

IN THE MATTER OF
SENTINEL GROUP, INC.

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

Docket C-3348. Complaint, Oct. 23, 1991—Decision, Oct. 23, 1991

This consent order requires, among other things, a Stamford, Connecticut, based corporation to divest, to Commission-approved acquirers, one of its funeral homes in each of three separate markets and to obtain Commission approval, for a period of ten years, before acquiring any additional funeral homes in these and three other markets.

Appearances

For the Commission: *Mark Taylor.*

For the respondent: *Sutton Keany, Winthrop, Stimson, Putnam, & Roberts, New York, N.Y.*

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 ("Commission"), having reason to believe that Sentinel Group, Inc., a corporation subject to the jurisdiction of the Commission, has acquired the assets of certain corporations subject to the jurisdiction of the Commission, in violation of the provisions 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 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:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

a. "*Sentinel*" refers to the respondent Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, succes-

sors and assigns, and their respective directors, officers, employees, agents, and representatives.

b. "*Funeral Services*" means a group of services that includes at least: removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

II. THE RESPONDENT

2. Sentinel was incorporated in 1985, and exists under the laws of the State of Delaware, with its headquarters located in Stamford, Connecticut, at 1177 Summer Street.

3. Sentinel is, and at all times relevant herein has been engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose businesses are in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITIONS

4. Since 1985, Sentinel has acquired at least 70 funeral service establishments located primarily in the Southeast, Southwest, and Midwest.

Count I

5. On May 6, 1988, Sentinel acquired Little & Davenport Funeral Home, Inc., in Gainesville, Hall County, Georgia.

6. On December 1, 1988, Sentinel acquired Ward's Funeral Home, Inc., also located in Gainesville, Hall County, Georgia.

Count II

7. On April 13, 1988, Sentinel acquired Miles-Odum Funeral Home, Inc., in Waycross, Ware County, Georgia.

8. On September 30, 1988, Sentinel acquired Mincy-Fulford Funeral Home, Inc., also located in Waycross, Ware County, Georgia.

Count III

9. On July 17, 1986, Sentinel acquired the J.D. Hill Chapel in Summerville, Chattooga County, Georgia.

10. On December 6, 1988, Sentinel acquired the Erwin-Petitt

Funeral Home, Inc., also located in Summerville, Chattooga County, Georgia.

Count IV

11. On September 2, 1987, Sentinel acquired Fox & Weeks Funeral Directors, Inc., a Savannah, Chatham County, Georgia funeral establishment operating from 2 locations.

12. On September 3, 1987, Sentinel acquired Saxon-Massey Funeral Services, Inc., also located in Chatham County, Georgia.

Count V

13. On September 29, 1988, Sentinel acquired Jennings Funeral Home, Inc., in Rome, Floyd County, Georgia. Jennings operated from 2 locations and was the largest funeral establishment in its geographic area.

14. On December 7, 1988, Sentinel purchased Daniels Funeral Home, Inc., also located in Rome, Floyd County, Georgia.

15. On December 29, 1988, Sentinel purchased Talley Brothers Funeral Home, also located in Rome, Floyd County, Georgia.

Count VI

16. On December 15, 1987, Sentinel acquired the 3 establishment Edward-Fentress Funeral Homes, all of which are located in the Ft. Smith, Arkansas area.

17. On December 31, 1987, Sentinel acquired Fingerhut Funeral Home located in east Ft. Smith.

IV. TRADE AND COMMERCE

18. A relevant line of commerce in which to analyze Sentinel's acquisitions of the funeral service companies listed in Counts I-VI is the provision of funeral services.

19. The relevant sections of the country in which to analyze Sentinel's acquisitions are the following:

a. For Count I the relevant geographic market is Gainesville and its immediate environs.

b. For Count II the relevant geographic market is Waycross and its immediate environs.

c. For Count III the relevant geographic market is Summerville and its immediate environs, whether or not the entirety of Chattooga County is included.

d. For Count IV the relevant geographic market is Savannah and its immediate environs, whether or not the entirety of Chatham County is included.

e. For Count V the relevant geographic market is Rome and its immediate environs, whether or not the entirety of Floyd County is included.

f. For Count VI the relevant geographic market is Ft. Smith and its immediate environs.

20. In the particular markets where the acquisitions in question have taken place, the funeral service industry is extremely concentrated; this is true whether measured by the Herfindahl-Hirschmann Index or by two-firm or four-firm concentration ratios.

21. Entry into the relevant markets outlined in paragraph 19 is slow and difficult.

22. In each of the relevant markets, the second and third acquisitions described in Counts I through VI were acquisitions of actual competitors of the establishments that Sentinel had previously acquired in each market.

V. EFFECTS OF THE ACQUISITIONS

23. The effect of the aforesaid acquisitions may be to substantially lessen competition in each of the relevant markets 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, in the following ways, among others:

a. By eliminating actual competition between Sentinel and others in the relevant markets; and

b. By significantly enhancing the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets.

Commissioner Yao not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain funeral home acquisitions of Sentinel Group, Inc., a corporation, and Sentinel, having been furnished with a copy of a draft of complaint that the Atlanta Regional Office proposed to present to the Commission for its consideration, and that, if issued by the Commis-

sion, would charge Sentinel Group, Inc., with violations of the Clayton Act and Federal Trade Commission Act; and

Respondent Sentinel, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 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 had violated the said Acts, 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 (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 Sentinel is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1177 Summer Street, in the City of Stamford, State of Connecticut.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER

I.

As used in this order, the following definitions shall apply:

(a) "*Sentinel*" means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel successors and assigns and their respective directors, officers, employees, agents and representatives.

