

Complaint

106 F.T.C.

IN THE MATTER OF

NATIONAL CUSTOMS BROKERS & FORWARDERS
ASSOCIATION OF AMERICA, INC.CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3164. Complaint, Sept. 18, 1985—Decision, Sept. 18, 1985*

This consent order requires a national association whose members provide services to clients in connection with the importation of merchandise into the United States, among other things, to cease adopting, maintaining, or enforcing any by-law, code of ethics, provision, rule or regulation that restricts or attempts to restrict the ability of a member to offer price discounts or reach independent pricing decisions relating to custom brokerage services. The Association is also barred from commencing or continuing any affiliation or formal relationship with an organization that engages in the prohibited conduct. Further, the order requires that the Association timely send a copy of the complaint and order, to each of its current members, together with the attached explanatory letter; publish the order in its "Bulletin" or newsletter; and provide a copy of the order to all new members and affiliates for a period of three years.

Appearances

For the Commission: *Dennis McFeeley and Barbara Wright.*

For the respondents: *Gerald H. Ullman, New York City.*

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 the National Customs Brokers & Forwarders Association of America, Inc., 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 the National Customs Brokers & Forwarders Association of America, Inc. (hereafter "Association"), is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its headquarters is at One World Trade Center, Suite 1109, New York, New York.

PAR. 2. The Association is a trade association with approximately

States. The Association operates in substantial part for the economic benefit of its members and is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended.

PAR. 3. Members of the Association provide services to clients in connection with the importation of merchandise into the United States. These services include determining the correct duty to be paid to the United States Customs Service, filing of the appropriate papers with the Customs Service, and performing other services for which members charge fees to their clients.

Members of the Association compete with each other in the sale of customs brokerage services.

PAR. 4. Members of the Association are integrally involved in the process of importing merchandise into the United States. Merchandise imported through the facilities and services of Association members is sold throughout the United States. Therefore, the acts and practices of the Association and its members affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 5. Acting as a combination of, and in conspiracy with, its members, the Association has restrained price competition among its members. In furtherance of this combination and conspiracy, the Association adopted a by-law requiring that its members charge fees that would assure a fair return for services rendered.

PAR. 6. The purposes and effects of the combination or conspiracy alleged in Paragraph Five have been as follows:

- a) The Association's members have been restricted in their ability to reach independent pricing decisions and to offer price discounts;
- b) Customers who import goods and use the services of the Association's members have been restricted in their ability to receive discounts and to obtain the benefit of open price competition among the Association's members.

PAR. 7. The combination or conspiracy and the acts and practices described in Paragraph Five are unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.

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 Seattle 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 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent National Customs Brokers and Forwarders Association of America, Inc., is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at One World Trade Center, Suite 1109, New York, New York.

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

I.

For purposes of this order, the following definitions shall apply:

A. The term *Association* means the National Customs Brokers & Forwarders Association of America, Inc., its successors or assigns, and its officers, board members, directors, committees, members, agents, representatives or employees.

B. The term *customs broker* shall mean any entity licensed as a customs broker by the United States Customs Service.

II.

It is ordered, That the Association, directly or indirectly, or through any corporate or other device, shall cease and desist from:

A. Adopting, participating in, maintaining or enforcing any by-law, code of ethics provision, rule, regulation, agreement, understanding, plan or program, either directly or indirectly, that restricts or attempts to restrict any member's ability to offer price discounts, or otherwise restricts or attempts to restrict the ability of any member to reach independent decisions concerning prices for the sale of customs brokerage services.

B. Affiliating or establishing a formal relationship, as set forth in the by-laws of the Association, or continuing an affiliation or formal relationship with any organization that has customs brokers in its membership that violates Section II.A of this order.

III.

It is further ordered, That the Association shall:

A. Within thirty (30) days after the date of service of this order send to each of its members a copy of the complaint and decision and order in this matter, with the letter attached to this order.

B. Publish this order within 30 days after the date of service on respondent in 10-point boldface (or larger) type under the heading "Federal Trade Commission Order" in the Association's "Bulletin" or similar newsletter read by the Association's general membership.

