

corporation, and Sam F. Posen, and Fannie Posen, individually and as officers of said corporation 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.

IN THE MATTER OF
TRANS-CONTINENTAL CLEARING HOUSE, INC., ET AL.

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

Docket 7146. Complaint, May 8, 1958—Decision, Oct. 20, 1959

Order requiring a Chicago concern to cease using deception to obtain advance fees for advertising real estate, including false claims that it had prospective buyers interested in the specific properties; that listed property would soon be sold through its efforts; that the property was underpriced and the asking price should be raised; that its sales representatives were bonded or insured; that it would finance or assist in financing purchase of the listed properties; that the listing fee was an advance on the selling commission and would be refunded if the property was not sold within a year; and that the property would be nationally advertised in newspapers, financial and business journals and periodicals, and radio and television broadcasts, and through associated real estate brokers.

Mr. John W. Brookfield, Jr., and Mr. William A. Somers for the Commission.

Mr. Sherman P. Appel, of Chicago, Ill., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charged the respondents with violation of the Federal Trade Commission Act in soliciting the list-

ing for sale and advertising of business properties. After the filing of respondents' answer, hearings were held at which evidence in support of the complaint was received, respondents electing to offer no evidence except certain documentary evidence offered during the course of their cross-examination of Government witnesses. Proposed findings and conclusions have been submitted (oral argument not having been requested), and the case is now before the hearing examiner for final consideration. Any proposed findings and conclusions not included herein have been rejected.

2. Respondent Trans-Continental Clearing House, Inc., is a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business at 1260 North Dearborn Street, Chicago, Illinois. In addition to the use of its corporate name, the corporation has also traded under the names "National Commercial and Industrial Systems" and "American Commercial and Industrial Systems."

3. Respondent William G. Dudley is practically the sole owner of the business, being the owner of 99 percent of its capital stock. He is president of the corporation and formulates, directs and controls its policies and practices.

4. Respondent, William Bodemer, although owning less than 1% of the capital stock of the corporation, is a director and vice president of the corporation. He has testified that he is the "general manager" of the business and that he "sets up the procedure to carry out the policy of Trans-Continental Clearing House, Inc." He supervises the bookkeeping and advertising departments and is in charge of the operation whereby the firm communicates with various brokerage concerns. He also handles or supervises the handling of most of the customer correspondence, including that relating to refunds of advance fees, and is primarily responsible for screening customer applications obtained by the firm's salesmen. He has also participated in various unfair practices employed by the corporate respondent. In this connection, he collaborates with respondent Dudley in preparing contact advertising and in selecting the areas to which such material is to be sent. Such advertising contains the representation "Your Business Must Be Sold—Or We Defray All Costs," and is shown to be false and misleading since respondents require their customers to pay a listing fee which is rarely ever refunded if the business is not sold. Other literature prepared or disseminated under Bodemer's supervision contains deceptive representations as to the effectiveness of respondents' services in obtaining buyers for property listed with them.

5. Respondents are engaged in the business of soliciting the listing for sale and advertising of business properties. The businesses involved are usually small, including bakeries, grocery stores, restaurants, garages, shoe repair shops, etc. In conducting their business respondents send many pieces of advertising and promotional literature to prospective purchasers of their services who reside in states of the United States other than Illinois, such material usually being sent through the United States mails. Signed contracts and checks covering payments for respondents' services are constantly being received by respondents from such purchasers, or from respondents' representatives who have obtained such written instruments from purchasers. Respondents are thus engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. Upon receipt by respondents from a prospect of the return postal card supplied by respondents, one of their traveling solicitors or salesmen calls upon the prospect and undertakes to sell him respondents' services. If the solicitor is successful he collects from the customer or subscriber a substantial amount of money as a listing fee or service fee. The solicitors are supplied by respondents with identification cards, contract forms, and various pieces of promotional literature, and are also supplied with written authorization to cash checks given the solicitor by the subscriber. Upon obtaining a check, the solicitor usually proceeds immediately to the subscriber's bank and cashes the check, remitting the proceeds to respondents. The amount of the listing fee is always substantial, ranging from possibly \$150.00 or \$200.00 to \$1,000.00 or even more, depending largely upon the amount agreed upon by the subscriber and the solicitor as the "asking" price for the property. Along with the issuance of the check, the subscriber signs a form of printed contract.

