

IN THE MATTER OF

NEW JERSEY MOVERS TARIFF BUREAU, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3282. Complaint, Jan. 19, 1990—Decision, Jan. 19, 1990*

This consent order prohibits, among other things, the Highland Park, N.J. based movers from entering into or maintaining any agreement to fix, maintain, or interfere with the prices charged by movers. The order also prohibits respondents from discussing or formulating agreements among movers concerning intrastate prices to be charged for the transportation of property or related services.

*Appearances*For the Commission: *Eugene Lipkowitz and Michael J. Bloom.*For the respondents: *Thomas F.X. Foley, Holmdel, N.J.*

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 New Jersey Movers Tariff Bureau, Inc., a corporation, and the New Jersey Warehousemen and Movers Association, a corporation (hereinafter sometimes referred to as "Tariff Bureau" and "Movers Association," respectively, or as "proposed respondents," collectively), have violated and are violating Section 5 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 as follows:

PARAGRAPH 1. Respondent New Jersey Movers Tariff Bureau, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey. Respondent New Jersey Warehousemen and Movers Association is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey. Both respondents have their offices and principal places of business located at 24 North Third Avenue, Highland Park, New Jersey.

PAR. 2. Except to the extent that competition has been restrained as alleged herein, respondents' members have been and are now in competition among themselves and with other public movers.

PAR. 3. Respondents are and have been, at all times relevant to this complaint, corporations organized for the profit of their members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 4. Respondents share common officers and directors, including a common President. The Tariff Bureau's General Manager serves as Executive Director of the Movers Association. Individuals serving on the Tariff Bureau's Board of Directors are also officers of the Movers Association. Respondents' memberships are also largely overlapping; in 1987-1988, each consisted of approximately 300 public movers engaged in the intrastate transportation of property in New Jersey. The members receive substantial compensation for such intrastate moves.

PAR. 5. Respondents maintain and have maintained a substantial course of business, including the acts and practices as hereinafter set forth, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Prior to 1981, New Jersey's public moving industry was regulated by the Board of Public Utilities, which was empowered, pursuant to the 1968 Public Movers Act, to "fix just and reasonable" rates. During much of the 1970's, respondent Tariff Bureau filed, on behalf of its members, a joint and common tariff that was subject to the approval of the Board of Public Utilities. In 1978, however, after the Board determined that the Tariff Bureau had acted anticompetitively and injured consumers, public movers who had been members of the Tariff Bureau began to file their rates individually instead of through a joint and common tariff. In 1981, the State of New Jersey decided to abandon rate regulation in favor of a regulatory system that provides greater freedom for public movers and consumers. The 1981 New Jersey Public Movers and Warehousemen Licensing Act replaced the 1968 Public Movers Act. The 1981 Act provides that each mover must file tariffs semiannually with the Director of the New Jersey Division of Consumer Affairs, but allows each mover to choose the rates it will charge for its moving services subject to a requirement that the rates be in accord with its filed tariff.

PAR. 7. In 1982, respondent Movers Association corresponded with its members and members of the Tariff Bureau, inviting them to stop

filing their tariffs individually and to participate in the filing of a new joint tariff. The Movers Association then re-activated the Tariff Bureau to design and implement the joint tariff. Acting in conjunction with the Movers Association through, among other things, joint meetings and the involvement of common employees and officers, the Tariff Bureau designed and implemented the joint tariff in a manner that had the natural tendency and effect of raising the prices of moving services. Since the inception of this effort to create a joint tariff, respondents have acted as a combination of their members or in a conspiracy with at least some of their members, and with each other, to hinder, restrain, restrict, suppress, or eliminate price and service competition among public movers in the intrastate transportation of household goods, office goods, and special commodities.

PAR. 8. In furtherance of said combination or conspiracy, respondents and their members have engaged in the following acts, policies, and practices, among others, to coordinate and raise prices for public moving services in New Jersey:

(A) Beginning in the fall of 1982, respondents surveyed their membership concerning the rates that members wanted to have published in the new joint tariff. Respondents then rejected the price preferences of their members reflected in the survey results and created instead a joint tariff containing menus of rates in tabular form. For each of several categories of moving services, members were then invited to and did select one of the tariff rate tables created by respondents.

(B) The joint tariff created by respondents to some extent allowed movers to "take exception" to the tariff tables and to select rates and terms of service that were not reflected in the tables. In general, however, respondents designed and operated the tariff, including the exception process, in a way that discouraged and suppressed movers' taking of exceptions to implement their unilateral pricing decisions. Thus, for example, some movers complained to the Tariff Bureau that the tariff tables did not contain their desired rates, but nevertheless declined to use an exception in order to obtain their desired rates.

(C) In the fall of 1987, the Tariff Bureau modified several of the tariff tables. In general, the modifications eliminated lower rates and added higher rates. The Tariff Bureau eliminated tables containing lower rates from the fall 1987 tariff even where the lower rates had been, during the most recent tariff period and before, movers' most popular choice of rates for their moving services.

(D) With respect to the fall 1987 tariff and subsequent tariffs embodying the new and higher rate tables, movers' rate selections revealed a marked price increase for several categories of moving services. Movers who had previously selected lower rates that were now no longer presented as rate options in the tariff generally did not seek to use the exception process to continue charging lower rates. Rather, they generally selected the tariff tables containing higher rates—in some instances rates that were several rate levels higher than those they had selected prior to the fall of 1987. In addition, the Tariff Bureau often ignored movers' requests for the same rates that they had selected in the previous tariff, and assigned them to the new higher rate tables.

PAR. 9. The aforesaid acts and practices of respondents, their members and others have been and are now having the effects, among others, of:

(A) Raising, fixing, stabilizing, or otherwise interfering or tampering with the prices of intrastate movers of household goods, office goods, and special commodities;

(B) Restricting or frustrating price competition in the intrastate transportation of household goods, office goods, and special commodities; and

(C) Depriving consumers of the benefits of price and service competition.

PAR. 10. The aforesaid acts and practices constitute unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the New Jersey Movers Tariff Bureau, Inc., a corporation, and the New Jersey Warehousemen and Movers Association, a corporation (hereinafter sometimes referred to as "Tariff Bureau" or "Movers Association," respectively, or as "respondents," collectively), and respondents named in the caption hereof having been furnished thereafter with a copy of a draft of complaint which the New York 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 attorney, 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, making the following jurisdictional findings, and enters the following order:

(1) Respondent New Jersey Movers Tariff Bureau, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey. Respondent New Jersey Warehousemen and Movers Association is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey. Both respondents have their offices and principal places of business located at 24 North Third Avenue, Highland Park, New Jersey.

(2) 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

I.

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

(A) "*Household goods*" means personal effects, fixtures, equipment, stock and supplies, or other property usually used in or as part of the stock of a dwelling.

(B) "*Intrastate transportation*" or "*intrastate moves*" means the pickup or receipt, transportation and delivery of property for compensation within the State of New Jersey by a mover authorized by state law to engage therein.

(C) "*Member*" means any mover or other person which pays dues or belongs to the New Jersey Movers Tariff Bureau, Inc. or to the New Jersey Warehousemen and Movers Association, or to any successor corporation.

(D) "*Office goods*" means personal effects, fixtures, furniture, equipment, stock and supplies, or other property usually used in or as part of the stock of any office, or commercial, institutional, professional, or other type of establishment.

(E) "*Person*" means any individual, copartnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined.

(F) "*Mover*" means any person engaged in the transportation of household goods, office goods, or special commodities by motor vehicle for compensation in intrastate commerce between points in the State of New Jersey.

(G) "*Special commodities*" means uncrated or unboxed works of art, fixtures, appliances, business machines, electronic equipment, displays, exhibits, home, office, store, theatrical or show equipment, musical instruments, or other articles.

(H) "*Tariff Bureau*" means the New Jersey Movers Tariff Bureau, Inc.

(I) "*Movers Association*" means the New Jersey Warehousemen and Movers Association.

(J) "*Tariff*" means a publication stating the prices charged by movers for services rendered in the transportation of household goods, office goods, and special commodities, within the State of New Jersey.

II.

It is ordered, That respondents Tariff Bureau and Movers Association, their successors and assigns, and their directors, officers, committees, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the transportation of property, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, jointly and individually, do forthwith cease and desist from:

A. Entering into, adhering to, or maintaining, directly or indirectly, any contract, agreement, understanding, plan, program, combination, or conspiracy to construct, fix, stabilize, raise, maintain, or otherwise interfere or tamper with the prices charged by movers;

B. Suggesting, urging, encouraging or persuading in any way movers to charge, file, or adhere to any existing or proposed tariff provision, or otherwise to charge or refrain from charging any particular price for any services rendered or goods or equipment provided;

C. Inviting, coordinating, or providing a forum for any discussion or agreement between or among movers concerning intrastate prices charged or proposed to be charged by movers for the intrastate transportation of property or related services, goods, or equipment; and

D. Formulating, compiling, filing, or maintaining any tariff derived in whole or in part from price information that respondents or others have collected on forms that contain pre-selected prices or that use or refer to tables of prices.

