

Complaint

116 F.T.C.

IN THE MATTER OF

NATIONAL ASSOCIATION OF SOCIAL WORKERS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3416. Complaint, March 3, 1993--Decision, March 3, 1993*

This consent order prohibits, among other things, a Washington, D.C.-based, professional association from restraining competition among social workers by restricting or banning truthful, non-deceptive advertising or solicitation by its members, and from restricting social workers from paying a fee to any patient referral service.

Appearances

For the Commission: *Robert J. Schroeder.*

For the respondent: *Patricia P. Bailey, Squire, Sanders & Dempsey, Washington, D.C.*

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 Association of Social Workers, a corporation, hereinafter sometimes referred to as respondent, has violated and is violating said 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 National Association of Social Workers is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 750 First Street, N.E., Suite 700, Washington, D.C.

PAR. 2. Respondent is a professional association with a total membership of about 114,000 social workers. Respondent has among its purposes, and it acts, to advance the interests of persons qualified, educated and trained, or who are being educated and trained to practice the social work profession in the United States, its territories, commonwealths and possessions. A substantial portion of respondent's activities furthers the pecuniary interests of its members. By virtue of its purposes and its activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 3. Respondent's members are social workers, and include social workers, sometimes called clinical social workers, who provide therapeutic and counseling services for a fee, or whose employer provides such services for a fee. Such social workers apply social work theory and methods to the treatment and prevention of psychosocial dysfunction, disability, or impairment, including emotional and mental disorders. The services they offer are assessment, diagnosis, treatment, including psychotherapy, counseling, and consultation. Except to the extent competition has been restrained as alleged herein, many of its members, directly or through entities by which they are employed, have been and are now in competition among themselves and with other social workers.

PAR. 4. The acts and practices of respondent, including the acts and practices alleged herein, have been or are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. To create and maintain a social work practice, social workers compete, or may compete, with each other and others to attract new clients. Except to the extent competition among social workers is restrained as alleged herein, social workers compete, or may compete, among other ways, by communication with potential clients through advertising, including the use of testimonials; by personal communication with potential clients; and by use of professional referral services and other similar means. These means of communication with the consuming public and others enable social workers to inform consumers of their ability, experience, and competence; the quality, convenience, and amenity of offered

services; and price and other terms of sale. Such communication benefits consumers by increasing the truthful, useful, and desired information available to consumers, and by promoting competition among social workers.

PAR. 6. Respondent has acted as a combination of its members or has combined or agreed with at least some of its members to restrain competition in the sale and delivery of social work services by:

A. Prohibiting its members from soliciting the clients of other social workers and other professionals;

B. Prohibiting its members from paying referral services, marketing agencies or other similar organizations for referring clients, or from participating in or operating such organizations; and

C. Restraining its members from engaging in certain types of truthful advertising, including advertising that contains testimonials.

PAR. 7. Respondent has engaged in various acts and practices in furtherance of the combination or agreement described in paragraph six above. These acts and practices include, among other things, the following:

A. Adopting, in 1979, and subsequently maintaining and enforcing, respondent's Code of Ethics which restrains competition in the following ways, among others:

1. Prohibiting social workers from "solicit[ing] the clients of colleagues." This restriction, which is not limited to uninvited, personal solicitation of individuals who are vulnerable to undue influence, deters or may deter social workers from initiating contact with potential clients.

2. Prohibiting social workers from "accept[ing] or giv[ing] anything of value for receiving or making a referral." This restriction deters or may deter social workers from operating or participating in such institutions as patient referral services.

B. Adopting, in 1984, and subsequently maintaining in effect, respondent's NASW Standards for the Practice of Clinical Social Work, which restrain competition in the following ways, among others:

1. Deterring social workers from using testimonials in advertising. This restriction, which is not limited to preventing solicitation of testimonials from individuals who are vulnerable to undue influence, constrains, or may constrain, social workers from supporting truthful claims about their practices with statements from clients; or

2. Deterring social workers from advertising "hint(s) of enticement." This restriction constrains, or may constrain, social workers from offering truthful information concerning their services.

