

Decision

IN THE MATTER OF
CLIFFORD E. RICE ET AL. TRADING AS
RETAIL BOARD OF TRADE ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6214. Complaint, June 18, 1954—Decision, July 6, 1956

Order requiring operators of a collection agency in Chicago—who secured business through solicitors furnished with contract forms for listing delinquent accounts by retailers, professional men, etc., in various States, for collection—to cease representing falsely through use of the name “Retail Board of Trade” that they were an organization of retailers; representing falsely, through statements of solicitors and by means of contract forms, that there would be no charge if no collections were made on an account, that the maximum fee charged for their services was 50%, and that fees would be charged only against an account on which collections were made; and representing falsely, through statements in form letters requesting information and through prominent use thereon of the term “Liquidation,” that it was to the debtor’s financial advantage to reply, or that information provided by the employer would be to the employee’s financial advantage; that their organization was a credit rating agency; or that field investigators would be sent to debtors’ homes and neighbors unless the information requested was furnished.

Mr. John W. Brookfield, Jr., for the Commission.

Mr. Mark J. Satter, of Chicago, Ill., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The complaint in this proceeding in substance alleges violations of the provisions of the Federal Trade Commission Act by respondents in that in the course of their operation of a collection agency, said respondents have made various false, misleading and deceptive representations in interstate commerce to the prejudice and injury of the public. All of the respondents filed joint answer admitting their status and relationship *inter sese* but either by denials or by pleas of new matter in avoidance have challenged those allegations of the complaint which charge violations of the Federal Trade Commission Act. The disputed issues were contested on hearing by all respondents.

This initial decision sustains the complaint generally against all respondents and the order issued herein follows that which was included in the notice attached to the complaint, except that it is not directed against the respondent Clifford E. Rice, who died *pendente lite*, and as to whom this proceeding is therefore dismissed.

The initial hearing was held at Chicago, Illinois, on November 1, 1954, whereat the testimony of one of the partners, Mrs. Frances M. Fischer, was taken at substantial length with reference to the interstate collection methods and practices of respondents, both as regards creditors and debtors, and numerous documentary exhibits were identified and received in evidence. The testimony of Robert Niehaus, manager of the Commercial Division of the Chicago Better Business Bureau, relative to the understanding of people as to the meaning of the term "Retail Board of Trade," was also heard at this time. Further hearings were held at Atlanta, Georgia, on December 13 and 14, 1955, whereat the testimony was heard of various persons whose accounts had been solicited and taken for collection by representatives of the respondents. These persons testified in substance concerning the failure of respondents to make accounting and payment on collections made for them as promised by respondents' respective representations to and collection contracts with such persons. Several further documentary exhibits were also received in evidence at this hearing. The Commission's case-in-chief having then been rested, a further hearing was set for Chicago, Illinois, for February 20, 1956, to hear respondents' evidence. Respondents' counsel appeared at such hearing and suggested the death of respondent Clifford E. Rice within approximately thirty days prior thereto. Respondents' attorney further stated that the surviving partners, Edith M. Rice, the wife of said deceased, and Frances M. Fischer, theretofore conducting business with said deceased Clifford E. Rice, as Retail Board of Trade, had elected to discontinue their operations as a going concern; had closed out their offices at 116 South Michigan Avenue, in Chicago, Illinois; that the said partner Frances M. Fischer was in the process of completing the liquidation of the business in a small office near her home in Oak Park, Illinois; and that it was anticipated by said respondents that all of the business of the said Retail Board of Trade would be fully liquidated by September 30, 1956. It was also stated that the respondent Edward E. Brim, who had been in the employ of the other respondents, had terminated such connection. Such statements of counsel, other than the suggestion of death, are not considered as evidence herein. Said counsel further stated that the surviving respondents elected to present no evidence in their own behalf and there being no further evidence to be adduced by the Commission, all parties rested and the matter was taken under submission. Fifteen days were granted to respective counsel for filing their proposed findings of fact, conclusions of law and order. Counsel supporting the complaint duly submitted the same but none have been received from respondents' counsel.

No substantial purpose can be accomplished by reciting the evidence in detail herein. The material substance thereof is fully covered by the specific findings of fact hereinafter set forth.

The hearing examiner having fully considered all of the evidence, the arguments of counsel, the suggestion of death, and the proposed findings of counsel supporting the complaint, and being duly advised in the premises, finds generally that all of the allegations contained in the complaint are true and that this proceeding is to the public interest. He further specifically finds as follows:

1. Respondent Clifford E. Rice, now deceased, died within thirty days prior to the final hearing of this proceeding on February 20, 1956, and in the following findings of fact, for the sake of brevity, reference to the respondents includes the said deceased at all times prior to his death, but at all times subsequent thereto only the surviving respondents are referred to.

2. Respondents Clifford E. Rice, Edith M. Rice and Frances M. Fischer are individuals and copartners trading as Retail Board of Trade, 116 South Michigan Avenue, Chicago, Illinois, and respondent Edward E. Brim is an individual and manager of said partnership. All of said respondents have acted together and cooperated in doing the things hereinafter found.

3. Respondents now operate and have operated for more than one year last past a collection agency under the name Retail Board of Trade. Business is secured through solicitors who travel in various states and solicit delinquent accounts from retailers, professional men and other sources for collection.

Respondents furnish the solicitors with contract forms which provide for the listing of each delinquent account. The accounts are against debtors residing in states other than Illinois, and each is listed on the contract form showing the name of the debtor, address, amount and nature of the debt. The creditor executes the contract assigning the accounts so listed to respondents for collection on a commission basis. The contract having been delivered to the solicitor, the latter mails it to respondents at Chicago.

4. The debtors concerned reside in states other than Illinois. Respondents receive money from debtors located in states other than Illinois and transmit it, less their commission, to creditors who reside elsewhere than in Illinois. Respondents often receive checks from creditors representing debts paid direct to the creditor.

In carrying on their aforesaid business respondents have engaged and are now engaged in extensive commercial intercourse in commerce among and between the various States of the United States, including the transmission and receipt of checks, letters, money orders, contracts and other written instruments.

5. Through the use of the name Retail Board of Trade, respondents represent that they are an organization of retailers. The aforesaid representation is false, misleading and deceptive. In truth and in fact, the Retail Board of Trade is a collection agency operated by the respondents and not connected with any organization of retailers.

6. In the course and conduct of their aforesaid business and for the purpose of inducing businessmen to sign the aforesaid contracts, respondents have represented through oral statements made by their solicitors and by means of the contract form, directly or by implication, that:

1. If no collections are made on claims there will be no charge;
2. The maximum commission charged for their services is 50%;
3. The fee charged for tracing, investigating, listing and other services will apply only against accounts on which collections were made;
4. If there are no collections on a specific account then there will be no charges against the said account.

7. Furthermore, while the contract does not contain any provision requiring respondents to make reports on the status and progress of accounts or remittances within a certain time, it is the general understanding of businessmen who enter into contracts of this nature that prompt reports and remittances will be made as a matter of course. Consequently, in many instances businessmen have signed the contracts with respondents under the belief and understanding that prompt reports and remittances would be made, which belief and understanding was engendered by oral representations by the respondents' use of testimonials referring to monthly statements of settlement of accounts collected to this effect or by their assumption that such reports and remittances would be made as a matter of course under the circumstances.

8. The aforesaid representations were false, misleading and deceptive. In truth and in fact a listing fee or charge is made against all claims submitted for collection and this fee is deducted from the proceeds of other claims which are collected. Fifty percent is not the maximum commission charged in many instances. In fact, in many instances clients have been charged the maximum commissions provided for in the contract on collections made plus a listing fee for each of the accounts listed though collections were made against only one or more, but not all, of the accounts listed. Respondents remit not more than 20% of the amount of money collected on delinquent accounts.

9. Respondents have consistently followed a policy of never rendering reports and remittances unless and until demand was made therefor by clients and in some instances do not render reports after demand is made therefor. Because of such policy many clients have been deprived of their share of collections and valuable information regarding the progress of collections for periods extending over many months. Respondents, in many cases refuse to make reports of collections, remit the money collected, or return the accounts to the creditors when requested so to do.

10. In accordance with respondents' instructions, their solicitors write the names of and amounts owed by the businessmen's debtors on the contract form and do not inform the businessmen clients that the form is a contract, nor do they show the contract to the clients, nor do they furnish a copy of the contract to the clients, and in some instances the top of the form is turned over so that it has the appearance of a blank sheet of paper when signed by the creditor client.

11. The use by respondents of the foregoing false, deceptive and misleading representations has had, and now has, the capacity and tendency to, and does mislead creditors into the erroneous and mistaken belief that such representations are true, and into signing a substantial number of the contracts and assigning claims to respondents because of such mistaken and erroneous belief.

12. Furthermore, in the course and conduct of collecting the accounts, respondents frequently desire to ascertain the current addresses of persons from whom they are endeavoring to collect monies, the names and addresses of the employers of such persons and other information of a pertinent nature. For this purpose, respondents use, and have used letters which contain requests for information, to be filled in by the persons to whom they are addressed and returned to respondents. Typical of the printed matter appearing on such letters sent to debtors is the following:

Re: Liquidation, XZM208935.

I am endeavoring to communicate with a person of your name and I believe you are the interested person.

This is a matter of importance to proper person. Please answer the following questions which will enable me to be certain whether or not you are the person to whom I shall communicate fully.

Following this is a series of questions to be answered of the following nature:

Full name

Telephone

Present Residence Address

* * *

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A typical letter addressed to employers contains the following:

Retail Board of Trade
116 South Michigan Avenue,
Chicago 3, Illinois

Beneath this is an emblem which contains the following:

Constructive Liquidations

and the body of the letter contains the following:

Re:

We are desirous of verifying the position of the above named individual, who, we are informed is employed by your organization.

This information is desired for business purposes and we assure you that it will be treated with the strictest confidence.

You will find enclosed a stamped addressed envelope for your convenience, and we thank you for your cooperation in this matter and an early reply.

Yours very truly,

C. E. RICE, *President.*

P.S. In the event this individual is not on your current payroll, we would appreciate your giving us any address on record, or any information as to his present whereabouts.

In addition to letters of this nature, respondents have sent form letters to debtors which contain statements of the following nature:

This Plan Protects You. Debtors are Rated According To Their Manner of Paying. Please reply on this blank at once and help us make proper report through our Credit Rating Department.

Our Credit Department furnishes, on application, to merchants and creditors in general, reports upon the credit standing and paying reputation of debtors.

* * *

Retail Board of Trade,
116 South Michigan Avenue,
Chicago 3, Illinois.

Another form letter sent to debtors contains the following:

Retail Board of Trade

* * *

INVESTIGATION DEPARTMENT

Names of persons who owe our members are automatically referred to this Department for investigation in all cases where debtor fails, refuses or for some reason neglects to answer communications requesting settlement.

* * *

Please understand that this organization is not an ordinary collection agency. Retail Board of Trade is quite a different organization.

Another form letter sent to debtors contains the following statements:

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You can save time and possible embarrassment by giving us the following information for our

PERSONAL CALL AND
INVESTIGATION DEPT.

Where shall our Investigator call—at your home or at your place of employment.

Give address:

Telephone Number:

* * *

What is name and address of closest neighbor who is acquainted with you and your circumstances?

And on other forms it is stated:

Banks and other Business Houses Watch Our Credit Reports. Your Name is on the Delinquent List and it will not be removed for any reason until the account is paid.

Another form letter sent to debtors contains the following:

AT THE DOOR AGENT AND INVESTIGATIONS

13. Through the use of the statements appearing on said form letters and in particular the use of the term "Liquidation" and other terms of similar import, respondents have represented, directly or by implication, that it is to the debtors' financial advantage to reply to said letters. In the form letter sent to employers of debtors, respondents have represented, directly or by implication, that the information provided by the employer will be to the financial advantage of the employee. In other form letters, respondents have represented that their organization is a credit rating agency, and is not a collection agency. In other form letters sent to debtors, respondents have represented that field investigators would be sent to debtors' homes and neighbors unless the information requested was furnished.

14. The aforesaid representations and implications arising therefrom are false, misleading and deceptive. In truth and in fact, there is no financial advantage to debtors in furnishing the information requested or to debtors in the information requested of employers. Furthermore, respondents are not conducting and have never conducted a credit rating organization. Their business and the sole purpose of the letters requesting the information hereinabove indicated is in the collection of accounts. Furthermore, respondents do not employ or utilize field investigators in making collections.

15. The use by respondents of the aforesaid statements and forms requesting certain information has had, and now has, the capacity and tendency to, and does, mislead and deceive, and has misled and

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deceived many persons to whom the form letters are sent into the erroneous and mistaken belief that the information requested concerning a particular person will be of financial advantage to that person; that the trade name used by respondents indicates the true nature of respondents' business; that they are engaged in conducting a credit rating agency and induces and has induced the recipients thereof because of such erroneous and mistaken belief to furnish information which they would not have otherwise provided. Furthermore, the false representations made to debtors that field investigators would contact them and their neighbors are coercive and misleading.

Upon the foregoing findings of fact based upon the allegations of the complaint, some of which are admitted in the answer filed by respondents and the remainder of which are established by the evidence, the hearing examiner makes the following conclusions of law:

1. The Federal Trade Commission has jurisdiction under the Federal Trade Commission Act over the subject matter of this proceeding and jurisdiction over the person of each of the parties respondent other than the said deceased respondent Clifford E. Rice; and that this proceeding is in the public interest.

2. The aforesaid acts and practices of the respondents as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That this action be, and the same hereby is, dismissed as to the respondent Clifford E. Rice, deceased.

