

Complaint

IN THE MATTER OF

AMERICAN INSTITUTE FOR CONSERVATION OF
HISTORIC AND ARTISTIC WORKSCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4065; File No. 0110244**Complaint, October 30, 2002--Decision, October 30, 2002*

This consent order addresses practices used by Respondent American Institute for Conservation of Historic and Artistic Works ("AIC"), an association of professional conservators – who manage, care for, preserve, or treat cultural objects, including artistic, historical, archeological, scientific, and religious objects – with approximately 3,100 members, many of whom provide professional services for a fee or who are employed by organizations that provide such services for a fee. The order, among other things, prohibits the respondent from maintaining or enforcing any policy, ethical rule, interpretation, commentary or guideline that impedes or restricts price competition among conservation professionals, including the provision of free or discounted services. The order also requires the respondent to remove the provisions that are inconsistent with the order from the *AIC Code of Ethics*, from the *Guidelines for Practice of the AIC*, from the *Commentaries to the Guidelines*; and from the respondent's Web site, and to publish the revisions of these documents in those places. In addition, the order requires the respondent to publish a copy of the order and complaint in the *AIC News* and on its Web site.

Participants

For the Commission: *L. Barry Costilo, Richard B. Dagen, Joseph Eckhaus, Roberta S. Baruch, Russell Porter, Louis Silvia, and Mary T. Coleman.*

For the Respondent: *Barbara Ryland, Crowell & Moring.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the American Institute for

Complaint

Conservation of Historic and Artistic Works (“Respondent” or “AIC”), a corporation, has violated and is violating the provisions of Section 5 of the Federal Trade Commission Act, 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 this Complaint stating its charges as follows:

PARAGRAPH ONE: Respondent American Institute for the Conservation of Historic and Artistic Works, is a corporation organized and existing under the laws of the District of Columbia with its principal office and place of business at 1717 K Street, N.W., Suite 200, Washington, DC 20006.

PARAGRAPH TWO: Respondent is a professional association organized for the purpose, among others, of serving the interests of its conservation professional members. AIC has approximately 3,100 members. A conservation professional manages, cares for, preserves, or treats cultural objects, including artistic, historical, archeological, scientific, and religious objects. The conservation professional may determine the condition, the need for treatment or restoration, and the appropriate method for preservation of such objects, and perform the required work to minimize deterioration or to restore such objects to their original state.

PARAGRAPH THREE: The general business practices of Respondent and its members, including the acts and practices herein alleged, are in or affecting “commerce” as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

PARAGRAPH FOUR: Respondent engages in substantial activities for the economic benefit of its members. At all times relevant to this Complaint, Respondent is and has been organized in substantial part for the profit of its members, and is therefore a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Complaint

PARAGRAPH FIVE: Many of Respondent's members provide conservation professional services for a fee or are employed by conservation related organizations that provide conservation professional services for a fee. Except to the extent that competition has been restrained as herein alleged, many of AIC's members have been and are now in competition among themselves and with other conservation professionals.

PARAGRAPH SIX: Respondent acting as a combination of its members, and in agreement with at least some of its members, has acted to restrain price competition among conservation professionals by restricting its members from offering conservation professional services at discounted fees or for free.

PARAGRAPH SEVEN: In furtherance of the combination and agreement alleged in Paragraph Six, Respondent has adopted and maintained provisions in its *Commentaries to the Guidelines for Practice of the AIC* that state "the consistent undercutting of local or regional market rates should be understood to be an unprofessional practice" and further state "when damage to the cultural property is imminent, and funding is limited, a conservation professional may work at reduced fees or pro bono."

PARAGRAPH EIGHT: The purpose, effects, tendency, or capacity of the combination, agreement, and acts or practices described in Paragraphs Six and Seven, have been and are to restrain competition unreasonably and to injure consumers by:

- A. discouraging and restricting price competition among conservation professionals; and
- B. depriving consumers and other users of conservation services of the benefit of free and open competition among conservation professionals.