PAR. 8. The effects, tendency and capacity of the combination or agreement, and the acts and practices described above have been and are to restrain competition unreasonably and to injure clients and other consumers in the following ways, among others:

A. Restraining competition in the delivery of social work services;

B. Depriving clients and other consumers of the benefits of truthful information about the availability of social work services;

C. Depriving clients and other consumers of the benefits of competition among social workers in the provision of their services through competing referral services, agencies and clinics.

PAR. 9. The combination or agreement, and the acts and practices described above constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The acts and practices of respondent, as herein alleged, or the effects thereof, are continuing and will continue in the absence of the relief herein requested.

Commissioner Starek dissenting.

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 respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 Association of Social Workers is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 750 First Street, N.E., Suite 700, Washington, D.C..

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 the purposes of this order, “NASW” means the National Association of Social Workers, its directors, trustees, councils, committees, boards, divisions, officers, representatives, delegates, agents, employees, successors, or assigns.

II.

It is ordered, That NASW, directly, indirectly, or through any corporate or other device, in or in connection with NASW's activities as a professional association, in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, shall cease and desist from:

A. Prohibiting, restricting, regulating, declaring unethical, interfering with, restraining or advising against the advertising, publishing, stating or disseminating by any person of the prices, terms, availability, characteristics or conditions of sale of social workers' services, offered for sale or made available by any social worker or by any organization or institution with which a social worker is affiliated, through any means, including but not limited to the adoption or maintenance of any principle, rule, guideline or policy that restricts any social worker from:

1. Engaging in any solicitation of actual or prospective clients or other consumers or from offering services to clients or other consumers receiving similar services from another professional; or
2. Presenting testimonials from clients or other consumers.

Provided that nothing contained in this order shall prohibit NASW from formulating, adopting, disseminating and enforcing reasonable ethical principles or guidelines governing the conduct of its members with respect to:

- (1) Representations, including representations of objective claims for which the claimant does not have a reasonable basis, that NASW reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act; or
- (2) Uninvited, in-person solicitation of business from persons who, because of their particular circumstances, are vulnerable to undue influence; or
- (3) Solicitation of testimonial endorsements (including solicitation of consent to use the person's prior statement as a testimonial endorsement) from current psychotherapy patients, or from other persons who, because of their particular circumstances, are vulnerable to undue influence.

B. Prohibiting, restricting, regulating, declaring unethical, interfering with or restraining the giving or paying of any remuneration by any of its members or affiliates or any organization or institution with which any of its members or affiliates is associated to any patient referral service or other similar institution for the referral of clients or other consumers for professional service.

Provided that nothing contained in this section shall prohibit NASW from formulating, adopting, disseminating and enforcing reasonable ethical principles or guidelines requiring that its members disclose

to clients or other consumers that they will pay or give, or have paid or given, remuneration for the referral of such clients or other consumers for professional services.

III.

It is further ordered, That, for a period of five (5) years after the date this order becomes final, NASW shall:

Maintain for three (3) years following the taking of any action against a person alleged to have violated any ethical principle, rule, policy, guideline or standard relating to advertising, solicitation or referral fees, in one separate file segregated by the names of any person against whom such action was taken, and make available to Commission staff for inspection and copying, upon reasonable notice, all documents and correspondence that embody, discuss, mention, refer or relate to the action taken and all bases for or allegations relating to it.

IV.

It is further ordered, That NASW shall:

A. Within sixty (60) days after the date this order becomes final, remove from NASW's Code of Ethics and Standards for the Practice of Clinical Social Work, and any officially promulgated or authorized guidelines or interpretations of NASW's official policies, any statement of policy that may be inconsistent with part II of this order, or amend any such statement to eliminate all such inconsistencies, including but not limited to Sections II.I.1 and III.K.1 of NASW's Code of Ethics, and Standards 8 and 9 of the Standards for the Practice of Clinical Social Work;

B. Within sixty (60) days after the date this order becomes final, publish in NASW News, or in any successor publication that serves as the official journal of NASW:

1. A copy of this order;
2. Notice of the removal or amendment of any Code of Ethics provisions, Standards, guidelines, interpretations, provisions or statement; and
3. A copy of any such Code of Ethics provision, Standard, guideline, interpretation, provision or statement as worded after any such amendment;

C. Within sixty (60) days after the date this order becomes final, distribute a copy of Appendix A, along with a copy of this order, to each of NASW's members, including those in all classes of membership, and to each affiliate;

D. Require as a condition of affiliation with NASW that any affiliate, constituent, or component organization agree by specific action taken by the affiliate, constituent, or component organization's governing body to adhere to the provisions of part II of this order; and

E. Cease and desist for a period of one (1) year from maintaining or continuing respondent's affiliation with any affiliate, constituent, or component organization, whether a division of NASW or a state or regional association affiliated with NASW, within one hundred and twenty (120) days after respondent learns or obtains information that would lead a reasonable person to conclude that said association has, following the effective date of this order, maintained or enforced any prohibition against:

1. Soliciting clients;
2. Offering services to persons receiving similar services from another professional; or

3. Making payments to patient referral services;

where maintenance or enforcement of such prohibition by respondent would be prohibited by part II of this order; unless, prior to the expiration of the 120 day period, said association informs respondent by a verified written statement of an officer that the association has eliminated and will not reimpose such prohibition, and respondent has no grounds to believe otherwise.

V.

It is further ordered, That NASW:

A. Shall, within sixty (60) days after the date this order becomes final and at such other times as the Commission may require by written notice to NASW, file with the Commission a written report setting forth in detail the manner and form in which NASW has complied and is complying with the order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by part II of this order, including but not limited to all documents generated by NASW or that come into the possession, custody, or control of NASW, regardless of the source, that discuss, refer, or relate to any advice or interpretation rendered with respect to advertising, solicitation, or giving or receiving any remuneration for referring clients for professional services, involving any of its members or affiliates.

VI.

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

Commissioner Starek dissenting.

APPENDIX A

NASW And FTC
Enter into Consent Agreement

As you may be aware, the NASW entered into a consent order agreement with the Federal Trade Commission on September 24, 1988. Under that agreement, the Commission has entered a cease and desist order that became final on [insert date]. A copy of that order is printed in this issue of the *NASW News*.

The agreement between the Commission and NASW does not constitute an admission by NASW that it has violated any law, and is for settlement purposes only.

The reason for this announcement is to acquaint all members with the order, especially including those who have become members in the last three years, and to call attention to changes that have been made in response to the agreement in NASW's Code of Ethics and in the Standards for the Practice of Clinical Social Work. The changes in the Code and Standards are also printed in this issue.

Under the terms of the order, NASW may not ban any of its members from engaging in truthful, non-deceptive advertising and marketing. Specifically, NASW may not prohibit its members from:

1. Engaging in any solicitation of actual or prospective clients or other consumers or from offering services to clients or other consumers receiving similar services from another professional;
2. Presenting testimonials from clients or other consumers.

The order also prohibits preventing the payment of any remuneration to any patient referral service or other similar institution for the referral of clients or other consumers for professional service.

However, the order does not prohibit NASW from formulating and enforcing reasonable principles or ethical guidelines to prevent deceptive advertising and solicitation practices. NASW is also not barred from issuing guidelines with respect to solicitation of business or testimonials from persons who because of their particular circumstances, are vulnerable to undue influence by a social worker.

The order also does not prohibit NASW from issuing reasonable principles or guidelines requiring that factual disclosures be made to clients or other consumers regarding fees paid by any social worker to any patient referral service or similar institution for referring the client or other consumer for professional services.

Finally, the order requires NASW to amend the Code of Ethics, the standards for the Practice of Clinical Social Work, and any guidelines or interpretations officially promulgated or authorized by NASW to delete any provisions that are in conflict with the order and to cease affiliation for one year with any affiliate, constituent, or component organization that engages in any conduct that is prohibited by the order and that does not notify NASW that it has ceased and will not repeat such conduct. In response to this requirement, NASW amended the Standards for Practice in April 1989, and the Code of Ethics in August 1990.

In entering into an agreement with NASW, the Federal Trade Commission has not endorsed principle, guideline, policy, or practice of the Association. For more specific information, you should refer to the Federal Trade Commission's order itself.

