

Complaint

88 F.T.C.

IN THE MATTER OF

FURNITURE CORPORATION OF AMERICA, T/A
FURNITURE LEASING OF AMERICA, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2849. Complaint, Oct. 26, 1976 — Decision, Oct. 26, 1976*

Consent order requiring a Miami, Fla., furniture leasing company, among other things to cease failing to maintain adequate records; and to follow prescribed procedures to locate and make proper refunds to past and present eligible customers.

Appearances

For the Commission: *Francis X. McDonough, Jr.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Furniture Corporation of America, a corporation, doing business as Furniture Leasing of America, Inc., hereinafter sometimes referred to as respondent, has 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 Furniture Corporation of America, doing business as Furniture Leasing of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 2400 N.W. 72nd Ave., Miami, Florida.

PAR. 2. Respondent Furniture Corporation of America, doing business as Furniture Leasing of America, Inc., is now and for some time past, has been engaged in the advertising for lease and the leasing of furniture and related accessories, which when leased are transported to consumers located in various States of the United States. Thus, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said furniture and related accessories in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

Respondent has established and operates a number of branches for

the purpose of leasing furniture and related accessories in the States of Massachusetts, Connecticut and Florida.

PAR. 3. Respondent Furniture Corporation of America, doing business as Furniture Leasing of America, Inc., at all times mentioned herein, has been, and now is, in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, with individuals, firms and corporations engaged in the leasing of furniture and related accessories of the same kind and nature as those leased by respondent.

PAR. 4. In the ordinary course and conduct of its business, respondent requires its customers to deposit money with it to ensure that such customers fully perform all of the terms, conditions and covenants contained in respondent's lease agreement and to ensure that the leased items are returned to respondent in the same condition in which such items were delivered to its customers, ordinary wear excepted. Upon termination of a customer's lease, respondent determines whether the customer has fully performed all of the terms, conditions and covenants contained in the lease agreement and whether such leased items are returned in the same condition respondent delivered them. After making this determination, respondent transmits this information to its principal place of business where the information is recorded in the customer's file and dollar assessments or charges are made in those instances where the customer fails fully to perform the terms, conditions and covenants of the lease agreement or fails to return the leased items in the same condition respondent delivered them.

Such assessments necessitate deductions from the deposited money which in turn result in a determination that respondent will either retain the full amount or a portion of the customer's deposited money. If no assessment is made, respondent's records indicate that the customer's deposited money may be returned.

PAR. 5. When a customer, who is determined by the respondent to be eligible for return of his deposited money does not specifically request the return of the deposit and does not within a designated period of time supply respondent with a current address to which the deposit may be mailed, the respondent clears the customer's lease deposit from the customer's account by a bookkeeping entry. In such case, respondent does not return or refund any portion of the outstanding lease deposit to the customer. Respondent thus absorbs into its operating income the outstanding amounts of such lease deposits due its customers.

Respondent at no time informs or attempts to inform its customers that they have returnable deposits due. Respondent at no time voluntarily returns returnable deposited money unless specifically requested by its customers nor in any way notifies such customers that

their deposits will be returned on demand. Respondent, Furniture Corporation of America, doing business as Furniture Leasing of America, Inc., through such acts and practices has failed to return substantial dollar amounts of lease deposits to its customers in a substantial number of instances.

PAR. 6. By failure to notify its customers that they have returnable deposits due them; by requiring that their customers specifically request the return of such deposits before respondent will return the outstanding amounts of the deposits; by failing to return such outstanding lease deposits to its customers and by absorbing such deposits into its own operating income, respondent caused a substantial number of its customers to be deprived of substantial sums of money rightfully theirs, therefore, the acts and practices described in Paragraph Five above were and are unfair.

