

Complaint

IN THE MATTER OF

**NATIONAL ASSOCIATION OF RESIDENTIAL
PROPERTY MANAGERS, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4490; File No. 141 0031
Complaint, October 1, 2014 – Decision, October 1, 2014

This consent order addresses National Association of Residential Property Managers, Inc.'s ("NARPM") adopting and maintaining provisions in its Code of Ethics that restrain competition among its members and others. The complaint alleges that NARPM has violated Section 5 of the Federal Trade Commission Act by adopting and maintaining provisions in its Code of Ethics that restrain its members from (1) soliciting the customers of competing property managers, and (2) making statements that are not false or deceptive about competing property managers. The consent order requires NARPM to cease and desist from restraining its members from soliciting property management work, or from making statements about competitors' products, services, or business or commercial practices that are not false or deceptive.

Participants

For the *Commission*: Armando Irizarry.

For the *Respondent*: Adam M. Carroll and John F. Faber, Jr.,
Wolcott Rivers Gates.

COMPLAINT

The Federal Trade Commission ("Commission"), 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, having reason to believe that the National Association of Residential Property Managers, Inc., ("Respondent" or "NARPM"), a corporation, has violated and is violating the provisions of 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 this Complaint, stating its charges as follows:

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RESPONDENT

1. Respondent National Association of Residential Property Managers, Inc. is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Tennessee, with its office and principal place of business located at 638 Independence Parkway, Suite 100, Chesapeake, VA 23320.

2. Respondent is a professional association of real estate agents, brokers, managers and their employees, with over 4,000 members. Many of Respondent's members are in the business of managing single-family and multi-family residential properties, condominiums, townhouses, and short-term rentals. Some members also manage commercial and industrial properties and provide management of homeowners associations. Except to the extent that competition has been restrained as alleged herein, many of Respondent's members have been and are now in competition among themselves and with other property managers.

JURISDICTION

3. Respondent conducts business for the pecuniary benefit of its members and is therefore a "corporation" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

4. The acts and practices of Respondent, including the acts and practices alleged herein, are in or affecting "commerce" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

NATURE OF THE CASE

5. Respondent maintains a Code of Ethics and Standards of Professionalism ("Code of Ethics") applicable to the commercial activities of its members. Respondent's members agree to abide by the Code of Ethics as a condition of membership.

6. Respondent has acted as a combination of its members, and in agreement with at least some of those members, to restrain competition by restricting through its Code of Ethics the ability of its members to advertise and to solicit the clients of their

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competitors. Specifically, Respondent's Code of Ethics contains a provision titled "Relations With Other Property Managers" that states:

- "NARPM Professional Members shall refrain from criticizing other property managers or their business practices."
- "The Property Manager shall not knowingly solicit competitor's clients."

7. Respondent established a process for receiving complaints about and resolving alleged violations of the Code of Ethics. Respondent may sanction members found to violate the Code of Ethics. Sanctions may include a letter of reprimand, probation or suspension for a specified term, or expulsion from NARPM.

VIOLATION CHARGED

8. The purpose, effects, tendency, or capacity of the combination, agreement, acts and practices alleged in Paragraphs 6 and 7 has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among property managers, by restricting truthful and non-deceptive comparative advertising, and by depriving consumers and others of the benefits of free and open competition among property managers.

9. The combination, agreement, acts and practices alleged in Paragraphs 6 and 7 constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, agreement, acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested herein.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of October, 2014, issues its Complaint against Respondent.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission, (“Commission”), having initiated an investigation of certain acts and practices of National Association of Residential Property Managers, Inc. (“Respondent” or “NARPM”) and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present 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 a consent order, an admission by 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, 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 agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order (“Order”):

1. Respondent National Association of Residential Property Managers, Inc., is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Tennessee, with its office and principal place of business located at 638 Independence Parkway, Suite 100, Chesapeake, Virginia 23320.

