

Complaint

94 F.T.C.

IN THE MATTER OF

MACLEOD MOBILE HOMES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9068. Complaint, Dec. 19, 1975 — Decision, July 25, 1979*

This consent order, among other things, requires a Riverhead, N.Y. mobile homes dealer and its affiliates to cease entering into, or enforcing any arrangement or rule which restricts the availability of mobile home sites to only those parties who purchase, lease or rent mobile homes, accessories and services from MacLeod Mobile Homes, Inc. or other designated sources.

Appearances

For the Commission: *Elliot Feinberg, Herbert S. Forsmith and Henry R. Whitlock.*

For the respondents: *Wayne S. Hyatt, Hyatt & Rhoads, Atlanta, Ga.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties identified in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

I. DEFINITIONS

PARAGRAPH 1. For the purpose of this complaint, the following definitions shall apply:

(a) "Mobile home" means a transportable unit or units designed to be placed without a permanent foundation, connected to utilities, and used or capable of being used for year-round living.

(b) "Mobile home park" means a tract of land utilized specifically for the purpose of renting sites for the placement of mobile homes for residential purposes, and in which utility connections and various communal services are commonly provided.

II. RESPONDENTS

PAR. 2. Respondent MacLeod Mobile Homes, Inc. is a corporation

organized under the laws of the State of New York, with its principal office located at 525 Riverleigh Ave., Riverhead, New York.

PAR. 3. Respondent Pashisha, Inc., an affiliate of MacLeod Mobile Homes, Inc., is a corporation organized under the laws of the State of New York, with its principal office located at 525 Riverleigh Ave., Riverhead, New York.

PAR. 4. Respondents Myron T. MacLeod and John J. Couch, individuals, are officers of said corporations. They formulate, direct, approve, authorize and control the acts and practices of said corporation, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

PAR. 5. (a) Respondent MacLeod Mobile Homes, Inc. has been and is now engaged in the advertising, offering for sale, sale and distribution of mobile homes and mobile home accessories. Respondent MacLeod Mobile Homes, Inc. further has been and is now engaged in the development and operation of the MacLeod's Mobile Home Park, located at 525 Riverleigh Ave., Riverhead, New York.

(b) Respondent Pashisha, Inc. has been and is now engaged in the advertising, offering for sale, and distributing of mobile homes and mobile home accessories.

(c) In fiscal year 1975, sales of mobile homes by corporate respondents exceeded \$600,000.

III. JURISDICTION

PAR. 6. (a) In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, advertising to be disseminated to prospective purchasers of mobile homes and prospective mobile home park tenants located in various States of the United States across state lines and in interstate commerce within the United States, as "commerce" is defined in the Federal Trade Commission Act, as amended.

(b) In the course and conduct of their business as aforesaid, respondents have purchased and continue to regularly purchase mobile homes and other products from suppliers in states other than New York for the purpose of offering said products for sale, to maintain an available inventory for sale and to fill special purchase orders received from their customers.

(c) Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 7. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in

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this complaint, respondents have been and are in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, with persons or firms engaged in the sale of mobile homes and mobile home accessories and with persons or firms engaged in the operation and maintenance of mobile home parks.

IV. VIOLATIONS

PAR. 8. In the course and conduct of their business as aforesaid, respondents have engaged, and are engaging, in various courses of action, including:

- (a) refusing to rent sites in their mobile home park for the accommodation of mobile homes which have not been purchased from them, thereby making the rental of these sites conditional and dependent upon the purchase of mobile homes from said respondents;
- (b) refusing to rent sites to persons who have purchased their mobile homes directly from park tenants, unless such tenants or purchasers make substantial payments to respondents;
- (c) requiring tenants in their parks to purchase heating fuel and bottled gas from suppliers designated by respondents.

V. EFFECTS

PAR. 9. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, as hereinabove alleged, have, or tend to have, the effect of:

- (a) reducing competition in the sale of mobile homes;
- (b) foreclosing potential competitors in the sale of mobile homes by raising entry barriers;
- (c) foreclosing substantial sales by dealers of mobile homes to actual or prospective tenants of sites in respondents' mobile home parks;
- (d) inflating the prices of mobile homes purchased from respondents;
- (e) depriving tenants who resell their mobile homes of a substantial part of the value of said homes;
- (f) restricting mobile home owners' rights to alienate or freely sell their property;
- (g) reducing competition in the sale of heating fuel and bottled gas to mobile home owners;
- (h) inflating the cost of heating fuel and bottled gas purchased by tenants of respondents' mobile home park;
- (i) depriving consumers of the benefits of competition.

