

thirty (30) days prior to any proposed change in the company's structure, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

IN THE MATTER OF
TRI-WEST CONSTRUCTION COMPANY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket C-2758. Complaint, Oct. 31, 1975--Decision, Oct. 31, 1975

Consent order requiring a Boise, Idaho, home construction, repair and rehabilitation firm, among other things to cease using false pricing claims and other misrepresentations to sell its home improvement products or services; using coercive tactics to increase the contract price; and obtaining certificates of completion before actually completing the work. Further, respondent is required to complete the work agreed to in the original contract at the original price, to obtain a supplemental contract for any additional work desired by a customer, and to comply with requirements of the Truth in Lending Act that credit cost disclosures be made and that credit customers whose homes have been taken as security be allowed a three-day right of rescission period.

Appearances

For the Commission: *Sharon Armstrong.*

For the respondents: *Richard M. Clinton, Bogle, Gates, Dobrin, Wakefield & Long, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Tri-West Construction Company, Inc., a corporation, and William B. Cafarelli, individually and as an officer of Tri-West Construction Company, Inc. (hereinafter respondents), have violated Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) and various provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint:

PARAGRAPH 1. Respondent Tri-West Construction Company, Inc.

(hereinafter Tri-West) is an Idaho corporation with its principal office and place of business located at 3826 W. State St., Boise, Idaho.

Respondent William B. Cafarelli is president and sole owner of Tri-West. He controls the policies, acts and practices of Tri-West, including those hereinafter set forth. His address is the same as that of Tri-West.

PAR. 2. Respondents operate a home improvement and renovation business in which they offer for sale, sell, distribute and install residential siding materials and other home improvement products, and services related thereto.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim. All allegations stated in the present tense include the past tense.

PAR. 3. In the course and conduct of their business, respondents cause their products, when sold, to be shipped from their place of business in the State of Idaho to purchasers thereof located in various other States of the United States including Washington, Oregon and Nevada, and cause work orders, contracts and other business papers and documents to be transmitted across State lines by and between respondents' representatives, in implementation and facilitation of their said sales of products and services. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in these products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their home improvement products and services, respondents through their salesmen and representatives make numerous statements in oral sales presentations with respect to the nature and time limitations of their offer, their prices, their business affiliations, and savings available to purchasers.

By and through their use of such statements, respondents represent directly or by implication that:

A. Tri-West is a subsidiary or division of United States Steel Corporation.

B. Tri-West has an exclusive arrangement with United States Steel Corporation whereby Tri-West is the only distributor of such company's residential siding materials in the particular trade area.

C. Tri-West and United States Steel Corporation advertise their siding materials and/or services by means of Tri-West's work on customers' homes.

D. After the installation of respondents' siding is completed, the

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homes of their customers will be used for demonstration and advertising purposes; and, as a result of allowing or agreeing to allow their homes to be used as models, demonstrators, or before-and-after examples, such customers will be granted discounts or reduced prices.

E. The prices offered by respondents to customers are discount or special prices available for only a limited period of time, and which afford savings to customers because of reductions from respondents' regular selling prices.

PAR. 5. In truth and in fact:

A. Tri-West is not a subsidiary or division of United States Steel Corporation.

B. Tri-West does not have an exclusive or any other arrangement with United States Steel Corporation whereby Tri-West is the only distributor of such siding materials in any particular area.

C. Neither Tri-West nor United States Steel Corporation advertise their siding materials and/or services by means of Tri-West's work on customers' homes.

D. After the installation of respondents' siding is completed, the homes of respondents' customers are not and will not, in most instances, be used for demonstration or advertising purposes; and customers are not granted discounts or reduced prices as a result of allowing or agreeing to allow their homes to be used as models, demonstrators, or before-and-after examples.

E. The prices offered by respondents to customers are not special or reduced prices available for only a limited period of time, and do not afford savings to customers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices; the prices at which their home improvement products and services are sold vary from purchaser to purchaser.

Therefore, the statements and representations set forth in Paragraph Four are false, misleading, and deceptive.

PAR. 6. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their home improvement products and services, respondents and their salesmen or representatives in many instances engage in the following additional unfair, misleading and deceptive acts or practices:

A. After a binding purchase order has been signed between respondents and the customer, specifying the work to be done and the agreed price therefor, respondents attempt by various means, either before or after starting the work, to coerce or induce an increase in the price of such work. Among such means are statements and declarations by respondents that the contract price was a mistake, that the work cannot be done at the contract price, that Tri-West will stop work if a

higher price is not agreed on, and other statements of similar import. Respondents thereby deprive customers of the opportunity to choose freely the products and services that they desire, and place at a severe bargaining disadvantage those customers for whom work has already started before respondents demand the higher price.