Complaint

PARAGRAPH NINE: The combination, agreement, and acts or practices described above constitute unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, agreement, and acts or practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirtieth day of October, 2002, issues its Complaint against AIC.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the American Institute for Conservation of Historic and Artistic Works (“AIC”), hereinafter sometimes referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to § 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

Decision and Order

1. Respondent American Institute for the Conservation of Historic and Artistic Works, is a corporation organized and existing under the laws of the District of Columbia with its principal office and place of business at 1717 K Street, N.W., Suite 200, Washington, DC 20006.

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

ORDER

I.

IT IS ORDERED, that for the purposes of this Order, the following definitions shall apply:

- A. "Respondent" or "AIC" means the American Institute for Conservation of Historic and Artistic Works, its officers, executive board, specialty groups, committees, task forces, representatives, agents, employees, successors and assigns;
- B. "Conservation Professional" means one who manages, cares for, preserves, or treats cultural objects, including artistic, historical, archeological, scientific, and religious objects. The conservation professional may determine the condition, the need for treatment or restoration, and the appropriate method for preservation of such objects, and perform the required work to minimize deterioration or to restore such objects to their original state; and
- C. "Regulating" means (1) adopting, maintaining or enforcing any rule, regulation, interpretation, ethical ruling, policy, commentary, or guideline; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting formal or informal investigations or inquiries.

Decision and Order

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in or in connection with Respondent'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, do forthwith cease and desist from: Regulating, restricting, impeding, declaring unethical or unprofessional, interfering with or advising against price competition among Conservation Professionals, including, but not limited to, the provision of free or discounted services.

III.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within ninety (90) days after the date on which this Order becomes final, remove from *AIC's Code of Ethics*, *Guidelines for Practice of the AIC*, and *Commentaries to the Guidelines for Practice of the AIC*, and from the AIC constitution and bylaws and any other existing AIC policy statement, commentary or guideline, including, but not limited to, those appearing on the AIC website, any provision, interpretation, policy statement, commentary or guideline which is inconsistent with Paragraph II of this Order and publish in the *AIC News* or in any successor publications, and on AIC's website, the revised versions of such documents. Following entry of the final Order, AIC shall also publish the revised version of such documents as early as feasible in the *AIC Directory*, but in no event later than twelve (12) months after the Order becomes final.
- B. Within one hundred twenty (120) days after the date on which this Order becomes final, publish a copy of this Order and the Complaint in the *AIC News* with such prominence as feature articles that are regularly published in the *AIC News*.

Decision and Order

- C. Within sixty (60) days after the date on which this Order becomes final, publish and retain for at least one (1) year a copy of this Order and Complaint on the AIC website. The Order and Complaint, and the revised versions of the documents described in Paragraph III (A) of this Order, should be accessible with a link placed in a prominent position on the website's homepage, which should read "AIC changes its *Commentaries* to the *AIC Code of Ethics and Guidelines for Practice*."

IV.

IT IS FURTHER ORDERED that Respondent shall file written reports within sixty (60) days after the date on which this Order became final, every sixty (60) days thereafter until the requirements set forth in this Order have been met, and annually thereafter for four (4) years on the anniversary of the date on which this Order became final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which it has complied and is complying with the Order. Such reports should include in detail, but not be limited to, any action taken in connection with the activities covered by Paragraph II.

V.

IT IS FURTHER ORDERED that for a period of five (5) years after the date this Order is entered, Respondent shall maintain and make available to the 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 Paragraph II of this Order.

VI.

IT IS FURTHER ORDERED that, Respondent shall notify the Commission at least thirty (30) days prior to any proposed

Decision and Order

change in the Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, the creation or dissolution of subsidiaries, or any other change in Respondent that may affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on October 30, 2022.

By the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the American Institute for Conservation of Historic and Artistic Works (“AIC”). AIC has its principal place of business in Washington, DC .

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and decide whether it should withdraw from the agreement or make final the agreement's proposed order.

AIC is an association of professional conservators. The complaint alleges that AIC engages in substantial activities for the economic benefit of its members. The complaint alleges that AIC has approximately 3,100 members, many of whom provide professional services for a fee or who are employed by organizations that provide such services for a fee.