PAR. 7. The acts and practices of respondent set forth in Paragraphs Five and Six above, were and are all to the prejudice and injury of the public and constituted and now constitute, unfair acts and practices, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such agreement is for settlement purposes only and does not constitute an admission by respondent 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 has reason to believe that the respondent has 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 (60) days, 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:

1. Respondent Furniture Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 2400 N.W. 72nd Ave., Miami, Florida. Such corporation does business as Furniture Leasing of America, Inc.

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

ORDER

It is ordered, That respondent Furniture Corporation of America, a corporation, doing business as Furniture Leasing of America, Inc., its successors and assigns, and its officers, and its representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the handling of customers' money deposited as a condition precedent to or in conjunction with the signing of a consumer lease agreement incident to the leasing of furniture, related accessories or any other personal property, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Failing to determine, prior to the negotiation of a lease agreement with two or more legally unrelated lessees, which person will be designated by the joint lessees to be the recipient of the information relating to the lessees' returnable deposit in the event that respondent is obligated to return any portion of the deposit to such customers.

2. Failing to incorporate the following language into respondent's "Lease Pickup Form":

It is imperative that you obtain the lessee's forwarding address for a Deposit Refund. If lessee is not sure of the address, ask if we can send the refund care of a friend or relative. If you cannot obtain an address, send the lessee Form A and so note below:

Street Apt.

City State Zip Code

If "care of," specify who

If above not available, Form A Sent
on -----.

3. Failing to complete the appropriate portion of the addition to respondent's "Lease Pickup Form," as it is described in Paragraph 2.

4. Failing to send to each customer, or designated lessee in instances where a designation as provided for in Paragraph 1 has been made, from whom respondent has failed to obtain an address to which the lessee's returnable deposit is to be sent, within three (3) business days after the lessee notifies respondent that it may pick up its furniture, and related accessories, the following notice and detachable postage paid business reply postcard:

FORM A

Dear Lessee:

We have scheduled the pickup of your furniture as requested. It is important that you inform us of an address to which we can send your Deposit, if we find you are entitled to it being refunded.

If you are not sure of your forwarding address, we would be happy to send it care of a friend or relative.

Please fill in the form below, tear along the perforated line and mail it to us. The postage is prepaid.

Thank you for your assistance.

FURNITURE LEASING OF AMERICA, INC.

DEPOSIT REFUND REQUEST

LESSEE: _____
LEASE AGREEMENT NUMBER: _____
SEND REFUND TO: _____

Street Apt. No.

City State Zip Code

If refund is to be sent care of another, give their name:

THANK YOU FOR YOUR COOPERATION.

Furniture Leasing of America, Inc.
Post Office Box 480225
Miami, Florida 33148 (305) 592-5590

5. Failing to perform the following steps, no later than thirty (30) business days after the expiration of the lease agreement, after determining that a customer has fully performed the terms, conditions and covenants contained in the lease agreement and has returned to respondent all leased items in the same condition in which they were delivered, ordinary wear excepted, and is thus due either a full or a partial return of the deposit:

a. Determine whether the customer's file contains an address to which a returnable deposit is to be forwarded. If so respondent shall forward a check in the appropriate amount to the customer or his designee at the address given. If not, respondent is to perform those steps detailed in Paragraphs 5b and 5c below.

b. Determine the name and address of the customer's parents, present employer and a listed personal reference of the customer from data set forth in the customer's credit application filed by the customer incident to the consummation of the lease agreement. Forward the notice, entitled "We Need Your Help" and described below, to the parents of the customer, if their name and address is available in the customer's file, or both the present employer and one personal reference of the customer listed in the customer's file.

WE NEED YOUR HELP

The individual listed below recently rented furniture from Furniture Leasing of America and is due the return of a money deposit which will be sent to him/her as soon as we can determine his/her correct address and/or telephone number.

If you know his/her address and/or telephone number, please complete the following, tear along the perforated line and mail to us. The postage is prepaid.

Thank you for your help.

FURNITURE LEASING OF AMERICA, INC.

* * * * *

Lessee

Street Apt.