PAR. 10. The aforesaid acts, practices and methods of competition,

constitute unreasonable restraints of trade and unfair methods of competition in or affecting commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended, and 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 Commission having issued its complaint on December 19, 1975, charging that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45); and

Respondents and complaint counsel, by joint motion filed December 9, 1976, having moved to have this matter withdrawn from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by order issued January 11, 1977, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its Rules; and

Each of the respondents and counsel supporting the complaint having executed an agreement containing a consent order, which includes an admission by the respondents of all the jurisdictional facts set forth in the 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 the complaint, and waivers as required by the Commission's Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of one hundred and eighty (180) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules and the recommendation of its staff, and having concluded that the consent agreements should be modified along the lines suggested by staff, with changes; and

Respondents and complaint counsel having thereafter executed and submitted a revised agreement containing consent order dated April 23, 1979, containing modifications agreed to by the Commission; and

The executed agreement dated April 23, 1979, as modified, containing the following consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 the complaint, and waivers as required by the Commission's Rules;

Now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

ORDER

It is ordered, That MacLeod Mobile Homes, Inc. and Pashisha, Inc., corporations, their successors and assigns, and their officers and Myron T. MacLeod and John J. Couch, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale, lease or rental of mobile homes, mobile home sites or any other product, service, real estate or thing, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. The offering, execution, maintenance or enforcement of any lease, agreement, understanding or other arrangement which, directly or indirectly, conditions the lease, rental or sale of a mobile home site upon the lease, rental or purchase of a mobile home from a respondent, or a source designated by a respondent.

2. The offering, execution, maintenance or enforcement of any lease, agreement, understanding or other arrangement, which, directly or indirectly, conditions the lease, rental or sale of any product, service, real estate or thing upon the lease, rental or purchase of any other product, service, real estate or thing from a respondent or a source designated by a respondent.

3. Refusing to offer, enter into, or maintain a lease or any other arrangement relating to the sale, lease or rental of any mobile home site unless or until the prospective tenant leases, rents, acquires or purchases, or promises or agrees to lease, rent, acquire or purchase a mobile home, or any other product, service, real estate or thing, from a respondent, or a source designated by a respondent.

4. Establishing, maintaining or enforcing any rule, practice or arrangement in a mobile home park owned, controlled or operated by a respondent whereby:

a) a mobile home sold, rented or leased by a tenant of a respondent must be removed from its site for the reason that said mobile home was not sold, rented or leased by, through or with the cooperation of a respondent or the designee of a respondent;

b) a mobile home park tenant who sells, rents or leases a mobile home is required to subscribe to or purchase or accept the services of a respondent or person or firm designated by a respondent;

c) a mobile home park tenant or prospective tenant is required to

compensate a respondent, or a person or firm designated by a respondent, who has not provided any services in connection with the sale, rental or lease of a mobile home by such tenant or the purchase, rental or lease of a mobile home by such a prospective tenant;

d) a prospective tenant purchasing a mobile home from any tenant of a respondent is not permitted to rent the mobile home site occupied by such mobile home, provided that any such prospective tenant would otherwise qualify for tenancy in such mobile home park under reasonable rules and regulations established for the operation thereof, which rules shall not be inconsistent with state law; or

e) a tenant of a respondent is threatened with or subjected to eviction or any coercive action or detriment for refusal or failure to agree to lease, rent, acquire or purchase any product, service, real estate or thing from a respondent or a source designated by a respondent.

Provided, however, that respondents may exercise their lawful rights as businessmen, including the right to set reasonable rules, regulations and standards concerning the appearance of mobile homes and acceptance of tenants in respondents' mobile home parks and the operation, maintenance and appearance of mobile homes, mobile home parks and mobile home sites, except insofar as limited by the provisions of this order; and

Provided further, that nothing in this order shall prevent respondents from establishing, maintaining or enforcing reasonable rules or regulations that are necessary to protect respondents' property, or are otherwise explicitly authorized under existing state law.

Provided further, that nothing in this order shall exempt any person or firm from the duty to comply with all applicable laws or regulations which are consistent with the provisions of this order.

It is further ordered, That respondents shall, within thirty (30) days of service of this order, distribute, and obtain a signed receipt therefor, a copy of this order to each of their operating divisions and respondents' employees engaged in the sale or rental of mobile homes or mobile home sites.

It is further ordered, That each 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. In addition, for a period of ten years from the effective date of this order, each individual respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale of mobile homes or the rental of mobile home sites or of his affiliation with a new business or

employment in which his own duties and responsibilities involve the sale of mobile homes or the rental of mobile home sites. Such notice shall include this respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in any 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 maintain complete business records relative to the manner and form of their continuing compliance with the terms and provisions of this order. Each record shall be retained by respondents for at least three years after it is made.

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.

IN THE MATTER OF
MOBILE HOMES-MULTIPLEX CORPORATION, ET AL.

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

Docket 9069. Complaint, Dec. 19, 1975 — Decision, July 25, 1979

This consent order, among other things, requires a Mt. Holly, N.J. mobile home dealer and its subsidiaries to cease entering into or enforcing any arrangement or rule which restricts the availability of mobile home sites to only those parties who purchase, lease or rent mobile homes, accessories and services from Mobile Homes-Multiplex Corp. or other designated sources.

Appearances

For the Commission: *Herbert Forsmith, Henry R. Whitlock and Elliot Feinberg.*

For the respondents: *John W. Kormes, Philadelphia, Pa.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties identified in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

I. DEFINITIONS

PARAGRAPH 1. For the purposes of this complaint, the following definitions shall apply:

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(b) "Mobile home park" means a tract of land utilized specifically for the purpose of renting sites for the placement of mobile homes for residential purposes and in which utility connections and various communal services are commonly provided.

II. RESPONDENTS

PAR. 2. (a) Respondent Mobile Homes-Multiplex Corp. is a corporation organized under the laws of the State of Delaware with its