B. Prior to actual completion of the work, respondents obtain and attempt to obtain the customer's signature on a "Certificate of Completion" or other document attesting to respondents' completion of the work contracted for. In order to obtain this signed certificate respondents make oral statements and representations that it is only a technical requirement, and otherwise disparage the importance of the certificate. By obtaining such signed certificate prematurely, respondents deprive customers of bargaining leverage in instances where respondents fail to complete the work promptly or to the satisfaction of the customer.

C. Respondents fail to disclose to the customer that their furnishing of home improvement products and services gives respondents and others the right, under State law, to file a lien for materials and/or labor on the customer's home. Such fact, if known to respondents' customers, would be likely to affect their consideration of whether or not to purchase such products and services from respondents. Thus, respondents have failed to disclose a material fact.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents are and have been in substantial competition in or affecting commerce with corporations, firms and individuals in the sale of home improvement products and services of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and the aforesaid unfair and deceptive acts and practices, and respondents' failures to disclose material facts, as alleged above, have the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that said statements and representations are true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two above are incorporated by reference in Count II as if fully set forth verbatim. All allegations stated in the present tense include the past tense.

PAR. 10. In the ordinary course and conduct of their business, respondents regularly extend and arrange for the extension of consumer credit, as "arrange for the extension of credit," and "consumer credit" are defined in Regulation Z, the implementing regulation of the Truth in Lending Act, promulgated by the Board of Governors of the Federal Reserve System.

PAR. 11. Subsequent to July 1, 1969, in the ordinary course of business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused and are causing their customers to execute a binding purchase order, hereinafter referred to as the "Order Contract." Respondents do not provide customers with any other consumer credit cost disclosures before the transaction is consummated.

PAR. 12. By and through their use of the order contract, respondents:

A. Fail to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

B. Fail to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.

C. Fail to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z.

D. Fail to use the term "deferred payment price" to describe the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and fail in some instances to disclose that sum, all as required by Section 226.8(c)(8)(ii) of Regulation Z.

E. Fail to disclose the date on which the finance charge begins to accrue when different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.

F. Fail to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

G. Fail in some instances to disclose the due dates or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

H. Fail to describe or identify the type of security interest retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

I. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation when said obligation includes a precomputed finance charge, as required by Section 226.8(b)(7) of Regulation Z.

J. Fail to include in the finance charge certain charges or premiums for credit life insurance when respondents did not disclose to the customer in writing that such insurance is not required and did not obtain a specific dated and separately signed affirmative written indication of the customer's desire for such insurance as prescribed by Section 226.4(a)(5) of Regulation Z, and thereby fail to state the finance charge accurately as required by Section 226.8(c)(8)(i) of Regulation Z.

K. Fail to furnish to the customer a duplicate of the instrument or other statement containing the disclosures prescribed by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

PAR. 13. By and through the use and acceptance of the Order Contract and by virtue of the work performed by respondents on the customer's residence, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the customer. The retention or acquisition of such security interest in said real property confers upon respondents' credit customers the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later, as prescribed by Section 226.9 of Regulation Z.

By and through their use of the order contract respondents fail to furnish such customers with any copy whatever of the notice of opportunity to rescind required by Sections 226.9(a) and (b) of Regulation Z, and to set forth on such notice the "Effect of rescission," Section 226.9(d) of Regulation Z, in the manner and form prescribed by Section 226.9(b) of Regulation Z.

Further, in some instances respondents make physical changes in such customers' property and performed work or services on such property before expiration of the rescission period provided in Section 226.9(a) of Regulation Z. Respondents' failure to refrain from commencing work pursuant to rescindable contracts, before the rescission period has expired, is in violation of Section 226.9(c) of Regulation Z.

PAR. 14. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of

Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Seattle 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 of the Truth in Lending Act and the implementing regulation promulgated thereunder; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the 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 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 respondents have violated the 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 sixty days, and having duly considered the comment filed thereafter pursuant to Section 2.34 of its rules, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

A. Respondent Tri-West Construction Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its office and principal place of business located at 3826 W. State St., Boise, Idaho.

Respondent William B. Cafarelli is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

B. 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

I

It is ordered, That respondents Tri-West Construction Company, Inc., a corporation, and William B. Cafarelli, individually and as an officer of said corporation, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, distribution or installation of home improvement products or services, or other products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing directly or by implication that:

1. Respondents' organization is a subsidiary or division of United States Steel Corporation or is otherwise affiliated with such company or any other manufacturer of construction materials.

2. Respondents have an exclusive arrangement of any kind with United States Steel Corporation or are the only distributor of such company's products in any area.

3. Respondents have an exclusive arrangement with or are the only area distributor of products of any manufacturer of construction materials.

4. Respondents, United States Steel Corporation, or any other supplier of construction materials advertises its products and/or services by means of work done on individuals' homes.