(b) "*Funeral home*" means a facility devoted to the care or preparation for burial or transportation of deceased human bodies, and a facility in which funeral services may be conducted.

(c) "*Properties to be Divested*" means the funeral home properties described in paragraph II.

(d) "*Commission*" means the Federal Trade Commission.

II.

It is ordered, That, within twelve (12) months after the date this order becomes final, Sentinel shall divest, absolutely and in good faith, the following funeral homes: Mincy-Fulford Funeral Home in Waycross, Georgia; Ward's Funeral Home in Gainesville, Georgia; and Erwin-Pettit Funeral Home in Summerville, Georgia. These funeral homes are hereinafter referred to as the "*Properties to be Divested*". The Properties to be Divested are to be divested only to an acquirer or acquirers, and only in such manner, that receive the prior approval of the Commission. The purpose of the divestiture required by this order is to insure the continuation of the funeral homes as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

III.

It is further ordered, That, pending divestiture, Sentinel shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal or impairment of any assets or business of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

IV.

It is further ordered, That the Properties to be Divested shall not be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of Sentinel.

V.

It is further ordered, That:

(A) If Sentinel has not divested the Properties to be Divested as required by paragraph II within twelve (12) months after the date this

order becomes final, Sentinel shall consent to the appointment of a trustee by the Commission to divest the remaining Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45 (1), or any other statute enforced by the Commission, Sentinel shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Sentinel to comply with this order.

(B) If a trustee is appointed by the Commission or a court pursuant to paragraph V.(A) of this order, Sentinel shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Sentinel, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the court for a court-appointed trustee; *provided, however*, that the Commission or court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the remaining Properties to be Divested, or any other relevant information, as the trustee may reasonably request. Sentinel shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Sentinel shall take no action to interfere with or impede the trustee's accomplish-

ment of the divestitures. Any delays in divestiture caused by Sentinel shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Sentinel's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II of the order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out in paragraph II; *provided, however*, that if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Sentinel from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Sentinel, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Sentinel, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Sentinel and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the remaining Properties to be Divested.

7. Except in cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondent for any action taken or not taken in performance of the trusteeship. Sentinel shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting in any liability, except to the extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Sentinel shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee causes to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph V.(A) of this order.

10. The Commission and, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to Sentinel and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

VI.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Sentinel has fully complied with paragraph II of this order, Sentinel shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Sentinel shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this order, including the identity of all parties contacted. Sentinel also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestiture.

VII.

It is further ordered, That, for a period of ten (10) years after the date this order becomes final, Sentinel shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission, any funeral home

located within the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Waycross, Georgia; (b) Summer-ville, Georgia; (c) Gainesville, Georgia; (d) Rome, Georgia; (e) Savannah, Georgia; and (f) Ft. Smith, Arkansas; *provided, however*, that this prohibition shall not apply to the construction of new facilities by Sentinel.

VIII.

It is further ordered, That, one year after the date this order becomes final and annually thereafter for nine (9) years, Sentinel shall file with the Commission a verified written report of its compliance with paragraph VII of this order. Such reports shall include a listing of all acquisitions made by Sentinel during the 12 months preceding the date of the report.

IX.

It is further ordered, That for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to Sentinel made to its principal office, Sentinel shall permit any duly authorized representative or representatives of the Commission:

(A) Access during the office hours of Sentinel, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Sentinel relating to compliance with this order;

(B) Upon five (5) days' notice to Sentinel and without restraint or interference from them, to interview officers or employees of Sentinel, who may have counsel present, regarding any such matters.

X.

It is further ordered, That Sentinel shall notify the Commission at least thirty (30) days prior to any proposed change in its organization such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this order.

Commissioner Yao not participating.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I concur in part with and dissent in part from the decision of the Commission majority to issue the consent order against Sentinel Group, Inc. The order remedies the potential anticompetitive effects of Sentinel's acquisitions of funeral homes in some, but not all, of the affected communities. Based on the information available concerning the level of concentration, conditions of entry, and other circumstances relevant to the state of competition in the funeral services market, the Commission should require additional divestitures in order to restore competition in more localities affected by Sentinel's acquisitions.

IN THE MATTER OF

ALPHA ACQUISITION CORPORATION, ET AL.

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

Docket C-3349. Complaint, Oct. 29, 1991—Decision, Oct. 29, 1991

This consent order requires, among other things, RWE to grant the required technology license used in producing high-purity alumina, and establish other required agreements, subject to prior Commission approval, within six months of the order, or else consent to the appointment of a trustee to effectuate these requirements. In addition, for ten years, RWE is required to obtain prior FTC approval before acquiring any entity that manufactures, distributes, or sells high-purity alumina, with sales in the U.S. of 125,000 pounds or more in any six-month period during the 36 months before the application.

Appearances

For the Commission: *Robert S. Tovsky* and *Marc G. Schildkraut*.

For the respondents: *Wayne D. Collins*, *Shearman & Sterling*, New York, N.Y. *David M. Foster* and *Dan Wellington*, *Fulbright & Jaworski*, Washington, D.C. and *Allen F. Maulsby*, *Cravath, Swaine & Moore*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Alpha Acquisition Corporation, a corporation, RWE-DEA Aktiengesellschaft fur Mineraloel and Chemie, a corporation, and RWE Aktiengesellschaft, a corporation, (collectively "RWE"), have entered into an agreement with Vista Chemical Company ("Vista"), a corporation, that violates said Acts, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

DEFINITIONS

PARAGRAPH 1. For purposes of this complaint, "*high-purity alcohol*