DISSENTING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I respectfully dissent from the decision of the Commission today to accord final approval to the consent order with the National Association of Social Workers ("NASW"). The lack of evidence indicating that the restrictions of NASW at issue are likely to restrict competition leads me to conclude that they are not "inherently suspect" as defined in Massachusetts Board of Registration in

Optometry ("Mass. Board").¹ Consequently, without a rule-of-reason inquiry, as required by Mass. Board, I cannot conclude that NASW's restrictions violate Section 5 of the Federal Trade Commission Act.

Association restrictions on professionals can reduce competition and thereby harm consumers. The challenged practices here are restrictions on certain types of advertising, solicitations, and payment of referral fees by those who choose to become members of NASW. Because social workers employed by social service agencies would not have reason to take part in these activities, the restrictions in effect apply only to "clinical" social workers in private practice who are members of NASW. These social workers primarily provide psychological counseling and therapy services, as opposed to what might be considered more traditional social worker services.

The restrictions at issue here were in place in NASW's ethics code and its "Standards of Practice" for a period of several years in the 1980s. We have no indication that they ever were enforced. We are not aware of any suspension, expulsion, reprimand, notice of violation in the association newsletter, or any threat of these or any other actions taken by NASW in response to violations of these restrictions. We do not know if the restrictions ever have affected a social worker's business practices in any way. We do not know if any members of the NASW were even aware of the existence of the allegedly anticompetitive restrictions.

Determining the extent to which a horizontal restraint is likely to have anticompetitive or procompetitive effects often requires considerable inquiry and analysis. However, in this case I need not reach that issue because the record does not indicate that the restrictions were likely to have any effect on the market. In order to determine whether a horizontal restraint is inherently suspect, Mass.

¹ 110 FTC 549 (1988).

Board instructs us first to ask “is the practice the kind that appears likely, absent and efficiency justification, to ‘restrict competition and decrease output’?”² The interpretation, enforcement, and market response to challenged restraints can, in many cases, clarify the likely effects of such restraints on competition.

Were the potential effects of the restrictions less ambiguous, I would not necessarily require much evidence of how these restrictions affected the market. Some efficiency benefits conceivably could result from NASW’s restrictions. For example, NASW’s restriction on the use of testimonials in members’ advertising may protect certain patients vulnerable to undue influence from being coerced into providing testimonials for their therapist’s advertising.³ After all, patients of clinical social workers in many instances have serious emotional and mental disorders. Many of these patients may benefit from protection that is broader than that which is appropriate in other markets. Private professional associations such as NASW may be particularly well suited to provide such protection. The record does not indicate the extent to which such benefits are likely to result from the restrictions, as it also does not indicate the extent to which anticompetitive effects might result.

I am concerned that approving the consent order with NASW will suggest that the Commission may apply the Mass. Board analysis to summarily condemn competitively ambiguous horizontal restraints without any inquiry into how, or even if, the restrictions have affected the market. When restrictions as written are competitively ambiguous, as I believe they are here, the enforcement of such restrictions can shed much light on their likely effects.

² 110 FTC 549, at 604.

³ The order recognizes this and other possible sources of efficiency by including some safe harbors for NASW action. Because Commission inquiry into the restrictions’ possible benefits was quite limited, I cannot confidently conclude that the safe harbors adequately protect potential benefits of the restrictions.

Judge Easterbrook has written that “there can be no restraint of trade without a restraint.”⁴ He explains that “enforcement mechanisms are the ‘restraints’ of trade. Without them there is only uncoordinated individual action, the essence of competition.”⁵ Evidence of how restrictions are interpreted and enforced may be sufficient to support a conclusion that the restrictions are inherently suspect.⁶

Other market evidence in some cases may indicate a likelihood of anticompetitive effects absent explicit market enforcement. For example, evidence may indicate that the fear of enforcement prevents professionals from certain restricted activities. Or professionals may choose not to violate restrictions because they fear retribution from their colleagues, such as being cut off from referrals or being ostracized after being noted as violators in a professional publication.

