

FEDERAL TRADE COMMISSION DECISIONS

Complaint

95 F.T.C.

IN THE MATTER OF
TEXAS ASSOCIATION OF PROFESSIONAL
SURETIES, ET AL.

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

Docket C-3010. Complaint, Feb. 13, 1980—Decision, Feb. 13, 1980

This consent order requires, among other things, an Odessa, Tex. unincorporated trade association of bail bondsmen and its Houston, Tex. affiliate to cease establishing, fixing or maintaining uniform non-competitive prices for the sale of bail bonds; requiring adherence to such prices through coercion or otherwise; and attempting by any means to eliminate competition between or among bail bondsmen. The associations are prohibited from discussing prices and recalcitrant members at meetings; and required to timely amend any rule, by-law or code of ethics so as to conform with the terms of the order. Additionally, respondents are required to terminate the membership of any member who fails to comply with those terms.

Appearances

For the Commission: *Steven E. Weart* and *Joel Winston*.

For the respondents: *Joseph J. Rey, Jr.* El Paso, Tex., and *Michael Ramsey*, Houston, Tex.

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 Texas Association of Professional Sureties and Association of Professional Sureties of Houston, hereinafter sometimes 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Texas Association of Professional Sureties (TAPS) is a non-profit, unincorporated trade association whose members are engaged in business for profit. It was organized in 1965 and currently maintains its offices at 318 North Texas St., Odessa, Texas. Respondent TAPS is composed of approximately fifty bail bondsmen located within the State of Texas, comprising approximately one-sixth of all persons engaged in the business of writing bail bonds in the State of Texas. Its affairs are managed by its officers, who are

elected by the membership. These officers include president, vice president, and secretary-treasurer.

PAR. 2. Respondent Association of Professional Sureties of Houston (HAPS) is a non-profit, unincorporated trade association whose members are engaged in business for profit. It maintains its offices at 212 Scanlan Building, 405 Main St., Houston, Texas. Respondent HAPS is composed of approximately 30 bail bondsmen located within Harris County, Texas, comprising approximately 90% of all persons engaged in the business of writing bail bonds in Harris County. Its affairs are managed by its officers, who are elected by the membership. These officers include president, treasurer, and secretary.

PAR. 3. Respondents are organized and function to promote and advance the pecuniary and other interests of their members and the bail bond profession. Their activities include lobbying for legislation favorable to their members, maintaining and supervising member conduct in accordance with their codes of ethics, and serving as conduits for the exchange of information among members.

PAR. 4. Local (county or city-wide) associations of bail bondsmen, including HAPS, are directly affiliated with TAPS. TAPS members pay monthly dues to the local affiliates of which they are members. These dues are then forwarded by the local affiliates to TAPS. Under the TAPS Constitution, local affiliate presidents have numerous functions in the policymaking and day-to-day activities of TAPS. For example, changes in TAPS dues must be approved by the president of TAPS and at least three local affiliate presidents.

TAPS was originally formed by HAPS and its members for the purpose of coordinating the activities of bail bondsmen throughout the State of Texas. The majority of the current membership of TAPS is made up of HAPS members, and two of the three officers of TAPS are also HAPS members. The TAPS Code of Ethics, as described in Paragraph Seven below, was adopted in whole from the HAPS Code of Ethics.

PAR. 5. Most of the members of the respondents write a significant portion of their bail bonds for criminal defendants arrested in Texas, but residing in states other than Texas. Additionally, most of the members write or arrange for the writing of bail bonds for Texas residents arrested in states other than the State of Texas. A large percentage of the members are agents for national surety companies, which underwrite their bail bonds. These surety companies maintain offices in states other than the State of Texas. In the course of their business, the surety companies transmit powers of attorney, contracts, and other correspondence and communications to agents, and receive fees, statistical information and other transmissions from agents

within the State of Texas, through the mails and other instrumentalities of interstate commerce.