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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 HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent” or “NARPM” means National Association of Residential Property Managers, Inc., its directors, boards, officers, employees, agents, representatives, committees, foundations, divisions, successors, and assigns.
- B. “Antitrust Compliance Officer” means a person appointed under Paragraph IV.A. of this Order.
- C. “Antitrust Counsel” means a lawyer admitted to practice law in a Federal court or in the highest court of any State or Territory of the United States.
- D. “Antitrust Laws” means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, the Sherman Act, 15 U.S.C. § 1 *et seq.*, and the Clayton Act, 15 U.S.C. § 12 *et. seq.*
- E. “Code of Ethics” means a statement setting forth the principles, values, standards, or rules of behavior that guide the conduct of an organization and its members.
- F. “FTC Settlement Statement” means the statement attached to this Order as Appendix A.
- G. “Member” means a member of NARPM, including any professional, associate, support specialist, international, junior, student, academic, or affiliate member.

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- H. "Organization Documents" means any document relating to the governance, management, or direction of the relevant organization, including, but not limited to, bylaws, rules, regulations, Codes of Ethics, policy statements, interpretations, commentaries, training materials, or guidelines.
- I. "Regulating" means (1) adopting, maintaining, recommending, or encouraging that Members follow 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.

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, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against:

- A. Solicitation of property management work, through any means, by any Member; and
- B. Restraining Members from making statements about competitors' products, services, or business or commercial practices;

Provided, however, that nothing in this Paragraph II. shall prohibit Respondent from adopting and enforcing reasonable principles, rules, guidelines, or policies governing the conduct of its Members with respect to representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

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III.**IT IS FURTHER ORDERED** that:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall:
1. Post and maintain for five (5) years on the Code of Ethics page of NARPM's website, together with a link from Respondent's home or menu page that is entitled "Antitrust Compliance," the following items:
 - a. An announcement that states "NARPM agreed to change its Code of Ethics and will not adopt, encourage its members to follow, or enforce any Code of Ethics provision relating to solicitation of property management work that does not comply with the FTC Consent Order;"
 - b. The FTC Settlement Statement; and
 - c. A link to the Federal Trade Commission's website that contains the press release issued by the Commission in this matter.
 2. Distribute electronically or by other means a copy of the FTC Settlement Statement to its board of directors, officers, employees, and Members.
- B. No later than sixty (60) days from the date this Order is issued Respondent shall:
1. Remove from NARPM's Organization Documents and NARPM's website any statement that does not comply with Paragraph II. of this Order; and
 2. Publish on NARPM's website any revisions of NARPM's Organization Documents.

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- C. Respondent shall publish:
1. In the font that is customarily used for feature articles:
 - a. Any revisions of NARPM's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement in the next available edition of the "Residential Resource" publication; and
 - b. The FTC Settlement Statement, on or as close as possible to the first and second anniversary dates of the first publication of the FTC Settlement Statement, in the "Residential Resource" publication, or any successor publication.
 2. No later than thirty (30) days from the date this Order is issued and continuing for a period of three (3) years, a statement in all ethics courses designed or offered by NARPM, or in any other education materials offered by NARPM, that currently discuss or explain Article 9 or Standard of Professionalism 9-2 of the NARPM Code of Ethics, or give examples related to these provisions, that restrictions on solicitation or advertising no longer apply.
- D. For a period of five (5) years after this Order is issued, distribute electronically or by other means, a copy of the FTC Settlement Statement to each:
1. New Member no later than thirty (30) days after the date of commencement of the membership; and
 2. Member who receives a membership renewal notice, at the time the Member receives such notice.

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- E. Respondent shall maintain and make available to Commission staff for inspection and copying upon reasonable notice records adequate to describe in detail any:
1. Action against any Member taken in connection with the activities covered by Paragraph II. of this Order, including but not limited to enforcement, advisory opinions, advice or interpretations rendered; and
 2. Complaint received from any person relating to Respondent's compliance with this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an antitrust compliance program to assure compliance with this Order and the Antitrust Laws:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall appoint and retain an Antitrust Compliance Officer for the duration of this Order to supervise Respondent's antitrust compliance program.
- B. For a period of three (3) years from the date this Order is issued, the Antitrust Compliance Officer shall be the President Elect of NARPM, after which a new Antitrust Compliance Officer may be appointed who shall be Antitrust Counsel, a member of the Board of Directors, or an employee of Respondent.
- C. For a period of five (5) years from the date this Order is issued, Respondent shall provide in-person annual training to its board of directors, officers, and employees concerning Respondent's obligations under this Order and an overview of the Antitrust Laws as they apply to Respondent's activities, behavior, and conduct.

