

IN THE MATTER OF

STRUCTURAL ENGINEERS ASSOCIATION OF
NORTHERN CALIFORNIA, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3268. Complaint, Nov. 2, 1989—Decision, Nov. 2, 1989*

This consent order prohibits, among other things, an association of approximately 1,000 engineers from restricting truthful advertising, price competition, and the offering of services to clients of other engineers.

Appearances

For the Commission: *Ralph E. Stone* and *Jeffrey A. Klurfeld*.

For the respondent: *Paul Fartessa*, (*President*), San Francisco, Ca.

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 Structural Engineers Association of Northern California, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated and is violating Section 5 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, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Structural Engineers Association of Northern California, Inc. ("SEAONC"), is a corporation formed pursuant to the laws of the State of California. SEAONC is a voluntary professional association of approximately 1,000 structural engineers who comprise over 70% of the Northern California licensed structural engineers and civil engineers who perform structural engineering. Its principal business office is at 217 Second Street, San Francisco, California.

PAR. 2. SEAONC's members are generally engaged in the business of providing structural engineering services for a fee. Except to the

extent that competition has been restrained as alleged herein, SEAONC's members have been and are now in competition among themselves and with other structural engineers.

PAR. 3. SEAONC engages in substantial activities that further its members' pecuniary interests. By virtue of its purposes and activities, SEAONC is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 4. The acts and practices of SEAONC, including the acts and practices alleged herein, have been in, or are affecting, commerce, within the meaning of the Federal Trade Commission Act.

PAR. 5. SEAONC has acted as a combination of its members or has conspired with at least some of its members to hinder, frustrate, or restrict competition among structural engineers in Northern California, by restricting or attempting to restrict its members from:

- A. Soliciting business by truthful advertising;
- B. Engaging in price competition; and
- C. Providing services to persons or entities that are the clients of other engineers.

PAR. 6. In furtherance of this combination or conspiracy, SEAONC has enacted and published Sections 2, 20, and 25 of its canons of ethics that:

- A. Prohibit its members from advertising their work or merit in a self-laudatory manner;
- B. Require that its members when engaging in engineering work uphold the principle of appropriate and adequate compensation for engineers and for employees in subordinate capacities; and
- C. Prohibit its members from reviewing the work performed by another engineer for the same client except with reason to believe that the other engineer's contract for services is not in contention.

PAR. 7. The purposes or effects of the combination or conspiracy and acts or practices of SEAONC as described above have been and are to restrain competition unreasonably and to injure consumers in one or more of the following ways, among others:

- A. By depriving consumers of truthful information pertinent to the selection of a structural engineer;
- B. By restraining competition with respect to the prices charged for structural engineering services;
- C. By preventing consumers from obtaining an expert second opinion of a structural engineer's work; and

D. By hindering competition among structural engineers in the provision of structural engineering services.

PAR. 8. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. Such combination or conspiracy, or the effects thereof, is continuing and will continue in the absence of the relief herein requested.

Chairman Steiger not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Structural Engineers Association of Northern California, Inc. ("SEAONC" or "respondent"), and the respondent having been furnished thereafter with a copy of a draft of complaint which the San Francisco 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; and

The respondent 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 had 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. SEAONC is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. with its

principal business address located at 217 Second Street, San Francisco, California.

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.

It is ordered, That, for purposes of this order, "SEAONC" means the Structural Engineers Association of Northern California, Inc., and its board of directors, committees, officers, delegates, representatives, agents, employees, successors, and assigns.

II.

It is further ordered, That SEAONC shall cease and desist, directly or through any corporate or other device, in connection with its activities, in or affecting commerce, as 'commerce' is defined in the Federal Trade Commission Act, from:

A. Restricting, regulating, impeding, declaring unethical, interfering with or advising against truthful, non-deceptive advertising;

B. Restricting, regulating, impeding, declaring unethical, interfering with or advising about the consideration offered or provided to any engineer in return for the sale or purchase of his or her professional services; and

C. Restricting, regulating, impeding, declaring unethical, interfering with or advising against any engineer providing or offering to provide services to persons or entities that are the clients of other engineers.

Provided, however, that nothing contained in this order shall prohibit SEAONC from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to: (1) representations, including unsubstantiated representations, that SEAONC reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act; and (2) the notice to be provided to an engineer prior to any review of his work by another engineer.

III.

It is further ordered, That SEAONC shall:

A. Within thirty (30) days after this order becomes final, remove from its canons of ethics, and from any other existing policy statement or guideline of SEAONC, any provision, interpretation or policy statement which is inconsistent with the provisions of Part II of this order;

B. Within sixty (60) days after this order becomes final, publish in the *Structural Engineers Association of Northern California News* or in any successor publication the revised versions of such documents, statements, or guidelines, and a copy of this order;

C. Within sixty (60) days after this order becomes final, file a verified report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this order;

D. For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which SEAONC has complied, and is complying with this order; and

E. Notify the Commission at least thirty (30) days prior to any proposed change in SEAONC, such as dissolution, reorganization, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

Chairman Steiger not participating.

IN THE MATTER OF

LEE M. MABEE, JR., M.D.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9214. Complaint, July 12, 1988—Decision, Nov. 15, 1989*

This consent order prohibits, among other things, a Sioux Falls, S.D. physician from conspiring to refuse to deal with the Medical School's residency program or physicians affiliated with the school, or to interfere with the operation of the Medical School's OB/GYN department or faculty, or from preventing or restricting competition in the provision of OB/GYN care in the Sioux Falls, S.D., area.

Appearances

For the Commission: *Michael E. Antalics* and *Michael McNeely*.

For the respondent: *Robert L. Mabee*, Sioux Falls, S.D. and *John A. Cotler, Larkin, Hoffman, Daly & Lindgren, LTD*, Minneapolis, Mn.

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 respondent has violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, 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 as follows:

PARAGRAPH 1. The address of a respondent Lee M. Mabee, Jr., M.D., is 1201 South Euclid Avenue, Suite 306, Sioux Falls, South Dakota.

PAR. 2. Respondent is a physician licensed by the State of South Dakota who specializes in the practice of obstetrics and gynecology, and who practices medicine in Sioux Falls, South Dakota (hereinafter "Sioux Falls").

PAR. 3. Fees and other payments for respondent's medical services are paid, at times, by patients or third-party payors that are located in states other than South Dakota. Respondent purchases and uses drugs, supplies and equipment manufactured outside of South Dakota,