C. Provide written notice of the name and address of any association of customs brokers that is disaffiliated or is refused affiliation pursuant to Section II.B of this order. The notice shall reference this matter by name of case and docket number and shall be sent to the Assistant Director for Compliance, Bureau of Competition, Federal Trade Commission and the Regional Director, Seattle Regional Office, Federal Trade Commission.

D. For three (3) years from the date of service of this order, provide to each new Association member or affiliate a copy of the complaint and decision and order in this matter. The complaint and decision and order shall be provided not later than thirty (30) days after the new member is accepted into membership or the organization is accepted as an affiliate.

IV.

It is further ordered, That the Association shall, within sixty (60) days after service 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.

V.

It is further ordered, That the Association shall notify the Commission at least thirty (30) days prior to any proposed change in the Association, including, but not limited to, disbanding, dissolution, assignment, the formation of a successor or substitute entity, or any other change in the Association that may affect compliance obligations arising out of this order.

ATTACHMENT

[Association letterhead]

Dear Member:

This letter is to notify you that, without admitting liability for any wrongdoing, we have voluntarily entered into an agreement with the Federal Trade Commission that resulted in the entry of a consent order on [enter date of order]. The order requires that this association not engage in certain practices. Copies of the complaint and order are included.

In accordance with the terms of the order, you are hereby notified that, among other requirements of the order, the National Customs Brokers & Forwarders Association of America, Inc. may not adopt or maintain any provision in its bylaws, codes of ethics or elsewhere, or enter into any agreement or understanding, that discourages the discounting of prices or that has the purpose or effect of stabilizing or fixing prices or other terms or conditions for the sale of customs brokerage services.

Moreover, violations of the order by affiliate associations of the National Customs Brokers & Forwarders Association of America, Inc. will result in the Association's disaffiliation of those local associations.

As you may be aware, the code of ethics provisions in the by-laws of this association recently have been altered. The change deletes the requirement in the code of ethics that fees charged by members shall assure a fair return for the services rendered. All of the criteria to be considered in setting fees were also deleted from the code. You are not required to consider these code provisions in setting fees. Any fees you have set that are based in whole or in part upon the deleted code of ethics provisions should be re-determined by you independently of the former code of ethics provisions.

This letter summarizes the important parts of the order, but you should read it carefully in its entirety.

Sincerely,

John Hammon
Executive Vice President

IN THE MATTER OF
DR. BARRY BRICKLIN

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5
AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9194. Complaint, June 24, 1985—Decision, Sept. 20, 1985

This consent order requires Dr. Barry Bricklin, among other things, to cease representing that he used his expertise as a psychologist and expert in the psychological aspects of dieting to test and evaluate weight control programs and products in the same way similarly qualified experts normally would. Also, respondent is prohibited from representing that consumers can eat as much food as they want and still lose weight without also giving specified disclosures about weight reduction; and from making claims about "usual" or "average" weight loss, or the efficacy or performance of weight reduction or weight control products or programs without competent and reliable surveys or other scientific evidence that substantiates the representation. Further, respondent is required to maintain records of substantiation for three years; file compliance reports with the Commission at specified times; and notify the Commission of the discontinuance of his present employment and any future employment in similar areas.

Appearances

For the Commission: *Michael Dershowitz and Sandra N. Hammer.*

For the respondents: *Pro se.*

COMPLAINT*

The Federal Trade Commission, having reason to believe that Buckingham Productions, Inc., trading and doing business as Rotation Diet Center; Furlong-Elliot Corp.; Freedom Center, Inc.; Plaza Business Services, Inc.; N.F. Rotation, Inc.; Rotation-Freedom Diet, Inc., corporations; Howard Elliot; Judy Ruthrauff; Dorothy Woolslager; and Benito Ventresca, individually and as officers of said corporations; Gail Elliot, individually ("respondents"); and Dr. Barry Bricklin, individually, ("expert respondent") have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1.

(a) Buckingham Productions, Inc., trading and doing business as

* The Decision and Order following this Complaint applies to respondent Dr. Barry Bricklin only. The Complaint against the other named respondents remains in litigation.