City State Zip Code

Area Code Telephone Number

c. Send an envelope containing the "WE NEED YOUR HELP" notice, described in Paragraph 5b, to the customer's current address, as it appears in the customer's file, requesting an address correction, on the envelope, from the United States Postal Service.

d. If the customer's telephone number is received from any source, respondent shall use it to attempt to contact the customer and determine the customer's forwarding address.

e. If the customer's forwarding address is received from any source, respondent shall refund the appropriate amount of the deposit to the customer at the forwarding address.

f. If no address or telephone number, or information which would directly lead to the discovery of the address or telephone number of the customer, is received within ninety (90) days after the termination of the customer's lease, the customer's lease file or a complete summary thereof, including a notation of the specific amount of money due the customer, will be maintained by respondent for a period of 3 years from the date the lease terminated, during which period of time any request by the customer for the return of the deposit due will be immediately honored. At the end of the 3 year period, the relevant state law will govern the appropriate disposition of customers' deposited money.

6. Failing to keep adequate records which may be inspected by Commission staff members, upon reasonable notice, which (1) substantiate that respondent is following the procedures specified in Paragraphs 1 through 5 of this order and (2) readily disclose the disposition of each customer's deposit and reasons therefor.

It is further ordered, That respondent will refund all returnable deposits to customers whose leases terminated on or after January 1, 1973 and which have not been refunded as of the effective date of this order. Respondent, in refunding the above-described money, will follow the procedures detailed in Paragraph 5 of this order. Respondent will fully comply with the provisions of this paragraph no later than three (3) months after the effective date of this order.

It is further ordered, That respondent, after the effective date of this order, shall include a copy of this order in each of its training manuals, and require each present and future employee who is or becomes

charged with implementing any portion of this order to read a copy of this order and to sign a statement acknowledging that they have read this order.

It is further ordered, That respondent 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 the respondent herein shall within sixty (60) days after service upon it 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.

Commissioner Dole did not participate by reason of absence.

Order

88 F.T.C.

IN THE MATTER OF
RSR CORPORATION

Docket 8959. Interlocutory Order, Nov. 2, 1976

In Camera treatment of listed information withdrawn to the extent that it may appear in publicly available portion of any decision the Commission may issue in this matter.

Appearances

For the Commission: *Annthalia Lingos, K. Keith Thurman, and James C. Egan, Jr.*

For the respondent: *Robert L. Wald, Wald, Harkrader & Ross, Washington, D.C.; and Merrill L. Hartman, Hewett, Johnson, Swanson & Barbee, Dallas, Tex.*

ORDER WITHDRAWING *In Camera* TREATMENT

On July 28, 1976, the Commission ordered the parties to show cause why certain information to which the administrative law judge (ALJ) had accorded *in camera* treatment at the trial of this matter should not be placed on the public record [88 F.T.C. 206]. This information included market share figures for RSR and Quemetco in 1971 and 1972, lead production figures for RSR and Quemetco in 1971 and 1972, and information concerning the distances to which various RSR and Quemetco plants shipped their output during 1971 and 1972.

By response of August 12, 1976, respondent has indicated that it would not object to publication of market share figures or production figures, but it would object to the making public

the second sentence of *in camera* finding 217, the second sentence of *in camera* finding 218, and shipping distance figures derived from CX 69-77 and CX 79 showing average plant shipping distance, percentage of plant production shipped to various states, and percentage of plant production shipped various distances, on the ground that disclosure of such data may assist competitors in determining the identity of some of RSR's customers.

One reason for the requirement that proceedings of this sort be decided "on the record" is to permit the public to evaluate the fairness and wisdom with which the decisions of public agencies have been made, and to permit affected parties to draw guidance from those decisions in determining their future conduct. This consideration mandates that to the maximum extent possible, information of relevance to the Commission's determination be made part of the record available for public inspection. At the same time, *in camera* treatment of certain relevant information may be appropriate where