

IN THE MATTER OF

DEBES CORPORATION, ET AL.

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

Docket C-3390. Complaint, August 4, 1992--Decision, August 4, 1992

This consent order prohibits, among other things, six Rockford, Illinois-area nursing homes and two corporations that own and operate nursing homes from entering into agreements to boycott temporary nurses registries or to fix, stabilize, or otherwise interfere or tamper with the prices charged by such registries. In addition, the order prohibits, for ten years, any agreement with any other respondent to purchase or use the services of any particular temporary nurses registry, and for five years prohibits each respondent from communicating to any other respondent any information concerning the use of temporary nurses registry services for any Rockford-area nursing home.

Appearances

For the Commission: *C. Steven Baker and Timothy T. Hughes.*

For the respondents: *Douglas R. Carlson, Wildman, Harold, Allen & Dixon, Chicago, IL. Patrick M. Sheller, McKenna & Cuneo, Washington, D.C. Andrew B. Kagan, Lawrence Y. Schwartz Ltd, Lincolnwood, IL. Robert J. Oliver, Connolly, Oliver, Close & Worden, Rockford, IL. and John P. Ryan, McBride, Baker & Coles, Chicago, IL.*

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 Debes Corporation, Alma Nelson Manor, Inc., Park Strathmoor Corporation, Beverly Enterprises, Inc., and its subsidiary, Beverly Enterprises - Illinois, Inc., Fairview Plaza Limited Partnership, a limited partnership, doing business as Fairview Plaza Nursing Home, The Neighbors, Inc., and Yorkdale Health Center, Inc., hereinafter sometimes collectively

referred to as "respondents," have violated the provisions of 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 this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Debes Corporation ("Debes") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 6122 Mulford Village Drive, Rockford, Illinois. Debes owns the respondent Park Strathmoor Corporation ("Park Strathmoor") and operates and manages the nursing home facility owned by respondent Alma Nelson Manor, Inc. ("Alma Nelson"). Debes knows of, approves or controls the acts and practices of both Park Strathmoor and the nursing home facility owned by Alma Nelson.

PAR. 2. Respondent Alma Nelson is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 550 S. Mulford Road, Rockford, Illinois, at which site Alma Nelson owns a nursing home facility which is operated and managed by Debes.

PAR. 3. Respondent Park Strathmoor is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 5668 Strathmoor, Rockford, Illinois, at which site Park Strathmoor owns a nursing home facility which is operated by Debes.

PAR. 4. Respondent Beverly Enterprises, Inc. ("Beverly") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 155 Central Shopping Center, Ft. Smith, Arkansas. Beverly owns and controls Beverly Enterprises - Illinois, Inc. ("Beverly-Illinois").

PAR. 5. Respondent Beverly-Illinois is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office located at 155 Central Shopping Center, Fort Smith, Arkansas. Until December 8, 1988 Beverly-Illinois owned and operated the nursing home facility known as Roosevelt Square which is located at 3520 School Street, Rockford, Illinois.

PAR. 6. Respondent, Fairview Plaza Limited Partnership, ("Fairview") doing business as Fairview Plaza Nursing Home, is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal place of business located at 321 Arnold, Rockford, Illinois, and its principal office located at 6600 N. Lincoln Ave., Suite 300, Lincolnwood, Illinois.

PAR. 7. Respondent The Neighbors, Inc. ("Neighbors") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 811 W. Second, P.O. Box 585, Byron, Illinois, at which site it owns and operates a nursing home facility.

PAR. 8. Respondent Yorkdale Health Center, Inc. ("Yorkdale") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 2313 N. Rockton Ave., Rockford, Illinois, at which site it owns and operates a nursing home facility.

PAR. 9. Beverly, through its wholly owned subsidiary, Beverly-Illinois, and all other respondents are, or have been, engaged in the business of owning or operating nursing homes, also known as long-term health care facilities, within a thirty mile radius of the city of Rockford, Illinois ("the Rockford area"). Except to the extent that competition has been restrained as alleged herein, the respondents have been and, with the exception of Beverly and Beverly-Illinois, are now in competition among themselves and with other providers of nursing home services.

PAR. 10. Respondents' general businesses or activities, and the acts and practices described below, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 45.

PAR. 11. Nurses registries, sometimes referred to as "temporary nurses registries" or "nursing pools" supply nursing personnel such as R.N.s (Registered Nurses), L.P.N.s (Licensed Practical Nurses), and C.N.A.s (Certified Nursing Assistants) on a temporary basis to nursing homes. Absent restraints on competition, nurses registries compete among themselves to provide temporary nursing services at the price and quality nursing homes desire. Competition among

nursing homes for temporary nursing services ensures an adequate supply of quality nurses.

PAR. 12. In October 1988, one of the nurses registries serving the Rockford area, the Alpha Christian Registry ("Alpha Christian"), announced a substantial increase in its prices to nursing homes for temporary CNA services. Respondents discussed the new Alpha Christian prices and the prices of the other nurses registries in the Rockford area at meetings throughout November and December 1988. Respondents agreed to and did send letters to Alpha Christian stating that they would not use Alpha Christian temporary CNAs due to excessive prices. Respondents also did in fact cease using temporary CNAs supplied by Alpha Christian. After boycotting Alpha Christian, respondents further conspired to threaten to boycott the other registries in the Rockford area, and they communicated this threat by sending copies of the letter they had sent to Alpha Christian to the other registries.

PAR. 13. By engaging in the acts and practices described in paragraph twelve respondents have combined or conspired with each other to conduct a boycott of the Alpha Christian Registry, to threaten to boycott other registries operating in the Rockford area, and to otherwise restrain competition among themselves for temporary CNAs.

