

Complaint

IN THE MATTER OF

MARSHALL LEWIS ENTERPRISES, INC., DOING BUSINESS AS
RADIO BROADCASTING ASSOCIATES, ET AL.

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

Docket C-2178. Complaint, March 30, 1972—Decision, March 30, 1972

Consent order requiring a Jersey City, N.J., firm engaged in producing and co-producing radio shows and program features for radio stations to cease misrepresenting in its news paper advertising that its courses of instruction will qualify participants as program producers, announcers or disc jockeys, misrepresenting the profits to be made by persons accepting respondents' offers, failing to reveal the costs to applicants prior to their signing a contract for tests, and pilot shows, and failing to reveal all other terms and conditions of respondents' operation.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Marshall Lewis Enterprises, Inc., a corporation, doing business as Radio Broadcasting Associates, and Dean Lewis and Stuart Marshall, individually, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Marshall Lewis Enterprises, Inc. d/b/a Radio Broadcasting Associates, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 270 Henderson Street, Jersey City, New Jersey. Individual respondents Dean Lewis and Stuart Marshall are officers of said corporation. They formulate, direct and control the policies of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. The respondents are engaged in the business of producing and co-producing radio shows and program features for radio stations and are now, and for some time last past have been, engaged in the solicitation of members of the general public to produce or co-produce and/or host said radio shows and program features and engage respondents' services, facilities, air time and courses of in-

Complaint

80 F.T.C.

struction and training in broadcasting. Said solicitations are made through advertisements placed in newspapers and otherwise, which are circulated to members of the public in various States of the United States.

In the course and conduct of their business and by means of statements, representations, acts and practices as hereinafter defined members of the public hereinafter sometimes referred to as "producers" are induced to enter into contractual agreements with respondents to purchase respondents' services, facilities, air time and courses of instruction and training in broadcasting and produce or co-produce and/or host disc jockey shows for respondents' radio programs which are caused to be broadcast by respondents into several states in the New York metropolitan area, and program features which are to be distributed, offered for sale and sold by respondents to radio stations located throughout the United States.

PAR. 3. In the course and conduct of their business respondents have been and are engaged in disseminating and in causing to be disseminated in newspapers of interstate circulation advertisements designed to be read by persons residing outside the State of New Jersey and intended to induce such persons to enter into contractual agreements with respondents to purchase respondents' services, facilities, air time and courses of instruction and training with the resultant effect that members of the public residing outside the State of New Jersey did in fact purchase respondents' services, facilities, air time and courses of instruction and training pursuant to contractual agreements made with respondents thereby placing respondents in business in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such services and activities in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing members of the general public to enter into said contractual agreements for the purchase of their services, facilities, air time and courses of instruction and training the respondents have made, published and caused to be published certain statements in various printed matter and newspapers.

Typical and illustrative, but not all inclusive of such statements and representations are the following:

Wanted beginners to produce and host weekly radio shows on a New York radio station. No experience necessary. We'll train 20 interesting people with good voices and hidden talent. Earnings to 12,000.00. For audition call 736-7595. New Jersey line 201-482-7700.

Wanted now 50 people. Produce and host daily or weekly radio shows for broadcasting network. Experience not required. We want men and women to produce shows on music, sports, current events, hobbies, history, art, home-making, travel and hundreds of others. Apply your knowledge and experience to a part/full time career.

Part/full time career in broadcasting. Shows will be broadcast from New York to Los Angeles—Coast to Coast. Earnings unlimited. Training at our expense. For more information—Mr. Sullivan, Program Development Dept. (212) 736-7595 Radio Broadcasting Associates.

Broadcasting positions. Produce and host radio shows. Experience not required. Openings available immediately. Part time/full time—Male/Female. For appointment—Program Development Dept. 212-285-9519. R.B. Assoc.

Notice Announcers, Disc Jockeys wanted. To host and produce radio shows for a New York radio station. Full/Part time. All ages considered. Earnings possibilities to \$15.00 per hour. For appointment 736-7595.

Presently, there are many openings available for people to produce and host daily/weekly syndicated program features, such features are distributed to radio stations throughout the United States.

To give you some idea what syndicated shows are worth—a local radio station might pay as little as three dollars per day for a five minute program. Now multiply that by only one hundred fifty stations (about two percent of the stations in the U.S.) and it comes out to about two thousands dollars a week. A producer working with R.B.A. on this particular example show would earn around \$400 a week.

All of our programs require a producer and host. All applicants who pass the required audition and test will be considered. Final acceptance of an applicant will be based upon voice quality, talent, background, ability and the applicant's willingness to learn. Applicants without broadcast experience, who qualify, will be trained at the company's expense.

Applicants who in R.B.A.'s opinion qualify for the position of program producer and who have very little or no broadcast experience will be trained by R.B.A. The producer would attend those meetings specifically geared to the type of show being produced. The training sessions cover all aspects of broadcasting as well; speech, production, engineering, marketing and merchandising techniques and programming.

Feature shows are exciting to produce—There's almost no limit to creativity—No particular formats to adhere to—and best of all—no limits on earnings. Most shows can be sold over and over again—each time, being aired on a different station—in a different city.

PAR. 5. By and through the use of the above-quoted statements and representations and others of similar import and meaning not specifically set out herein, respondents represent, and have represented, directly or by implication:

(a) That the advertisements were offers of employment opportunity for the positions set out therein.

(b) That the earnings projections made are the average earnings consistently made by individuals who are accepted by respondents and produce or co-produce and/or host radio shows and receive

Complaint

80 F.T.C.

respondents' courses of instruction and training in broadcasting pursuant to contractual agreements with respondents.

(c) That the advertisements which respondents placed in newspapers were placed by a radio station.

(d) That radio shows produced by members of the public pursuant to contractual agreements with respondents are regularly broadcast from New York to Los Angeles—coast to coast and that said persons will be producing radio shows for a broadcasting network which will be broadcast over a broadcasting network.

(e) That feature radio shows of respondents' "producers" are distributed by respondents to radio stations located throughout the United States for sale or syndication; that the method of distribution is successful in terms of selling or syndicating said radio shows and that such "producers" may expect substantial earnings from the distribution and sale of their shows.

(f) That the program offered by respondents to individuals who enter into contractual agreements with respondents to produce or co-produce and/or host radio shows and otherwise engage respondents' services, facilities, air time, or course of instruction and training in broadcasting constitutes a course of instruction and training sufficient to qualify said individuals as program producers, radio program hosts, announcers or disc jockeys.

PAR. 6. In truth and in fact:

(a) Said advertisements are not offers of employment opportunity for the positions set out therein. Rather, the advertisements are designed to attract members of the general public for the purpose of obtaining leads to prospective purchasers of respondents' services, facilities, air time and courses of instruction and training.

(b) Respondents' claimed earnings both as to spare time or full time work are far in excess of the average earnings of individuals who are accepted by respondents and produce or co-produce and/or host radio shows and receive respondents' courses of instruction and training pursuant to contractual agreements with respondents.

(c) Respondents do not operate a licensed radio station but merely purchase broadcasting time from radio stations which it resells to individuals who are accepted by respondents and produce or co-produce and/or host radio shows pursuant to contractual agreements with respondents.

(d) Respondents do not broadcast their radio programs or those of individuals who produce or co-produce and/or host radio shows pursuant to contractual agreements with respondents from New York to Los Angeles or from coast to coast nor are said shows pro-

duced for a broadcasting network or broadcast over a broadcasting network.

(e) Respondents do not distribute the feature radio shows of all of its "producers" to radio stations located throughout the United States for sale or syndication; the distributions of those feature shows which are made are not successful in terms of selling or syndicating said radio shows and only a small percentage, if any, of said "producers" have derived any income therefrom.

(f) Respondents course of instruction and training does not constitute a course of instruction and training sufficient to qualify participants to become program producers, radio program hosts, announcers or disc jockeys.

PAR. 7. In the further course and conduct of their business and in furtherance of their purpose of inducing the purchase of and payment for their services, facilities, air time, or courses of instruction and training, respondents have engaged in certain other acts and practices.

Typical and illustrative, but not all inclusive of such practices are the following:

(a) In a substantial number of instances respondents have failed to fully and adequately disclose at the outset to applicants that the purpose of such contact is to induce said persons to enter into contractual agreements with respondents to purchase respondents' products, services or facilities and that said applicants will be charged substantial fees for tests and pilot shows and that applicants who subsequently enter into certain contracts with respondents will be required to make substantial payments of money to respondents each week for the duration of the contract period and in other instances respondents also failed to fully and adequately disclose at the outset the amount of said weekly payments, the down payment required on the signing of a contract, and the total cost of the products, services or facilities covered by any agreement which may be offered to any applicant.

(b) In a substantial number of instances respondents have failed to fully and adequately disclose at the outset, to applicants, the manner and method by which said applicants can derive income pursuant to any contractual agreement made with respondents.

(c) In a substantial number of instances respondents have failed to fully and adequately disclose at the outset all the terms and conditions of their staff production contract; percentage production contract and co-production contract as well as the circumstances under which each type of contract is offered to potential "producers."

Complaint

80 F.T.C.

(d) In a substantial number of instances respondents have represented or implied that they would obtain paying sponsors for radio shows of respondents "producers" and in other instances respondents have represented or implied that they would lend substantial assistance in recruiting and obtaining paying sponsors for radio shows of respondents "producers" when in truth and in fact respondents do not obtain paying sponsors for said radio shows or lend substantial assistance in recruiting and obtaining paying sponsors for said radio shows.

(e) In a substantial number of instances respondents have falsely represented or implied that persons who enter into contractual agreements with respondents to produce or co-produce and/or host radio shows will have no difficulty obtaining their own paying sponsors for their radio shows or that paying sponsors are readily obtainable by said persons when respondents knew or should have known based on the past experience of its "producers" that most "producers" will be unable to obtain paying sponsors for their radio shows.

PAR. 8. Respondents fail to disclose in their radio show production contracts the full cost to "producers" for each such radio show in the event of cancellation of such contracts by "producers" prior to completion of a minimum number of radio programs; and, furthermore, fail to disclose in such contracts the minimum number of programs which must be completed in order to avoid retroactive increases in cost upon such cancellation.