As a result of the aforesaid transactions, and by virtue of respondents' representation of their members and promotion of their business, respondents and their memberships have been and are now engaged in a pattern, course of dealing, and substantial volume of trade in bail bonds in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 6. The bail bondsmen holding membership in the respondent associations are in substantial competition with one another and with other members of the industry in the sale of bail bonds, in or affecting commerce, except insofar as that competition has been hindered, lessened, restricted and eliminated by the unfair methods of competition and unfair acts and practices hereinafter set forth.

PAR. 7. For many years past, and continuing in the present time, respondents have planned, adopted, put in effect, and carried out policies having the purpose, tendency and effect of hindering, frustrating, restraining, suppressing and eliminating competition in the offering for sale and sale of bail bonds in or affecting commerce. Pursuant to, and in furtherance of, the above policies respondents, alone and by means of agreements, understandings, and combinations and conspiracies with certain of its members and with others, have engaged and continue to engage in the following acts and practices:

(a) Determining, fixing, establishing, stabilizing, effectuating and maintaining uniform, identical, non-competitive prices for the sale of bail bonds.

(b) Promoting, encouraging, and coercing adherence to, and discouraging and deterring variance from, said uniform, identical, non-competitive prices among member and non-member bail bondsmen.

(c) Holding regular meetings at which members discuss with other members the prices for which bail bonds have been and are to be sold by member and non-member bail bondsmen, the identity of member and non-member bail bondsmen charging prices lower than those approved by respondents and their members, and actions to be considered or taken against such bail bondsmen identified, all for the purpose and having the effect of determining, fixing, establishing, stabilizing, effectuating and maintaining uniform, identical, non-competitive prices for the sale of bail bonds.

(d) Promulgating and maintaining Codes of Ethics, with which members are required to comply, which state the following:

(i) In instances where the risk is average, the standard fee charged for bonds will be 10% for local State, 15% out of County State, and 15% Federal. This scale on fees will not be binding where, in the opinion of the Surety the risk on a bond is greater than average.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, as hereinabove alleged, are unfair and to the prejudice of the public because they have the purpose, tendency, and effect of hindering, lessening and restraining competition in the sale of bail bonds between and among bail bondsmen; raising barriers to entry of new competition in the sale of bail bonds; and limiting and restricting channels of distribution of bail bonds.

Said 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.

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 Dallas 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 respondents, their attorneys, 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 (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 Texas Association of Professional Sureties is an unincorporated, non-profit trade association with its principal office and place of business located at 318 North Texas St., Odessa, Texas.
2. Respondent Association of Professional Sureties of Houston is an

unincorporated, non-profit trade association with its principal office and place of business located at 212 Scanlan Building, 405 Main St., Houston, Texas.

3. 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 respondent Texas Association of Professional Sureties and respondent Association of Professional Sureties of Houston, individually, and their respective officers, directors, agents, representatives, employees, successors and assigns, directly or indirectly or through any corporation, subsidiary, affiliate, association, division, committee or other device, in connection with each respondent association's business, or with the offering for sale, sale, distribution or promotion of bail bonds, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from entering into, cooperating in, or carrying out any agreement, understanding or combination, express or implied, or unilaterally to do, adopt or perform any of the following acts, policies or practices:

1. Determining, fixing, suggesting, recommending, establishing, stabilizing, maintaining or effectuating, or attempting to determine, suggest, recommend, fix, establish, stabilize, maintain, or effectuate any price, term or condition of sale, price floor, or minimum charge to customers for bail bonds.

2. Promoting, encouraging, requiring or coercing adherence to, or discouraging or deterring variance from, any price, term or condition of sale, price floor or minimum charge to customers for bail bonds.

3. Discussing at any meeting or elsewhere:

(a) any price, term or condition of sale, price floor, or minimum charge to customers for bail bonds;

(b) the prices charged by, or terms or conditions of sale of, any member or non-member bail bondsman or bondsmen; or

(c) any action to be considered or taken in regard to any bail bondsman or bondsmen by reason of the price which such person or persons charge or their terms or conditions of sale.