PAR. 14. Respondents' conspiracy to eliminate competition among the nursing homes for temporary CNA services has had the following effects, among others.

A. Restricting the supply of quality CNA services by depressing the price of such services.

B. Interfering in the process by which individual providers of temporary CNA services make independent decisions regarding the price of such services.

C. Limiting consumers' access to the price and quality of nursing services they desire.

PAR. 15. The conspiracy, acts and practices described herein constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The effects of such conspiracy, acts and practices are continuing or will

continue or such conspiracy, acts, or practices will recur in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago 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, makes the following jurisdictional findings and enters the following order:

1. Respondents are corporations or partnerships organized, existing, and doing business under and by virtue of the laws of the States of Illinois, Delaware or California, with their offices and principal places of business located at the addresses listed below.

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

(B) "*Debes*" means the Debes Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 6122 Mulford Village Drive, Rockford, Illinois, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(C) "*Park Strathmoor*" means Park Strathmoor Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 5668 Strathmoor, Rockford, Illinois, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(D) "*Alma Nelson*" means Alma Nelson Manor, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 550 S. Mulford Rd., Rockford, Illinois, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(E) "*Beverly*" means Beverly Enterprises, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 155 Central Shopping Center, Fort Smith, Arkansas, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(F) "*Beverly-Illinois*" means Beverly Enterprises - Illinois, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office located at 155 Central Shopping Center, Fort Smith, Arkansas, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(G) "*Neighbors*" means The Neighbors, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 811 W. Second, P.O. Box 585, Byron, Illinois, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(H) "*Fairview Plaza*" means the Fairview Plaza Limited Partnership, doing business as the Fairview Plaza Nursing Home, a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 321 Arnold, Rockford, Illinois, and its principal office located at 6600 N. Lincoln Ave., Suite 300, Lincolnwood, Illinois, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(I) "*Yorkdale*" means Yorkdale Health Center, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 2313 N. Rockton Ave., Rockford, Illinois, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(J) "*Temporary nurses registry*" means any person that supplies nursing personnel on a temporary basis.

(K) "*The Rockford area*" means the counties of Winnebago, Boone, and Ogle in the State of Illinois.

II.

It is ordered, That each respondent shall forthwith, directly, indirectly, or through any corporate, or other device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, cease and desist from:

A. Entering into, attempting to enter into, organizing, adhering to or maintaining any agreement, understanding, or program with any other purchaser or user of nursing services to:

1. Refuse, or threaten to refuse, to use the services of any temporary nurses registry; or

2. Fix, stabilize, or otherwise interfere or tamper with the prices charged by any temporary nurses registry;

B. For a period of five (5) years after the date this order becomes final, communicating to any other respondent any information concerning its own or any other nursing home's intention or decision to use, refuse to use, or threaten to refuse to use the services of any temporary nurses registry for any nursing home in the Rockford area.

C. For a period of ten (10) years after the date this order becomes final, agreeing with any other respondent to purchase or use the services of a particular temporary nurses registry or of a particular group of temporary nurses registries.

III.

Provided, however, That this order shall not prohibit any agreement solely between any individual respondent and any entity or entities that control or are controlled by that respondent;

Provided further, That Section II (A) and (B) of this order shall not be construed to prohibit respondents from entering any agreement that is reasonably necessary for the formation or operation of a joint venture that is lawful under the antitrust laws, except a joint venture prohibited by Section II (C) of this order; and

Provided further, That as to respondent Beverly Enterprises Inc., this order shall apply only to conduct or practices in or affecting the sale of temporary nurses' services to nursing home facilities in the State of Illinois.

IV.

It is further ordered, That each respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute a copy of the complaint and order to:

1. Each of its directors and officers or, in the case of Fairview Plaza, general partners, and to each of its nursing home administra-

tors and directors of nursing employed by facilities in the Rockford area;

2. The Illinois Health Care Association, the Rockford Chapter of the Illinois Health Care Association, the Extended Care Nursing Association and every member of the Directors of Nursing Council of the Illinois Health Care Association;

3. Each temporary nurses registry from which it they purchased services for any nursing home facility located in the Rockford area since January 1988.

B. Within sixty (60) days after the period of three (3) years and annually thereafter for on the anniversary date on which this order becomes final, and at any time the Commission, by written notice, may require, file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with this order.

C. Notify the 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 its compliance obligations arising out of this order.

IN THE MATTER OF

THE VONS COMPANIES, 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-3391. Complaint, Aug. 7, 1992--Decision, Aug. 7, 1992*

This consent order requires, among other things, a California-based national grocery chain to sell its Madonna Road supermarket in San Luis Obispo to an FTC-approved purchaser within twelve months or else consent to the appointment of a Commission-approved trustee to divest the property. The respondent is also required, for a period of 10 years, to obtain FTC approval before making similar acquisitions.

Appearances

For the Commission: *Steven A. Newborn* and *Paul R. Roark*.

For the respondent: *George P. Stone, Munger, Tolles & Olson*,
Los Angeles, CA. *Terrance Wallock*, in-house counsel, Arcadia, 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 ("Commission"), having reason to believe that the respondent, The Vons Companies, Inc., an entity subject to the jurisdiction of the Commission, entered into an agreement with Williams Bros. Markets, Inc. ("Williams Bros."), a corporation, that violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that pursuant to that agreement, Vons acquired certain business interests of Williams Bros., and that such acquisition constitutes a violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing that a proceeding in respect thereof would be in the public interest, the Commission hereby issues its complaint pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section