

File

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

Civil Action No. 10-28-80

v. :

10/28/80

NEW YORK COUNTY LAWYERS' ASSOCIATION, :

Defendant. :

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The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief and complains and alleges as follows:

I

DEFINITIONS

As used herein:

1. "Person" means any individual, partnership, corporation, association or other legal entity.
2. "Corporate Fiduciaries Association" means an unincorporated professional organization of member banks and trust institutions known as the Corporate Fiduciaries Association of New York City located in the County of New York.

II

JURISDICTION AND VENUE

3. This complaint is filed and instituted under Section 4 of the Sherman Act (15 U.S.C. Section 4), in order to prevent and restrain further violation by defendant, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. Section 1).

4. Defendant New York County Lawyers' Association maintains an office, transacts business, and is found within the Southern District of New York.

III

THE DEFENDANT

5. The New York County Lawyers' Association (hereinafter the "Association") is made a defendant herein. The Association is a Bar Association organized under the provisions of the New York Not-For-Profit Corporation Law whose membership consists of licensed attorneys practicing in New York State.

IV

CO-CONSPIRATORS

6. Various persons, not made defendants herein, have participated as co-conspirators with defendant in the violation hereinafter alleged, and have performed acts and made statements in furtherance thereof.

V

TRADE AND COMMERCE

7. The trusts and estates business involves the providing of services incident to appointment as executor of an estate or trustee of a trust, including the planning for the disposition, investment, and management of the assets of an estate or a trust.

8. A "trust" is an arrangement whereby legal title to assets is transferred to a trustee who holds, invests, and administers assets for the benefit of the beneficiary or beneficiaries. There are two forms of trusts. An "inter vivos trust" is a trust created and effective during the life of the person creating the trust (known as the settlor). A "testamentary trust" is a trust incorporated into the will of the trust settlor. The testamentary trust is not effective during the lifetime of the settlor.

9. A "corporate fiduciary" is a corporation permitted by law to serve as executor of an estate or trustee of a trust. A corporate fiduciary is typically a bank or trust company, including the trust departments of national and state banks and trust institutions.

10. In New York County the primary providers of trust and estate services incident to appointment as an executor or a trustee are attorneys-at-law and corporate fiduciaries. Attorneys-at-law and corporate fiduciaries compete in the providing of these services.

11. Assets which form the res of trusts and estates governed by New York State law are located in diverse areas both within and outside the state of domicile of the settlor or testator. Trustees and executors frequently obtain ancillary powers in diverse state jurisdictions in order to administer or dispose of such assets. Moreover, trustees and executors acting under authority of New York State law frequently serve settlors and decedents domiciled outside of New York State.

12. Assets administered and invested by executors and trustees with respect to trusts and estates governed by New York State law may be invested in stocks and bonds, which are traded on national stock exchanges, or in securities of various United States Government agencies, or obligations of states and political subdivisions located throughout the United States. Such assets may also be invested in insurance policies issued by companies doing business in interstate commerce.

13. As of April 1980, attorneys-at-law and corporate fiduciaries in New York State managed assets in trusts and estates governed by New York law with a market value in excess of 130 billion dollars.

14. The activities of defendant and co-conspirators which are the subject of this complaint are within the flow of, and have substantially affected, the above-described interstate commerce.

15. Defendant, and its standing committee on the unlawful practice of law, may be designated under the Rules of Practice of the Appellate Division, New York State Supreme Court, First Judicial Department, to investigate possible cases of the

unlawful practice of law. In June 1966, defendant entered into an agreement with the Corporate Fiduciaries Association entitled the Statement of Principles Between the New York County Lawyers' Association and the Corporate Fiduciaries Association of New York City which delineated the spheres of activities of corporate fiduciaries and attorneys-at-law with respect to the providing of trust and estate services, among other things. This agreement included prohibitions on the activities of corporate fiduciaries which do not constitute the practice of law under the law of the State of New York or which have not been adjudicated by the courts of New York State as constituting the practice of law. This agreement and the activities of defendant and co-conspirators in connection therewith, as hereinafter alleged, exceed the authority granted by the aforementioned Rules of Practice.

VI

VIOLATION ALLEGED

16. Beginning as early as 1966 and continuing until at least August 1980, defendant and co-conspirators engaged in a continuing combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. Section 1. Said unlawful combination and conspiracy may continue or be renewed unless the relief prayed for is granted.

17. The aforesaid combination and conspiracy has consisted of a continuing agreement between defendant and co-conspirators to restrict and to define the trust and estate services which corporate fiduciaries may provide to the public in competition with attorneys-at-law.

18. In formulating and effectuating the aforesaid combination and conspiracy, defendant and co-conspirators have done those things which they have combined and conspired to do, including, among other things:

a. approved and entered into an express agreement, entitled the Statement of Principles Between the New York County Lawyers' Association and the Corporate Fiduciaries Association of New York City, for the purpose and with the effect of delineating the spheres of activities of corporate fiduciaries and attorneys-at-law with respect to the providing of trust and estate services, among other things; and

b. established a Joint-Conference Committee to implement and enforce such Statement and to hear complaints and consider questions arising under the Statement.

VII

EFFECTS

19. The aforesaid combination and conspiracy has had, and is continuing to have, the following effects, among others:

a. competition in the trusts and estates business has been restrained;

b. corporate fiduciaries have been limited, restricted, and impaired in their ability to advertise the availability of and to provide trust and estate services;

c. corporate fiduciaries have been denied the opportunity freely to compete with attorneys-at-law in offering and providing services incident to appointment as executor or trustee; and

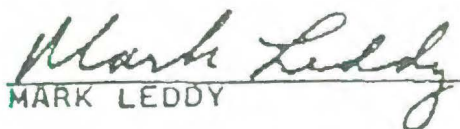
d. the public has been deprived of the benefits of free and open competition in the trusts and estates business.

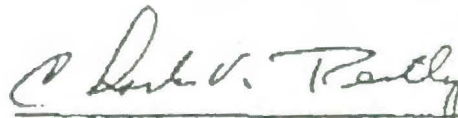
WHEREFORE, plaintiff prays:

1. that the alleged combination and conspiracy between defendant and co-conspirators be adjudged and declared to be unlawful in violation of Section 1 of the Sherman Act;
2. that an injunction be imposed perpetually enjoining defendant from continuing or renewing the instant combination and conspiracy;
3. that an injunction be imposed perpetually prohibiting defendant from adopting, promulgating, publishing or seeking adherence to any treaty, resolution, code of ethics, statement of principle, agreement, rule, standard, or advisory opinion relating to the business activities of banks, trust companies or other fiduciary institutions, or any of their employees engaged in connection therewith, as relates to trust or estate services, advertising the availability of such services, or providing forms of trusts or wills to the public and explanatory literature in connection therewith; and
4. that plaintiff have such other and further relief as may be just and proper.


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