5. The homes of any of respondents' customers are or will be used for demonstration or advertising purposes or as model homes; or that as a result of allowing or agreeing to allow their homes to be used as models, demonstrators, or before-and-after examples, customers are or will be granted reduced prices, discounts, or other special prices.

6. Any price for respondents' products and/or services is a discount price, reduced price, or otherwise special price, unless respondents can affirmatively show by documentary evidence that such price constitutes a significant reduction from an established selling price at which such products and/or services have been sold in substantial quantities by respondents in the recent regular course of their business; or misrepresenting, in any manner, respondents' prices or the savings available to customers.

7. The price or terms offered by respondents are limited as to time or limited in any other manner, unless respondents can affirmatively show by documentary evidence that the represented limitations are actually in force and are in good faith adhered to.

B. Refusing or failing to perform work at the contract price after

entering into an agreement therefor with a customer. In each instance where respondents and the customer determine upon additional goods or services to be provided by or through respondents, beyond those originally agreed upon, the complete terms of such supplementary agreement shall be set forth in a separate contract which shall clearly and conspicuously disclose in bold print:

This is a contract for additional goods and/or services. You are *not required* to purchase these goods and/or services. If you do not wish these additional goods and/or services, Tri-West will perform all the requirements of the original contract for the original contract price.

C. Obtaining from any customer a signed certificate of completion or other document attesting to the completion of contracted work unless the customer has in fact received all products and services contracted for, and a copy of each applicable guarantee.

D. Representing directly or by implication that a certificate of completion is only a technical requirement, or disparaging in any manner the importance of the customer's waiting until completion of all contracted work before signing such a document.

E. Failing to disclose to the customer that respondents' furnishing of home improvement products and services gives respondents and others the right, under State law, to file a lien for materials and/or labor on the customer's home.

II

It is further ordered, That respondents Tri-West Construction Company, Inc., a corporation, and William B. Cafarelli, individually and as an officer of said corporation, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

A. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

B. Failing to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.

C. Failing to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z.

D. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

E. Failing to disclose the date on which the finance charges begins to accrue when different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.

F. Failing to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe said sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

G. Failing to describe or identify the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and to provide a clear identification of the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

H. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation when said obligation includes a precomputed finance charge, as required by Section 226.8(b)(7) of Regulation Z.

I. Failing to itemize and include in the finance charge, for purposes of disclosure of the finance charge and computation of the annual percentage rate, any and all charges or premiums for credit life and/or disability insurance unless respondents have clearly and conspicuously disclosed to the customer in writing that such insurance is not required and have obtained a specific dated and separately signed affirmative written indication of the customer's desire for such insurance as prescribed by Section 226.4(a)(5) of Regulation Z.

J. Failing to furnish to the customer, before the transaction is consummated, a duplicate of the instrument or other statement containing the disclosures prescribed by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

K. Failing, in any transaction in which a security interest is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the customer, to comply with all requirements regarding the right of rescission set forth in Section 226.9 of Regulation Z.

L. Making any physical changes in a customer's property or performing any work or services on such property before expiration of the rescission period provided for in Section 226.9(a) of Regulation Z, in any transaction in which a security interest is or will be retained or acquired in real property which is used or expected to be used as the

principal residence of the customer, as provided in Section 226.9(c) of Regulation Z.

M. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, at the time and in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondents hereafter maintain complete business records relative to the manner and form of their compliance with the provisions of this order. Each such record shall be retained for not less than three years, and shall be furnished to representatives of the Federal Trade Commission upon request.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen and/or other persons engaged in the sale of respondents' products and/or services, and to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of the preparation, creation, or placing of advertising, and that respondents shall secure from each such salesman and/or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include the respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

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IN THE MATTER OF

DIESEL TRUCK DRIVERS TRAINING SCHOOL, INC., ET
AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2759. Complaint, Nov. 3, 1975—Decision, Nov. 3, 1975*

Consent order requiring a Sun Prairie, Wis., seller and distributor of courses of instruction in truck driving, among other things to cease misrepresenting business affiliations, earnings, nature of business and opportunities in their services. Respondents are further required to make certain affirmative disclosures to prospective students and to give students a three-day cooling-off period during which they may cancel their contract with full refund of all monies paid.

Appearances

For the Commission: *William M. Rice, Jr.*

For the respondents: *Robert L. Klabacka, Klabacka & Kirkhuff*, Sun Prairie, Wis.

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 Diesel Truck Drivers Training School, Inc., a corporation, and Robert L. Klabacka, individually and as an officer of said corporation, 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 Diesel Truck Drivers Training School, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at rural route #1, Sun Prairie, Wis.

Respondent Robert L. Klabacka is an individual and officer of respondent corporation. His business address is the same as that of said corporate respondent.

The said individual respondent formulates, directs and controls that acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the advertising, offering for sale, sale or distribution of