7. There is uncontradicted testimony from some 25 witnesses residing in various places in three states that in obtaining contracts and checks from them respondents' solicitors have made one or more of the following representations: (1) that respondents had available prospective buyers who were interested in the purchase of their specific property; (2) that their property would be sold within a short period of time as a result of respondents' efforts; (3) that the property was under-priced and that the asking price should be raised; (4) that respondents' sales representatives were bonded or insured; (5) that respondents would finance or assist in financing the purchase of the property; (6) that the listing fee or amount paid upon the signing of the contract was merely an advance on respondents' selling commission and would be refunded if the property

was not sold within a year; (7) that property listed with respondents would be nationally advertised in newspapers, in nationally known financial and business journals and periodicals, including the Wall Street Journal, Business Week, Newsweek and Barrons, by radio and television broadcasts and through real estate brokers associated with respondents.

8. These representations were false and misleading. While respondents maintain card indexes and files indicating parties who may be interested in purchasing certain types of businesses, respondents do not have available prospective purchasers for any specific property. Properties listed with respondents are seldom sold within a short period of time or at all; actually it is only in very rare instances that sales are made as a result of respondents' efforts.

9. Usually the property of the subscriber was not underpriced. This representation usually was made not in good faith but in order to provide a basis or excuse for increasing the amount of the listing fee to be paid by the subscriber. None of respondents' sales representatives are bonded or insured. Respondents have no facilities whatever for financing or assisting in financing the purchase of properties. Only in very rare instances have listing fees been refunded by respondents.

10. The newspaper advertising of listed property furnished by respondents consists of a four or five line insertion in a metropolitan newspaper and classified advertising in the customer's locality. The latter type of advertising cannot be considered national in scope nor can the placement of an advertisement in a metropolitan newspaper which, although distributed throughout the country, is not read generally outside of the area in which it was published. Respondents have placed advertising of property listed with them in only two of the well known financial and business journals and periodicals. A typical advertisement by respondents in such a publication consists of a grouping of some thirty to sixty listings together on a single page. In fact, not all customers receive even this limited form of advertising. Respondents have done no radio or television advertising whatsoever. Although respondents disseminate bulletins describing listed properties to several hundred brokers, these brokers are connected with respondents only to the extent that they have indicated that they would be willing to receive without cost the information set forth in the bulletins. They are not affiliated or associated with respondents and are not part of respondents' organization.

11. Respondents' principal defense is that there was always a written agreement or contract entered into between respondents and

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the subscriber, that this contract governed the relationship between the parties, and that many of the witnesses testified that they understood that this would be the case. This defense is rejected. The present proceeding is not a civil action at law on the contract, but is a proceeding in the public interest directed at misrepresentations made for the purpose of inducing prospects to execute the contract and make the cash payment. No provisions in the contract can operate to justify or excuse the misrepresentation and deception here present.

12. The use by respondents of the representations herein found to be false and misleading has the tendency and capacity to mislead and deceive a substantial portion of the public into entering into contracts with respondents and paying over to respondents substantial sums of money. Respondents' acts and practices are therefore to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

It is ordered, That respondent, Trans-Continental Clearing House, Inc., a corporation, and its officers, and respondents, William G. Dudley and William Bodemer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of the listing for sale and advertising of business properties or other properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondents have available prospective buyers who are interested in the purchase of specific properties;
2. That property listed with respondents will be sold as a result of their efforts;
3. That property sought to be listed is underpriced or that the asking price should be raised, unless such is the fact;
4. That respondents' sales representatives are bonded or insured;
5. That respondents will finance or assist in financing the purchase of listed property;
6. That the listing fee or any other amount paid by the property owner will be refunded, unless refunds are in fact made by respondents in strict accordance with such representation;
7. That property listed with respondents will be nationally advertised in newspapers, financial or business publications, by radio or

television broadcasts, through real estate brokers associated with respondents, or by any other means.

OPINION OF THE COMMISSION

By TAIT, *Commissioner*:

This matter is before the Commission on the appeal of counsel supporting the complaint from the hearing examiner's initial decision in which he dismissed the complaint as to one of the officers of the corporate respondent in his individual capacity and dismissed one of the allegations of the complaint as to all of the respondents.

