

IN THE MATTER OF

AMREP CORPORATION

Docket 9018. Interlocutory Order, April 11, 1983

ORDER DENYING RESPONDENT'S MOTION TO DISMISS THE COMPLAINT
FOR MOOTNESS AND LACK OF PUBLIC INTEREST

By motion dated January 17, 1983, as supplemented by an affidavit in support of the motion filed February 3, 1983, respondent has moved for an order dismissing the complaint for mootness and lack of public interest. Further, the respondent requests that the Commission reopen the record to consider the developments set out in the motion which, in its view, require the Commission to dismiss this complaint.

Respondent argues that five events have occurred since the close of the record in this proceeding which render further proceedings moot. Respondent notes the settlement of certain class actions by buyers of land at Rio Rancho Estates, the sale of all remaining unsold vacant land at Silver Spring Shores to General Development Corporation [100 F.T.C. 488], the transfer of "substantially all" of the land at El Dorado, the reconveyance of land at Oakmont Shores to the trustee in bankruptcy of the former owner, and the enactment of amendments to the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701, *et seq.*, and the regulations thereunder. As a result of all of these changed circumstances, respondent argues that it is no longer selling much of the land involved in the complaint, and that future sales will be governed by the stronger protections now present in the amended Interstate Land Sales Full Disclosure Act. Accordingly, respondent argues, any possible Commission order is unnecessary.

On January 31, 1983, complaint counsel filed an answer in opposition to the respondent's motion.

The Commission sees no reason to reopen the record to evaluate the impact of these developments on any potential order which it may adopt in this matter. The reconveyance of lots at Oakmont Shores to the Trustee in Bankruptcy occurred in 1975, and is reflected in the record. (*See, e.g.*, Initial Decision at pp. 73-74.) Similarly, information and arguments concerning the effect of class action settlements, and the amendments to the Interstate Land Sales Full Disclosure Act and the regulations thereunder, are reflected in the record and the briefs. (*See, e.g.*, Denial of Respondent's Motion for an Order Pursuant to 5 U.S.C. 557(d)(1), (12/12/78); Ruling on "Respondent's Motion to Take Official Notice and for a Hearing on Form and Content of Relief" (6/11/79); Respondent's Reply to Complaint Counsel's Answer to Re-

spondent's Appeal, pp. 20-22, 72; Respondent's Answer to Complaint Counsel's Proposed Findings of Fact, Conclusions of Law, and Order, at p. 298.) In addition, the Commission is free to take judicial notice of the changes in the law in this area. Finally, the Commission is fully aware of the terms of the purchase agreement by which General Development Corporation bought the remaining unsold land at Silver Spring Shores from respondent, since it entered an order approving certain terms of that purchase on September 30, 1982 [100 F.T.C. 488]. As a result, the record adequately reflects the "developments" which respondent would have the Commission reopen the record to recognize.

Such developments do not, however, necessarily render further proceedings moot. The Order sought by complaint counsel and largely approved by the Administrative Law Judge applies prospectively to all future sales of undeveloped land, not just the four subdivisions involved in the instant matter. It is well-established that the Commission may enter an Order to prevent future wrong-doing by a respondent that has engaged, but is no longer engaged, in the deceptive or unfair acts or practices alleged in the complaint. *Fedders Corp. v. FTC*, 529 F.2d 1398, 1403 (2d Cir. 1976), *cert. denied*, 429 U.S. 815 (1977). Further, complaint counsel have clearly stated their intention to recommend consumer redress for past deceptive acts or practices pursuant to Section 19 of the FTC Act. Whether the respondent has ceased such acts or practices is not relevant to such an action. At best the developments cited by the respondent affect the terms of the Commission's Order, not whether such an Order should issue at all. To that extent, the record adequately reflects those concerns and the Commission will, of course, consider the entire record in determining what, if any, relief may be appropriate in this case.

Accordingly, having considered respondent's motion,

It is hereby ordered, That Respondent's Motion to Dismiss the Complaint for Mootness and Lack of Public Interest be, and hereby is, *denied*.

IN THE MATTER OF

GULF & WESTERN INDUSTRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 9153. Complaint, March 25, 1981—Decision, April 14, 1983

This consent order requires a New York City corporation engaged in the burial casket industry, among other things, to timely divest to a Commission-approved buyer, Alabama-Indiana Metal Products, Inc., located in Anniston, Alabama. The order also requires the corporation to permit prospective purchasers to inspect the Anniston facility and supply them with information concerning the facility's operation. Further, the corporation is barred from acquiring any stock or interest in any concern engaged in the manufacture or sale of burial caskets or their components, without prior Commission approval for a period of ten years.

Appearances

For the Commission: *Robert W. Doyle, Jr., Michael E. Antalics, Debra A. Simmons and Randall D. Marks.*

For the respondent: *Robert L. Jones*, in-house counsel, New York City and *Charles E. Koob, Simpson, Thacher & Bartlett*, New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent, subject to the jurisdiction of the Commission, has acquired the stock or assets, as hereinafter described, of corporations subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint pursuant to Section 11 of the Clayton Act (15 U.S.C. 21), and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

(1) For the purposes of this Complaint, the following definitions shall apply: