

Complaint

89 F.T.C.

IN THE MATTER OF
NATIONAL SERVICE INDUSTRIES, INC., T/A CERTIFIED
LEASING COMPANY

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

Docket C-2876. Complaint, Apr. 7, 1977 --- Decision, Apr. 7, 1977

Consent order requiring an Atlanta, Ga., furniture leasing corporation, among other things, to cease failing to maintain adequate records for three years following the expiration date of leases; and follow prescribed procedures to locate and make proper refunds to qualified customers. Additionally, the order requires respondent to furnish lessees with detailed written notices, and prohibits the use of these notices in the collection of delinquent debts.

Appearances

For the Commission: *Michael E.K. Mpras* and *Robert L. Patterson*.
For the respondents: *Jack L. Lahr* and *Christopher Smith*, *Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

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 National Service Industries, Inc., a corporation, doing business as Certified Leasing Company, 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 National Service Industries, Inc., doing business as Certified Leasing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 1180 Peachtree St., N.E., Atlanta, Georgia.

PAR. 2. Respondent National Service Industries, Inc., through its various subsidiaries and divisions, operates numerous plants, including those engaged in the production or manufacture of furniture, safety and protective products, amusement parks, and is engaged in the leasing or retail selling of furniture, through its unincorporated operating division, Certified Leasing Company, which operates approximately 17 furniture leasing and retail selling stores in seven states.

PAR. 3. Respondent operates and controls retail stores which sell or lease furniture and other merchandise to be shipped and delivered from their warehouses and from the places of business of their various suppliers to their warehouses and retail stores for leasing to and purchase by the general public located in states other than those from which such shipments and deliveries originate. By these and other acts and practices, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in merchandise and services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the ordinary course and conduct of its aforesaid business, respondent enters into lease agreements with individual customers whereby such customers lease furniture from respondent for a set period of time. Under the terms of the lease agreement, consumer lessees are required to pay to respondent a security deposit which is usually equivalent to the charge of one month's furniture rental. Further, the lease agreement requires consumer lessees to perform other acts or fulfill conditions and covenants, including the return of leased items in the same condition respondent delivered to them, ordinary wear excepted, at the expiration or termination of the lease period. Upon expiration or termination of the lease, respondent determines to what extent a consumer lessee has complied with the conditions of the lease agreement. If all obligations, conditions or covenants have not been met, respondent makes deductions from the consumer lessees' deposited money in amount deemed adequate to cover the expenses or charges incurred because of the consumer lessee's failure to comply with the lease requirements, ordinary wear excepted.

After such deductions, if any, are made from the consumer lessee's security deposit, respondent's records indicate the amount of the consumer lessee's security deposit, if any, which is returnable to the consumer lessee.

PAR. 5. Respondent, seldom, if ever, informs or attempts to inform consumer lessees that there is a portion of the security deposit which is returnable to the consumer lessees. Furthermore, seldom, if ever, does respondent voluntarily return security deposit balances without consumer lessees' specific requests. In those instances where consumer lessees do not specifically request return of their security deposit balance, respondent often, if not always, removes the returnable balances from the consumer lessees' accounts, and transfers said balances into one of its income accounts.

PAR. 6. By failing to attempt to notify consumer lessees that there

is a portion of the security deposit which is returnable to the consumer lessees, by requiring that consumer lessees specifically request the return of the balance of any security deposit balance remaining after legitimate expenses under the lease have been charged against such deposit, and by transferring said returnable balances into one of its income accounts, respondent has caused a substantial number of consumer lessees 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 the respondent as herein alleged, 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 Washington, D. C. 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, as amended; and

The respondent, its attorney 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 said 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 had 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(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Proposed respondent National Service Industries, Inc., doing business as Certified Leasing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Delaware with its office and principal place of business located at 1180 Peachtree St., N.E., Atlanta, Georgia.

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 National Service Industries, Inc., a corporation, doing business as Certified Leasing Company, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the leasing to consumers 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 request, both orally and in writing, at the time the lease agreement is signed with two or more legally unrelated persons, which person will be designated by the joint lessees to be the recipient of the lessees' returnable security deposit in the event that respondent is obligated to return the full security deposit or any portion thereof to such customers.

2. Failing to incorporate on the face of the lease agreement, in bold print, the following notice which shall be given to the lessee at the time the lease agreement is signed.

NOTICE

You may be entitled to a refund of all or a portion of your security deposit at the termination of this lease agreement. Retain this reminder so that you may send us a forwarding address where you can be reached so that we can promptly forward any balance of the security deposit due you.

3. Failing to request from the lessee, both orally and in writing, at the time the lease agreement is signed, a tentative forwarding address where the security deposit, or any portion thereof which may be returnable to the lessee, can be mailed if no updated forwarding address is received prior to or at the termination of the lease agreement.

4. Failing, when notice of termination of the lease agreement is received telephonically, to request from the lessee at that time a forwarding address.

5. Failing to send written notice by first class mail prior to the expiration of the term of the lease agreement to the lessee's last

known address requesting a forwarding address within five business days after receiving notification of the lessee's intent to terminate the lease agreement, if such forwarding address has not been received.

6. Failing to send by first class mail, with the envelope captioned "PLEASE FORWARD," the security deposit, or any portion thereof which may be returnable to the lessee, including an itemized accounting of respondent's charges against the lessee's security deposit within thirty (30) days from the termination of the lease agreement, to the lessee's updated forwarding address or to the tentative forwarding address obtained at the time the lease agreement was signed if no updated address has been received, or in the absence of the above, to the lessee's last known address; and failing in all other situations to provide within 30 days, by first class mail, such itemized accounting upon the oral or written request of the lessee.

It is further ordered:

A. That respondent attempt to refund all security deposits or portions thereof due lessees whose lease terminated or expired within three months from the effective date of this order. In attempting to refund all returnable deposited money, respondent shall perform the following steps:

1. Determine whether the lessee's file contains an address to which a returnable deposit is to be forwarded. If so, respondent shall forward a check in that amount to the lessee or his designee at the address given.

2. If no forwarding address is given, respondent shall send a notice by first class mail, with the envelope captioned "PLEASE FORWARD," to the lessee's last known address informing such lessee that a refund is due him, and that he should immediately contact the respondent at the address or telephone number given, requesting an address correction.

3. If the letter is returned by the post office as undeliverable, respondent shall:

(a) Determine from information set forth in the lessee's credit application filed by the lessee incident to the consummation of the lease agreement the name and address of the lessee's parents, employer and a listed personal reference of the lessee.

(b) Forward the notice in the form set forth below, entitled "We need your help," to either the parents, employer, or one listed personal reference of the lessee, if such names and addresses are available in the lessee's file.

WE NEED YOUR HELP

The individual listed below recently rented furniture from Certified Leasing Company and placed a security deposit with us. The individual is entitled to a refund of all or a portion of such deposit, which refund will be sent as soon as we can determine a current address.

If you know the individual's current address and/or telephone number, please complete the following form and return it to us. The postage is prepaid.

Thank you for your help.

CERTIFIED LEASING COMPANY

_____ Lessee		
_____ Street		_____ Apt.
_____ City	_____ State	_____ Zip Code
()		
Area Code		Telephone Number

B. That respondent shall not use the notices described in paragraphs 2. and A. 3.(b) of the order to collect or attempt to collect delinquent accounts.

C. That respondent maintain, for a period of three years from the date the lease was terminated or expired, adequate records including a complete summary of each lessee's file which (1) substantiate that respondent is following the procedures specified in the order, and (2) readily disclose the disposition of the lessee's security deposit and the reasons therefor, including a notation of the specific amount of money due the lessee from his security deposit; any request by such person within three years from the date the lease was terminated or expired for the return of the deposit due shall be honored by mailing the balance of said deposit within thirty (30) days from the date of receipt of such request.

D. That respondent deliver a copy of this order to all present and future administrative and sales employees engaged in any aspect of communicating with customers with respect to the leasing to

consumers of furniture or other personal property, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

E. That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent or its division 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 or its division which may affect compliance obligations arising out of the order.

F. 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 it has complied with this order.

IN THE MATTER OF
SEARS, ROEBUCK AND CO.

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

Docket 8993. Complaint, Sept. 17, 1974 --- Decision, Apr. 11, 1977

Consent order requiring a Chicago, Ill., merchandising organization, among other things, to cease using bait and switch tactics and other unfair or deceptive strategies in the advertising and sale of major home appliances. The order further requires the firm to conspicuously post copies of advertisements in the proper departments of stores, and to have sufficient quantities of the advertised items available to meet reasonably anticipated demand.

Appearances

For the Commission: *James S. Teborek, James F. Drzewiecki, Robert C. Goldberg, Blanche Stein, and Thomas D. Massie.*

For the respondent: *Richard P. Robinson, Chicago, Ill., Lloyd S. McClelland, Chicago, Ill., Burton Y. Witzenfeld, Arnstein, Bluck, Witzenfeld & Minow, Chicago, Ill.*

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 Sears, Roebuck and Co., a corporation, 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 Sears, Roebuck and Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 925 South Homan Ave., Chicago, Illinois.

PAR. 2. Respondent is the largest merchandising organization in the United States. Respondent is now, and has been for some time last past, engaged in the advertising, offering for sale, sale and distribution of a wide variety of consumer products, including sewing machines, washers and dryers, and other major home appliances throughout the United States. The term "major home appliance" is defined herein as any home appliance in which there are two or more models in the product line and the most expensive model has a retail price in excess of (\$50.00) fifty dollars. Said respondent conducts said business by mail and telephone sales from catalogs and through its