Respondents are charged with violation of Section 5 of the Federal Trade Commission Act in soliciting the listing for sale and advertising of business properties. The complaint is directed against Trans-Continental Clearing House, Inc., a corporation, and William G. Dudley and William Bodemer, individually and as officers of the corporation. The order to cease and desist contained in the initial decision runs against the corporation and against William G. Dudley in both his official and individual capacities, but dismisses the complaint as to William Bodemer as an individual. The hearing examiner found, in this connection, that Bodemer, while vice president of the corporation, owns only 1% of its capital stock, is active in the operation of the corporation only insofar as administrative detail is concerned and has little or nothing to do with the formulation and control of the corporation's policies and practices. He concluded, therefore, that Bodemer had been improperly joined in the proceeding in his individual capacity.

We are of the opinion that the finding upon which the hearing examiner based the dismissal of the complaint as to Bodemer greatly minimizes the importance of the functions performed by this individual. Bodemer's own testimony, as well as that of the respondent Dudley, clearly reveals that Bodemer's duties are not restricted to the handling of administrative details such as supervising office personnel and ordering supplies, as found by the hearing examiner. Bodemer testified that he is the "general manager" and that he "sets up the procedure to carry out the policy of Trans-Continental Clearing House, Inc." He supervises the bookkeeping and advertising departments and is in charge of the operation whereby the firm communicates with various brokerage concerns. Of greater importance, however, he collaborates with respondent Dudley in preparing contact advertising used by the firm and in selecting the areas to which such material is to be sent. Such advertising contains the representation "Your Business Must Be Sold—Or We Defray All Costs," and is

shown to be false and misleading since respondents require their customers to pay a listing fee which is rarely ever refunded if the business is not sold. He also handles or supervises the handling of most of the customer correspondence, including that relating to refunds of advance fees, and is primarily responsible for screening customer applications obtained by the firm's salesmen.

In *Federal Trade Commission v. Standard Education Society*, 302 U.S. 112, the Supreme Court held that officers, directors or stockholders of a corporation may be included in a Commission order to cease and desist when necessary for such order to be fully effective in preventing the unfair practice found to exist. Subsequent to that decision, the courts have repeatedly held that an officer of a corporation who is responsible for initiating unfair trade practices or who participates in the use of such practices may properly be included in the order in his individual capacity. *International Art Co. v. Federal Trade Commission*, 109 F. 2d 393; *Sebrone Co. v. Federal Trade Commission*, 135 F. 2d 676; *Parke, Austin & Lipscomb, Inc. v. Federal Trade Commission*, 142 F. 2d 437; *Steelco Stainless Steel, Inc. v. Federal Trade Commission*, 187 F. 2d 693; *Consumer Sales Corp. v. Federal Trade Commission*, 198 F. 2d 404. We think the evidence presented in this matter amply supports the finding that Bodemer, while acting in a supervisory capacity, participated in various operations and activities directly connected with certain of the unfair acts and practices utilized by the corporate respondent. It is our opinion that to this extent Bodemer is individually responsible for the corporate violations and should, therefore, be included in the order to cease and desist in his individual capacity.

The second exception to the initial decision relates to the dismissal of the charge that respondents falsely represented that property listed with them would be nationally advertised in newspapers, in nationally known financial and business journals and periodicals, by radio and television broadcasts, and through real estate brokers associated with respondents. The hearing examiner held that this allegation had not been sustained by the evidence.

The advertising material disseminated to property owners by respondents contains numerous representations to the effect that a business may be sold more readily by advertising on a nationwide scale than by promotional activities confined to the area in which the business is located. In this connection, they advise prospective customers in a booklet entitled "How To Successfully Sell A Business" that "surveys show the majority of businesses that change hands are sold to persons who come from cities and towns outside the locality

where the business is situated"; that "experience proves that the national 'marketplace' or 'clearing house' is the surest way to sell"; and that "local efforts fail to reach the majority of potential right buyers." Respondents' salesmen emphasize the advantages of listing property with a firm that will advertise nationally in newspapers, in well known financial and business publications, by radio and television and through affiliated brokerage concerns.

In view of these representations, the prospective customer may reasonably expect to receive extensive and effective national advertising through the various media specified by respondents. The record discloses, however, that the only advertising generally furnished by respondents is a four or five line insertion in a metropolitan newspaper, classified advertising in the customer's own locality, and a description of the property in a bulletin sent to independent brokers who had indicated a desire to receive such information. Respondents have also inserted some advertisements of the classified type in the Wall Street Journal and the New York Journal of Commerce, but they do not provide this service for all of their customers.