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- D. No later than sixty (60) days after the date this Order is issued, Respondent shall implement policies and procedures to:
 - 1. Enable persons (including, but not limited to, its board of directors, officers, employees, Members, and agents) to ask questions about, and report violations of, this Order and the Antitrust Laws, confidentially and without fear of retaliation of any kind; and
 - 2. Discipline its board of directors, officers, employees, Members, and agents for failure to comply fully with this Order.
- E. For a period of five (5) years from the date this Order is issued, Respondent shall conduct a presentation at (1) each of NARPM's annual convention and regional conferences, and (2) each code of ethics training session, that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws.

V.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:

- A. No later than (i) ninety (90) days after the date this Order is issued, (ii) one hundred eighty (180) days after the date this Order is issued; and
- B. No later than one (1) year after the date this Order is issued and annually thereafter for four (4) years on the anniversary of the date on which this Order is issued, and at such other times as the Commission staff may request.

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VI.

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

- A. Dissolution of Respondent;
- B. Acquisition, merger, or consolidation of Respondent;
or
- C. Any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

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VIII.

IT IS FURTHER ORDERED that this Order shall terminate on October 1, 2034.

By the Commission.

APPENDIX A

(Letterhead of NARPM)

Dear Member:

As you may know, the Federal Trade Commission conducted an investigation concerning the provisions in NARPM's Code of Ethics and Standards of Professionalism ("Code of Ethics") that stated:

NARPM Professional Members shall refrain from criticizing other property managers or their business practices.

The Property Manager shall not knowingly solicit competitor's clients.

The Federal Trade Commission alleges that these provisions in the Code of Ethics violate the Federal Trade Commission Act because they unnecessarily restrict members of NARPM from competing for clients, thereby depriving clients of the benefits of competition among property managers.

To end the investigation expeditiously and to avoid disruption to its core functions, NARPM voluntarily agreed, without admitting any violation of the law, to the entry of a Consent Agreement and a Decision and Order by the Federal Trade Commission. As a result, NARPM is in the process of revising its Code of Ethics, ethics training, and will implement an antitrust compliance program.

Analysis to Aid Public Comment

In general, the Federal Trade Commission has prohibited NARPM from maintaining bylaws, code of ethics, operational policies, or membership requirements that restrict members from advertising for or soliciting property management work.

You must disregard any instruction you received in any NARPM ethics training regarding the above provisions. Those provisions are no longer valid or part of the Code of Ethics.

The Decision and Order does not prohibit NARPM from adopting and enforcing Codes of Ethics or similar documents that govern the conduct of members with respect to representations that NARPM reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

A copy of the Decision and Order is enclosed. It is also available on the Federal Trade Commission website at www.FTC.gov, and through the NARPM web site.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from the National Association of Residential Property Managers, Inc. (hereinafter “NARPM”). The Commission’s complaint (“Complaint”) alleges that NARPM, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. NARPM restrained competition by adopting and maintaining provisions in its Code of Ethics that restrain its members from (1) soliciting the customers of competing property managers, and (2) making statements about competing property managers that are neither false nor deceptive.

Analysis to Aid Public Comment

Under the terms of the proposed Consent Agreement, NARPM is required to cease and desist from restricting its members from soliciting customers or from making statements about competitors' products, services, or business or commercial practices that are not false or deceptive.

The Commission anticipates that the competitive issues described in the Complaint will be resolved by accepting the proposed order, subject to final approval, contained in the Consent Agreement. The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order ("the Proposed Order").

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by NARPM that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondent

NARPM is a non-profit professional corporation of real estate agents, brokers, managers and their employees, with over 4,000 members. NARPM's members are in the business of managing single-family and multi-family residential properties, condominiums, townhouses, and short-term rentals. Some members also manage commercial and industrial properties and homeowners associations.

Analysis to Aid Public Comment

B. The Anticompetitive Conduct

NARPM maintains a Code of Ethics applicable to the commercial activities of its members. NARPM's members agree to abide by the Code of Ethics as a condition of membership. NARPM maintains the following provisions in its Code of Ethics:

- “The Property Manager shall not knowingly solicit competitor's clients.”
- “NARPM Professional Members shall refrain from criticizing other property managers or their business practices.”