On the other hand, even when all agree that restrictions as written appear facially suspicious, they may, in fact, be competitively innocuous because they are not generally known by association members, are known but widely ignored, are easily circumvented, or are responded to by the membership in a way that illustrates that they are highly unlikely to have anticompetitive effects.

In this case, we are presented with almost no evidence on the interpretation, application, and market response to the challenged restraints. Nor do we have any evidence that the written restrictions at issue were enforced or affected the market in any way.

Furthermore, the restraints applied only to NASW members who provide psychological therapy and counseling in private practice.

⁴ *Schachar v. Am. Academy of Ophthalmology, Inc.*, 870 F. 2d 397 (7th Cir. 1989).

⁵ *Id.*, at 399.

⁶ One commentator recently proposed as the first “analytical guideline” for antitrust enforcement in this area, “Professional rules are restraints only if and as enforced.” John Lopatka, *Antitrust and Professional Rules: A Framework for Analysis*, 28 SAN DIEGO L. REV. 301, 310, 382 (1991). I would not go as far as he does when he argues that “unenforced restraints can be ignored.” *Id.*, at 382.

In order to compete effectively at providing these services, it may not be necessary to be a member of NASW. We have no indication that NASW has leverage to impose anticompetitive restrictions on those social workers who choose to join the association. Moreover, even if NASW did have such leverage, it appears that inter-professional competition with other types of therapists may be sufficient to prevent anticompetitive results.

Obtaining evidence on these issues does not appear to impose an onerous burden of proof or to require an inordinate commitment of resources. Prudent enforcement requires that these issues be examined. The Commission's previous determinations that conduct is inherently suspect have been confined largely to cases in which market evidence much more strongly suggested the likelihood of anticompetitive effects than does the evidence in the present matter.

In Mass. Board, the record indicated that the Board had taken actions against numerous violators of the restrictions and these Board actions resulted in violators discontinuing advertising practices that were held to violate the Board's regulations.⁷ Moreover, substantial evidence suggested that the restrictions were highly likely to lead to increased prices for optometry services.⁸

In Detroit Auto Dealers Association, evidence indicated that there was protracted enforcement of the restrictions which appeared to coerce widespread adherence.⁹ Furthermore, the association acknowledged that its activity had anticompetitive results.¹⁰

In Superior Court Trial Lawyers' Association, the Commission concluded that the practice at issue was a *per se* antitrust violation.¹¹ But the Commission also concluded that the boycott resulted in

⁷ 110 FTC at 562-71 (Initial Decision Findings 73 and 117-59).

⁸ *Id.*, at 561-63 (Initial Decision Findings 60-78).

⁹ *Detroit Auto Dealers Association, Inc.*, 111 FTC 417, 425, 451-56 (1989) (Initial Decision Findings 51-52, 245-84), *aff'd in part, remanded in part*, 955 F. 2d 457 (6th Cir. 1992).

¹⁰ 111 FTC at 426-27 (Initial Decision Findings 57-61).

¹¹ 107 FTC 510, 574.

anticompetitive effects amounting to \$4 to 5 million per year.¹² The Supreme Court ultimately affirmed, holding the boycott to be illegal *per se* but emphasizing that the record included “overwhelming testimony” indicating that the group’s actions brought the District’s criminal justice system to the “brink of collapse” and thus resulted in higher prices.¹³

The Commission’s recent consent order in American Psychological Association (“APA”) was supported by evidence of enforcement of the restraints. Thus, we did not have to speculate about how the restrictions there have affected the market. APA’s own enforcement record illustrated both its broad interpretation of the restrictions and actual effects of the restrictions on competitive behavior.

Without such evidence here, I cannot conclude that the challenged restrictions are inherently suspect. Consequently, in order to condemn these restrictions under Section 5, a traditional rule-of-reason analysis must be performed, including an evaluation of market power. Although the evidence in this regard is not complete, based on what has been presented to date, I consider it highly unlikely that these restrictions would be condemned at the completion of that analysis.

My conclusion that the challenged restraints are not inherently suspect does not require that I reach the issue of market power.¹⁴ And I am not today advocating inclusion of a market power screen as a formal element of the Commission’s truncated rule-of-reason analysis. But it seems to be self-evident that to ignore the issue of

¹² *Id.*, at 577.