Provided, however, that nothing contained in subpart II. D. of this order shall prevent respondents from collecting and publishing individual tariffs or tariff information that movers have communicated to respondents on forms, other than forms devised, established or circulated to movers by respondents that contain pre-selected prices or that use or refer to tables of prices, in which each mover inserts or sets forth prices that are unilaterally determined by the mover, for the purpose of facilitating each mover's satisfaction of the tariff filing requirements of the State of New Jersey. And *provided further,* that, after a period of one year from the effective date of this order, nothing contained in this subpart shall prevent respondents from presenting to state regulatory authorities tariff filings that contain a tabularized or consolidated display of unilaterally determined mover prices.

III.

It is further ordered, That respondents Tariff Bureau and Movers Association each shall:

(A) At the first opportunity after this order becomes final, but in no case later than six (6) months thereafter, cancel all tariffs and any supplements thereto on file with the Director of the Division of

Consumer Affairs in the New Jersey Department of Law and Public Safety that establish prices for transportation of property or related services, goods, or equipment by movers in New Jersey and take such action as may be necessary to effectuate cancellation and withdrawal.

(B) Within thirty (30) days after this order becomes final, distribute a copy of the order to each of their members.

(C) Within thirty (30) days after this order becomes final, amend their by-laws, rules and regulations, and other of their materials to conform to the provisions of this order and provide each of their members with a copy of the amended by-laws, rules and regulations, and other materials.

(D) Within thirty (30) days after this order becomes final, amend their by-laws to require each of their members to observe the substantive provisions of the order as a condition of their membership.

(E) At the first opportunity after this order becomes final, but in no case later than six (6) months thereafter, terminate all previously executed powers of attorney and tariff service agreements between the Tariff Bureau and any mover utilizing its services that authorizes the publication and/or filing of intrastate tariffs within the State of New Jersey; *provided, however*, that nothing contained in this subpart shall prevent any new executions of such agreements or powers of attorney.

(F) For a period of three (3) years after this order becomes final, furnish a copy of the order to each of their new members within thirty (30) days of each new member's admission.

IV.

It is further ordered, That respondents Tariff Bureau and Movers Association each shall:

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

(B) In addition to the report required by Paragraph IV(A), annually for a period of three (3) years on or before the anniversary date on which this order becomes final, and at such other times as the Federal Trade Commission or its staff may by written notice to respondent require, file a verified written report with the Federal Trade

Commission setting forth in detail the manner and form in which the respondent has complied and is complying with this order.

(C) 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 the respondent has complied and is complying with this order.

(D) Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in 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 respondent that may affect compliance obligations arising out of this order.

IN THE MATTER OF
ROBERT G. KOSKI, D.O.

Docket 9225. Initial Decision, January 25, 1990*

INITIAL DECISION BY

LEWIS F. PARKER, ADMINISTRATIVE LAW JUDGE

JANUARY 25, 1990

INITIAL DECISION ON RESPONDENT'S APPLICATION FOR AWARD
OF FEES AND EXPENSES PURSUANT TO THE EQUAL ACCESS
TO JUSTICE ACT¹

I. INTRODUCTION

On February 13, 1989, the Commission issued its complaint in this proceeding, charging that the respondent, Robert G. Koski, D.O., had violated Section 5 of the Federal Trade Commission Act, 15 U.S.C.A. 45, by conspiring with other health care providers in the Dickinson County, Michigan area to coerce, intimidate, threaten to boycott, or boycott Marquette General Hospital and its physicians to prevent its proposed new medical office from offering services to consumers in competition with the providers (Cplt., ¶10).

On September 13, 1989, complaint counsel moved to dismiss the complaint against Dr. Koski because post-complaint discovery revealed that he had left a meeting of his alleged co-conspirators before a boycott vote was taken. Since the principal allegation of the complaint connecting Dr. Koski to the alleged conspiracy was his participation in this meeting, complaint counsel concluded that they had no evidence that he joined the alleged conspiracy at this meeting, and that the remaining evidence in their possession was not sufficient to show that Dr. Koski joined the conspiracy at any other time.

On October 10, 1989, the Commission dismissed the complaint. Thereafter, Dr. Koski filed an application for the award of fees and expenses under the EAJA. Complaint counsel filed their response to

*Dismissal Order issued October 10, 1989 (112 FTC 500).

¹Section 3.83(g) of the Rules of Practice requires the entry of an initial decision on an application for award of fees and expenses filed pursuant to the Equal Access to Justice Act, 5 U.S.C.A. 504 ("EAJA").