4. Promulgating, adopting, maintaining, enforcing or requiring adherence to any constitution, code of ethics, rule, regulation, by-law, or other device by which any price, term or condition of sale, price floor, or minimum charge to customers for bail bonds is determined,

fixed, suggested, recommended, established, maintained, or effectuated.

5. Restricting or preventing, or attempting to restrict or prevent, any bail bondsman from carrying on any lawful course of action, or from engaging in trade or commerce by lawful methods of his or her own choosing.

6. Eliminating or attempting to eliminate competition between or among bail bondsmen.

It is further ordered, That each respondent shall, within thirty (30) days after service upon it of this order, mail by first class mail a copy of this order to each of its members, with a notice that such member must abide by the terms of this order as a condition to continued membership in the association.

It is further ordered, That, immediately upon completion of the above mailings, each respondent obtain from the person(s) actually performing the required mailing of each order and notice, an affidavit verifying the mailing of each such document, and specifying the particular person or business entity and address to which such document was mailed.

It is further ordered, That each respondent shall, within thirty (30) days after service upon it of this order, amend its charters, constitutions, by-laws, codes of ethics, rules and regulations by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this order; and that each respondent shall thereafter require as a condition of membership that all of its present and future members act in accordance with the provisions of this order, and shall terminate the membership of any member not acting in accordance with the provisions of this order.

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

It is further ordered, That each respondent, 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 complied with this order including copies of all affidavits required by this order to be obtained by each respondent.

Interlocutory Order

95 F.T.C.

IN THE MATTER OF

GENERAL FOODS CORPORATION

*Docket 9085. Interlocutory Order, Feb. 15, 1980*ORDER DIRECTING GENERAL COUNSEL TO CONTINUE COURT
ENFORCEMENT OF SUBPOENA DUCES TECUM

On November 16, 1979, the administrative law judge certified his recommendation to the Commission that the General Counsel be directed to continue proceedings for enforcement of a subpoena *duces tecum* issued to Hills Bros. Coffee, Inc. By motion dated December 3, 1979, Hills Bros. urged the Commission to withdraw its enforcement efforts. On December 20, 1979, respondent General Foods, filed a pleading in support of the ALJ's recommendation.

Our original order for court enforcement was issued on July 12, 1979, and directed the General Counsel to seek enforcement of those portions of the subpoena that concern marketing plans for Hills Bros.' "High Yield" coffee. After enforcement proceedings were initiated in district court, we learned, through the General Counsel, that complaint counsel had informed the administrative law judge that proof of economic injury to Hills Bros. was not an essential element of their case. However, the ALJ had previously denied Hills Bros.' motion to quash partly because he deemed the documents on "High Yield" coffee relevant to the question of economic injury. We therefore issued an order on November 9, 1979, directing the ALJ to reconsider his ruling in light of complaint counsel's assertions. Our order also directed the General Counsel to seek a stay of enforcement proceedings in district court pending the ALJ's reconsideration.

The ALJ's present recommendation for enforcement recognizes complaint counsel's statement that economic injury to Hills Bros. is not essential to their case. However, his certification is based on the fact that complaint counsel have nevertheless expressed their desire to elicit testimony on this subject. The ALJ believes that information concerning Hills Bros.' ability to introduce "High Yield" to the market after the period of General Foods' allegedly anticompetitive activities is relevant to the economic injury issue. He has limited his recommendation for enforcement, however, to marketing plans that concern only the first year in which "High Yield" coffee was introduced. This modification was suggested to conform to a similar limitation adopted by the ALJ in responding to a motion by Folger Coffee Company to quash a similar subpoena *duces tecum*.

The Commission has consistently held that an administrative law judge has wide discretion in discovery matters and that his determina-