The advertising furnished by respondents cannot be considered national in scope despite the fact that listed property may be advertised in a publication, such as a metropolitan newspaper, which is distributed throughout the country, but which is not read generally outside of the area in which it is published. Moreover, respondents have not advertised listed property by radio or television, as indicated, and, except for occasional advertisements placed in two of the well known financial and business journals, have not advertised nationally in such publications. A typical advertisement by respondents in such a publication consists of a grouping of some thirty to sixty listings together on a single page. As a further matter of fact, it is apparent that all customers do not receive even this limited form of advertising. The brokers to whom bulletins are sent are not associated or affiliated with respondents and are not connected with them in any way except as recipients of the information contained in respondents' bulletin. It is our opinion, therefore, that the evidence sustains the aforementioned charge and that the hearing examiner's ruling to the contrary was in error.

The appeal of counsel supporting the complaint is granted and the initial decision will be modified to conform with this opinion.

FINAL ORDER

Counsel in support of the complaint having filed an appeal from the initial decision of the hearing examiner, and the matter having

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been heard on briefs, no oral argument having been requested; and the Commission having rendered its decision granting the appeal and directing modification of the initial decision:

It is ordered, That paragraph 4 of the initial decision be modified to read as follows:

4. Respondent, William Bodemer, although owning less than 1% of the capital stock of the corporation, is a director and vice president of the corporation. He has testified that he is the "general manager" of the business and that he "sets up the procedure to carry out the policy of Trans-Continental Clearing House, Inc." He supervises the bookkeeping and advertising departments and is in charge of the operation whereby the firm communicates with various brokerage concerns. He also handles or supervises the handling of most of the customer correspondence, including that relating to refunds of advance fees, and is primarily responsible for screening customer applications obtained by the firm's salesmen. He has also participated in various unfair practices employed by the corporate respondent. In this connection, he collaborates with respondent Dudley in preparing contact advertising and in selecting the areas to which such material is to be sent. Such advertising contains the representation "Your Business Must Be Sold—Or We Defray All Costs," and is shown to be false and misleading since respondents require their customers to pay a listing fee which is rarely ever refunded if the business is not sold. Other literature prepared or disseminated under Bodemer's supervision contains deceptive representations as to the effectiveness of respondents' services in obtaining buyers for property listed with them.

It is further ordered, That paragraph 7 of the initial decision be modified by adding thereto the following:

(7) that property listed with respondents would be nationally advertised in newspapers, in nationally known financial and business journals and periodicals, including the Wall Street Journal, Business Week, Newsweek and Barrons, by radio and television broadcasts and through real estate brokers associated with respondents.

It is further ordered, That paragraph 11 of the initial decision be stricken.

It is further ordered, That the following be inserted after paragraph 9 as paragraph 10 and that paragraph 10 be renumbered 11:

10. The newspaper advertising of listed property furnished by respondents consists of a four or five line insertion in a metropolitan newspaper and classified advertising in the customer's locality. The latter type of advertising cannot be considered national in scope nor can the placement of an advertisement in a metropolitan newspaper

which, although distributed throughout the country, is not read generally outside of the area in which it was published. Respondents have placed advertising of property listed with them in only two of the well known financial and business journals and periodicals. A typical advertisement by respondents in such a publication consists of a grouping of some thirty to sixty listings together on a single page. In fact, not all customers receive even this limited form of advertising. Respondents have done no radio or television advertising whatsoever. Although respondents disseminate bulletins describing listed properties to several hundred brokers, these brokers are connected with respondents only to the extent that they have indicated that they would be willing to receive without cost the information set forth in the bulletins. They are not affiliated or associated with respondents and are not part of respondents' organization.

It is further ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondent, Trans-Continental Clearing House, Inc., a corporation, and its officers, and respondents, William G. Dudley and William Bodemer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of the listing for sale and advertising of business properties or other properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondents have available prospective buyers who are interested in the purchase of specific properties;
2. That property listed with respondents will be sold as a result of their efforts;
3. That property sought to be listed is underpriced or that the asking price should be raised, unless such is the fact;
4. That respondents' sales representatives are bonded or insured;
5. That respondents will finance or assist in financing the purchase of listed property;
6. That the listing fee or any other amount paid by the property owner will be refunded, unless refunds are in fact made by respondents in strict accordance with such representation;
7. That property listed with respondents will be nationally advertised in newspapers, financial or business publications, by radio or television broadcasts, through real estate brokers associated with respondents, or by any other means.

It is further ordered, That the hearing examiner's initial decision.

as modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Trans-Continental Clearing House, Inc., William G. Dudley and William Bodemer, 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