A conservation professional is a person who manages, cares for, preserves, or treats cultural objects, including artistic, historical, archeological, scientific, and religious objects. The conservation professional may determine the condition, the need for treatment or restoration, and the appropriate method for preservation of such objects, and perform the required work to minimize deterioration or to restore such objects to their original state.

The complaint charges that AIC has violated Section 5 of the Federal Trade Commission Act by acting as a combination of its members and in agreement with some of its members to restrain price competition among conservation professionals. The complaint alleges that in furtherance of the combination and agreement AIC has adopted and maintained *Commentaries to the Guidelines for Practice of the AIC* that state that “the consistent

Analysis

undercutting of local or regional market rates should be understood to be unprofessional behavior.” They further state that “when damage to the cultural property is imminent, and funding is limited, a conservation professional may work at reduced fees or pro bono.” Read together, these provisions mean that only in these limited circumstances can a conservator work for free or at reduced fees without being considered to be engaging in “unprofessional behavior.”

The complaint alleges that the above acts and practices constitute unfair methods of competition which have restrained competition unreasonably. It further alleges that the effects of the acts and practices are to discourage and restrict price competition among conservation professionals and to deprive consumers and users of conservation services of the benefit of free and open competition.

AIC has signed a consent agreement containing the proposed consent order. The proposed consent order would prohibit AIC from maintaining or enforcing any policy, ethical rule, interpretation, commentary or guideline that impedes or restricts price competition among conservation professionals, including provision of free or discounted services.

To ensure and monitor compliance, the consent order provides, among other things, that within 90 days after the order becomes final AIC shall remove the provisions that are inconsistent with the order from *AIC’s Code of Ethics*, *Guidelines for Practice of the AIC*, *Commentaries to the Guidelines* and AIC’s website, and publish the revisions of these documents in such places. In addition, the order requires AIC to publish a copy of the order and complaint in the *AIC News*. It further provides that the order and complaint shall be published on the AIC web site, with a link placed in a prominent position on the web site’s home page. The proposed consent order also contains other provisions to monitor compliance.

Analysis

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Complaint

IN THE MATTER OF

SHELL OIL COMPANY, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-4059; File No. 0210123**Complaint, September 27, 2002--Decision, November 18, 2002*

This consent order addresses the acquisition by the Royal Dutch/Shell Group of Companies, through Respondent Shell Oil Company – engaged in almost all aspects of the energy business, including exploration, production, refining, transportation, distribution, and marketing – of Respondent Pennzoil-Quaker State Company, which manufactures and markets products such as lubricants, branded and unbranded motor oils, base oil, and other automotive and specialty industrial products. The order, among other things, requires the respondents to divest Pennzoil’s 50 percent interest in Excel Paralubes – a joint venture with Conoco Inc. that produces paraffinic base oil, the principal component of finished lubricants used for passenger car motor oil, heavy duty engine oil, automatic transmission fluid, and other lubricant products – to an acquirer approved by the Commission. The order also prohibits the respondents from divesting the Pennzoil Excel Paralubes interest to Conoco. In addition, the order requires the respondents to freeze at approximately current levels Pennzoil’s right to obtain certain base oil supply under a contract with ExxonMobil, and – at the option of the acquirer of the Excel Paralubes interest, and as approved by the Commission – to purchase Group II base oil from the acquirer for up to one year. An accompanying Order to Hold Separate requires the respondents to hold separate and maintain the assets to be divested, pending their divestiture.

Participants

For the Commission: *Dennis F. Johnson, Marc W. Schneider, Barbara K. Shapiro, Patricia V. Galvan, Geary Gessler, Mohsin Syed, Phillip L. Broyles, Eric D. Rohlck, Elizabeth A. Piotrowski, Daniel P. Ducore, Jeffrey Fischer and Mary T. Coleman.*

For the Respondents: *Steve Newborn and Laura Wilkinson, Clifford Chance Rogers & Wells, and Rufus Oliver, Baker Botts.*