¹³ *Federal Trade Commission v. Superior Court Trial Lawyers’ Association*, 110 U.S. 768, 772, 782 (1990).

¹⁴ Mass. Board does not require the use of a market power screen, but it is worth noting that the Massachusetts Board of Registration had the power to license, and thus it appeared likely to have substantial market power. And, in *NCAA*, the Supreme Court found that the association there did have substantial market power *NCAA v. Board of Regents of the Univ. Of Okla.*, 468 U.S. 85, 111 (1984) and that its restraint had demonstrable anticompetitive effects. *Id.*, at 104-07.

market power is to argue that the truncated rule of reason is applicable to the restrictions of all associations, regardless of the extent of an association's membership or its ability to affect members' behavior.

This is particularly troubling when the challenged restrictions are unenforced and their potential effects are ambiguous. Here, the indications of a lack of market power on the part of NASW could well undermine the potential for the restraints to have anticompetitive effects. It may well be that some limited analysis of market power is warranted in such cases in order to provide the Commission with some confidence that our enforcement program is consistent with our competition mission.¹⁵

I am concerned about extending the reach of Mass. Board to restrictions as competitively ambiguous as those of NASW here. I am further troubled that acceptance of the consent here might portend a lower standard of proof under Mass. Board by future Commission. The Mass. Board approach was an attempt by the Commission to enunciate a standard for evaluating horizontal restraints as gleaned from the Supreme Court's decision in *NCAA and Broadcast Music, Inc., v. CBS*,¹⁶ the truncated rule-of-reason cases. A relatively low standard of proof in a truncated rule-of-reason analysis might appear to conserve enforcement resources. But if too much reason is truncated from the rule of reason, resources will be drawn to cases of questionable merit. The net effect is likely to be a draining of enforcement resources away from the types of cases in which Commission action can best benefit consumers. Acceptance of the consent order with NASW appears likely to encourage this unfortunate and unintended effect.

¹⁵ Clearly, evidence of market power is not necessary in all cases. For example, analysis of market power would not be necessary in a case involving an ethics code restriction that establishes minimum prices for association members.

¹⁶ 441 U.S. 1 (1979).

Absent evidence that NASW's restrictions are likely to restrict competition, I do not have reason to believe that NASW has violated the Federal Trade Commission Act. Therefore, I must dissent from the Commission's action today.

IN THE MATTER OF

INSTITUT MERIEUX S.A.

Docket C-3301. Show Cause Order, March 9, 1993

SHOW CAUSE ORDER

On August 6, 1990, the Federal Trade Commission ("Commission") issued an order against Pasteur Merieux Serums et Vaccins S.A., formerly known as Institut Merieux S.A., ("respondent") in Docket No. C-3301. Paragraph II of the order, among other things, requires respondent to have leased on a long-term basis, at reasonable and customary terms, Connaught Bio Sciences, Inc.'s rabies vaccine business ("Connaught's rabies vaccine business"), by January 15, 1991, to a lessee that receives the prior approval of the Commission. Connaught's rabies vaccine business is located in Toronto, Ontario, Canada. Paragraph II also mandates that the lessee must make a lump-sum payment under reasonable and customary terms for the existing inventory of Connaught's rabies vaccine, and requires that the lease include a commitment from the lessee to supply rabies vaccine sufficient to satisfy the Canadian demand for rabies vaccine. Paragraph IV of the order provides for the appointment of a trustee to lease Connaught's rabies vaccine business in the event respondent has not accomplished the lease mandated by paragraph II of the order in a timely manner. Paragraph IX of the order, among other things, states that "in recognition of the sovereign rights of Canada . . . the appointment and term of a trustee, [and] the selection of any lessee . . . shall be subject to the approval of Investment Canada in accordance with Canadian law."¹ Paragraph XI of the order requires respondent to submit in writing to the Commission periodic verified written reports of its compliance with the terms of the order.

To date, respondent has been unable to locate a lessee for

¹ "Investment Canada" is defined in the order to mean "the Agency of the Government of Canada established pursuant to the Investment Canada Act (S.C. 1985, C. 20) of Canada."