PAR. 9. The use by respondents of the aforesaid unfair and false, misleading and deceptive statements, representations and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of substantial quantities of respondents' services, and products by reason of said erroneous and mistaken belief and unfairly into the assumption of debts and obligations and the payments of monies which they might otherwise not have incurred.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the company and the individual respondents named in the caption hereof, and the individual respondents having been furnished thereafter with a copy of the draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and,

The individual respondents Dean Lewis and Stuart Marshall and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the said individual respondents of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by said individual respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and,

The Commission having thereafter considered the matter and having determined that it had reason to believe that the said individual respondents Dean Lewis and Stuart Marshall have violated said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Marshall Lewis Enterprises, Inc., is a corporation organized, existing and formerly doing business as Radio Broadcasting Associates, under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 270 Henderson Street, Jersey City, New Jersey. On June 25, 1971, Marshall Lewis Enterprises, Inc., made an assignment for the benefit of creditors pursuant to Section 2A:19-1 N.J.S.A. The corporation ceased doing business as of June 25, 1971. All of the assets of the corporation are in the hands of the assignee and said assets are being marshalled and sold for the benefit of the creditors of the corporation by the assignee.

Decision and Order

80 F.T.C.

Respondent Dean Lewis is president and respondent Stuart Marshall is secretary-treasurer of Marshall Lewis Enterprises, Inc. They formerly formulated, directed and controlled the policies, acts and practices of said corporation. The address of Dean Lewis is 270 Henderson Street, Jersey City, New Jersey. The address of Stuart Marshall is 380 Lake Avenue, Greenwich, Connecticut.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Dean Lewis and Stuart Marshall individually and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of members of the general public to enter into contractual agreements to produce or co-produce and/or host radio shows or otherwise solicit contracts for the purchase of respondents' services, facilities, air time, or courses of instruction and training in broadcasting in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting directly or by implication:

(a) That employment is being offered when in fact the purpose is to obtain purchasers of respondents' services, facilities, air time or course of instruction and training.

(b) That the radio shows of respondents' "producers" are to be broadcast over a broadcasting network or networks or otherwise misrepresenting the range of radio transmission of said radio shows.

(c) That the radio shows of respondents' "producers" will be distributed by respondents to radio stations for sale or syndication; that such distributions are successful in terms of selling or syndicating said radio shows and that the "producers" of said radio shows may realize earnings therefrom.

(d) That the course of instruction and training offered by respondents is adequate to qualify participants as program producers, radio program hosts, announcers or disc jockeys.

2. Placing advertisements in newspapers, publications or any other media without a clear disclosure in said advertisements of the full name and address of the advertiser and the business in which the advertiser is engaged.

3. Misrepresenting in any manner the earnings, profits or gains derived or which may reasonably be derived by persons who are accepted by respondents to produce or co-produce and/or host radio shows or otherwise engage respondents' services, facilities, air time or courses of instruction and training in broadcasting.

4. Failing clearly and unqualifiedly to reveal, at the outset of the initial contact with members of the general public, that the purpose of such contact is to induce said members of the public to enter into contractual agreements with respondents to purchase respondents' products, services or facilities as the case may be which shall be identified and described with particularity, including: the amounts or costs that may be incurred by applicants prior to the signing of a contract for tests, pilot shows or any other service or facility; the total cost of the products, services or facilities covered by any agreement which may be offered to any applicant; the downpayment required on the signing of a contract and the number, frequency and amount of all payments to be made pursuant to the terms of any contract which may be offered to any applicant.

5. Failing clearly and unqualifiedly to reveal, at the outset of the initial contact with members of the general public who may enter into contractual agreements with respondents, all the terms and conditions of each and every type of contract which respondents may ultimately offer to said persons; the circumstances and requirements pursuant to which each type of contract may be offered to any individual and complete details as to the manner and method by which said persons can derive income pursuant to each such contract.

6. Failing clearly and unqualifiedly to disclose orally or by written communication at the outset of the initial contact with members of the general public and prior to their entry into contractual agreements with respondents to produce or co-produce and/or host radio shows or engage respondents' services, facilities, air time or courses of instruction and training in broadcasting:

(a) That respondents do not undertake to obtain sponsors or lend any assistance in obtaining sponsors for radio shows of said members of the public.

(b) The percentage of persons who have entered into such contractual agreements with respondents who have

Complaint

80 F.T.C.

obtained sponsors for their radio shows and the average income derived from sponsors for all such persons during the year preceding.

7. Failing to clearly and unqualifiedly set forth in writing in all contracts for the production of radio programs which must be completed in order to avoid a retroactive increase in each program's production costs and the dollar amount to be paid for each program's production costs or any other costs, retroactively, in the event the contract is cancelled prior to the completion of the minimum number of radio programs.

It is further ordered, That respondents deliver a copy of this order to all present and future employees, instructors or other persons engaged in the offering for sale or sale of respondents services, facilities, air time or courses of instruction and training.

It is further ordered, That the 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 this order.