It is further ordered, That respondents Edith M. Rice and Frances M. Fischer, individuals and the surviving copartners of Clifford E. Rice, deceased, now trading as Retail Board of Trade, or trading under any other name, respondent Edward E. Brim, an individual, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the solicitation of accounts for collection in commerce, as "commerce" is defined in the Federal Trade Commission Act, do hereby cease and desist from:

1. Representing, directly or by implication:

- (a) That no charges will be made for accounts unless they are collected;

(b) That a maximum of 50%, or any other percentage less than that actually charged, will be retained by respondents from accounts collected;

(c) That no listing or other fees will be charged against uncollected accounts;

(d) That respondents will make prompt regular or periodic reports on claims in their hands for collections, unless such reports are made at prompt and regular intervals.

2. Using the name Retail Board of Trade or any other name of similar import to designate, describe or refer to respondents' business, or otherwise representing directly or by implication that they are a trade or other organization of retailers or other businessmen.

It is further ordered, That respondents Edith M. Rice and Frances M. Fischer, individuals and surviving copartners of Clifford E. Rice, deceased, now trading as Retail Board of Trade, or trading under any other name, respondent Edward E. Brim, an individual, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the collection of, or attempts to collect, accounts in commerce, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That they are a credit rating agency, or are engaged in making credit investigations or reports for banks or business houses, or that the information requested in printed forms, or written matter is to be used for other than the collection of debts from the subjects of the forms;

(b) That their business is other than a collection agency.

(c) That they employ investigators or collectors to make personal calls on debtors.

2. Using the name "Retail Board of Trade," or any other name of similar import to designate, describe or refer to respondents' business or otherwise representing, directly or by implication that they are a trade or other organization of retailers or other businessmen.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner, filed May 18, 1956, and having examined the record, including the transcript and exhibits; and

It appearing, in the findings of fact specifically numbered in said initial decision, that the word "alleged" in the last sentence of finding designated No. 2 is incorrect and should be changed to the word

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"found," and that a typographical error is contained in finding designated No. 8 which also should be corrected; and

It further appearing that the statement prefatory to the hearing examiner's two conclusions in said initial decision is inaccurate and inconsistent with the record and should be modified:

It is ordered, That this case be, and it hereby is, placed on the Commission's own docket for review.

It is further ordered, That the word "found" be, and it hereby is, substituted for the word "alleged" in the last sentence of finding designated No. 2 in the initial decision, and that the word "and" be, and it hereby is, substituted for the word "in" immediately following the words "for collection" in the second sentence of finding designated No. 8 of said decision.

It is further ordered, That the hearing examiner's statement prefatory to his two conclusions of law in the initial decision be, and it hereby is, modified to read as follows:

Upon the foregoing findings of fact based upon the allegations of the complaint, some of which are admitted in the answer filed by respondents and the remainder of which are established by the evidence, the hearing examiner makes the following conclusions of law:

It is further ordered, That the initial decision, as so modified, shall, on the 6th day of July, 1956, become the decision of the Commission.

It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the aforesaid initial decision.

Decision

IN THE MATTER OF
CORY CORPORATION ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6348. Complaint, May 6, 1955—Decision, July 10, 1956*

Consent order requiring two affiliated corporations to cease making false representations in literature furnished their salesmen and by the salesmen in selling their "Flavor Seal" stainless steel cookware, such as that food values are lost and minerals and vitamins injured and destroyed by high cooking temperatures, that cooking in boiling water causes loss of the greater percentage of food values, that deficiency diseases are caused by improper preparation of food and over 90% of disease is caused by faulty diet, and that "waterless cooking" in their "Flavor Seal" stainless steel cookware would avoid all such dangers; and to cease disparaging competing products through statements that in aluminum utensils food develops dangerous poisons detrimental to health; and that those who eat food cooked or prepared in enamel utensils run the risk of appendicitis, tumors, and cancer as a result of chips of enamel getting into the system.

Mr. Joseph Callaway for the Commission.

Fink & Ruben and *Mr. Stanford Clinton*, of Chicago, Ill., for respondents, with the exception of John I. Snyder, Jr., who was represented by *Olwine, Connelly & Chase*, of New York City.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 6, 1955, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of the provisions of the Federal Trade Commission Act. After being duly served with said complaint, the respondents appeared by counsel and filed their answers thereto. Thereafter, said respondents entered into agreements with counsel supporting the complaint, containing a consent order to cease and desist. One of said agreements, dated February 20, 1956, has been signed on behalf of all respondents, except respondent John I. Snyder, Jr., and by counsel for said respondents. Another agreement, dated February 23, 1956, has been signed by respondent John I. Snyder, Jr., and by counsel for said respondent. Both agreements, which have been signed by counsel supporting the complaint and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, have been submitted to the hearing examiner for his consideration.