, 2000, it produced some, but not all, of the documents demanded by the CID. The Government remains willing to negotiate with Sioux Sales regarding production of the materials outstanding and the responses to

² The Government reserves the right to respond to Sioux Sales’ Petition on the merits should this motion to dismiss be denied.

Interrogatories 7 and 8, so as to minimize the burden to Sioux Sales but allow us to obtain the information and materials needed to conduct the investigation.

Respectfully Submitted,

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