NARPM also established a process for receiving complaints about and resolving alleged violations of the Code of Ethics. NARPM may sanction members found to violate the Code of Ethics. Sanctions may include a letter of reprimand, probation or suspension for a specified term, or expulsion from NARPM.

The Complaint alleges that NARPM has violated Section 5 of the Federal Trade Commission Act by adopting and maintaining provisions in its Code of Ethics that restrain its members from (1) soliciting the customers of competing property managers, and (2) making statements that are not false or deceptive about competing property managers. The Complaint alleges that the purpose, effects, tendency, or capacity of the combination, agreement, acts and practices of NARPM has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among property managers, and by depriving consumers and others of the benefits of free and open competition among property managers.

II. The Proposed Order

The Proposed Order has the following substantive provisions. Paragraph II requires NARPM to cease and desist from restraining its members from soliciting property management work, or from making statements about competitors' products, services, or business or commercial practices that are not false or deceptive. The Proposed Order does not prohibit NARPM from adopting and enforcing reasonable restraints with respect to representations that

Analysis to Aid Public Comment

NARPM reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

Paragraph III of the Proposed Order requires NARPM to remove from its website and organization documents any statement that does not comply with the Proposed Order, and to publish on the website any revision to the organization documents. NARPM must publish an announcement that it has changed its Code of Ethics, and a statement describing the Consent Agreement (“the Settlement Statement”). NARPM must publish the aforementioned documents in NARPM’s news magazine. NARPM must distribute the Settlement Statement to NARPM’s board of directors, officers, employees, and members. NARPM must publish in all ethics courses designed or offered by NARPM that discuss the provisions at issue a statement that restrictions on solicitation or advertising no longer apply. Paragraph III also requires NARPM to provide all new members and all members who receive a membership renewal notice with a copy of the Settlement Statement.

Paragraph IV of the Proposed Order requires NARPM to design, maintain, and operate an antitrust compliance program. NARPM will have to appoint an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of five years, NARPM will have to provide in-person annual training to its board of directors, officers, and employees, and conduct a presentation at its annual convention, regional conferences, and each code of ethics training session, that summarizes NARPM’s obligations under the Proposed Order and provides context-appropriate guidance on compliance with the antitrust laws. NARPM must also implement policies and procedures to enable persons to ask questions about, and report violations of, the Proposed Order and the antitrust laws confidentially and without fear of retaliation, and to discipline its board of directors, officers, employees, members, and agents for failure to comply with the Proposed Order.

Paragraphs V-VII of the Proposed Order impose certain standard reporting and compliance requirements on NARPM.

The Proposed Order will expire in 20 years.

Complaint

IN THE MATTER OF

GRACO INC.;
ILLINOIS TOOL WORKS INC.;
AND
ITW FINISHING LLC

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

Docket No. 9350; File No. 111 0169

Complaint, December 15, 2011 – Decision, October 6, 2014

This consent order addresses the \$650 million acquisition by Graco, Inc. of certain assets of Illinois Tool Works Inc. and ITW Finishing LLC (“ITW”). The complaint alleges that Graco’s acquisition of ITW would substantially reduce competition in various markets for industrial liquid finishing equipment in North America. The consent order requires Graco to divest ITW’s liquid finishing business assets, including the Binks, DeVilbiss, Ransburg, and BGK brands.

Participants

For the *Commission*: Anna Chehtova, Amanda Hamilton, Marc Schneider, Brian Telpner, and Cathlin Tully.

For the *Respondents*: John Graubert, Covington & Burling LLP, Joseph Humke, Lindquist & Vennum, Richard Parker, O’Melveny & Myers LLP, and Richard A. Duncan, Faegre Baker Daniels LLP; Logan Breed and J. Robert Robertson, Hogan Lovells US LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the Act, the Federal Trade Commission, having reason to believe that Respondents Graco Inc. (“Graco”), Illinois Tool Works Inc., and ITW Finishing LLC (“ITW”) having entered into an agreement pursuant to which Graco will acquire the assets of ITW, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and which if consummated may substantially lessen competition in violation