

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

v.

BUSINESS INVESTMENT AND  
DEVELOPMENT CORP.,  
Defendant.

Civil No. MO-81-CA-20

Filed: March 24, 1982

Entered: July 16, 1982

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint on February 27, 1981, and the plaintiff and the defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by either party with respect to any issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon consent of the parties, it is

ORDERED, ADJUDGED AND DECREED, as follows:

I

This Court has jurisdiction over the subject matter of this action and over both parties. The complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

## II

As used in this Final Judgment:

- (A) "BIDCO" means Business Investment and Development Corporation and specifically includes its wholly owned subsidiary American Lenders Service Company ("ALSCO");
- (B) "Person" means any individual, corporation, partnership, joint venture, firm, association, or any other business or legal entity;
- (C) "Repossession services" includes, but is not limited to, tracing of property, collection and adjustment of loans, as well as repossession, sale or return of collateral;
- (D) "Repossessor" means any person that provides adjustment or repossession services for banks, credit unions or other lending institutions that seek to recover merchandise sold under security agreements where the debtor has forfeited possessory rights by defaulting on loan terms;
- (E) "Repossessor organization" means any trade association for repossessors or any person that licenses other persons to provide repossession services under a trademarked name;
- (F) "Franchisee" means any person that has executed an ALSCO franchise agreement.

## III

The provisions of this Final Judgment shall apply to the defendant BIDCO, its subsidiaries, successors and assigns, to its officers, directors, franchisees, members, agents and employees, and to all other persons in active concert or participation with the defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV .

(A) The defendant, whether acting unilaterally or in concert with any other person, is enjoined from, directly or indirectly,

(1) entering into, adhering to, or maintaining any contract, agreement, understanding, plan or program with any other reposessor organization to fix or maintain the prices of repossession services;

(2) formulating, establishing, publishing, maintaining, or distributing any price schedule or list of fees for repossession services;

(3) advocating, urging, recommending or suggesting any price schedule or list of fees for repossession services; or

(4) participating in any conversation, discussion or other communication with any other reposessor or with any representative of any reposessor organization that in any way relates to fees for repossession services, provided that nothing in Paragraph IV(A)(4) prohibits the defendant from negotiating with repossessors regarding fees to be charged for specific accounts that it is referring or accepting.

(B) Nothing in this Final Judgment shall limit the ability of ALSCO to set and disseminate prices for the repossession services of ALSCO offices in which ALSCO owns a majority interest, provided that such price lists are neither distributed to nor discussed with franchisees, except with respect to negotiation regarding fees to be charged for specific accounts that it is referring or accepting.

(C) Nothing in this paragraph shall prohibit ALSCO from allowing individual franchisees to advertise in any ALSCO



directory independently determined prices or fees for repossession services.

V

The defendant is ordered:

(A) to include in a prominent manner in the prefatory section of each ALSCO directory, at such time as it is published, the following statement:

In conformity with a consent decree entered into with the United States Department of Justice, American Lenders Service Company has discontinued publishing and disseminating fee schedules for its franchisees. All prior schedules are, in their entirety, null and void. ALSCO, however, may set and disseminate prices for repossession services of ALSCO offices in which ALSCO owns a majority interest. ALSCO makes no suggestion whatsoever concerning its franchisees' specific fees or prices to be charged for repossession services. ALSCO may require its franchisees to guarantee customer satisfaction regarding prices, terms, or conditions of providing repossession services.

(B) until an ALSCO directory is published, to include in a prominent manner in any BIDCO publication that lists ALSCO franchisees and is disseminated by ALSCO to current and prospective customers, at least once every six (6) months

for the first two years following the date of entry of this Final Judgment and once every twelve (12) months thereafter, the statement in Paragraph V(A).

VI

The defendant is enjoined from:

(A) restricting the area in which or the customers for which its franchisees may provide repossession services; and

(B) restricting the geographic area for which its franchisees may advertise their services, provided, however, that nothing in this Final Judgment shall prohibit the defendant from imposing a reasonable limit on the total number of cities and towns that each franchisee may list in any ALSCO directory;

unless the plaintiff approves in writing such restriction as necessary or appropriate to promote competition in the repossession industry.

VII

Nothing in this Final Judgment shall prohibit the defendant from restricting the area in which its franchisees may operate repossession offices if such restrictions do not grant to any franchisee an exclusive territory which overlaps in whole or in part an exclusive territory granted to such franchisee by any other repossession organization, provided that the defendant may continue in effect any such overlapping exclusive territory held by any franchisee on February 6, 1982 for a period not to exceed three years from the date of entry of this Final Judgment. Prior to the end of such period, the defendant shall require any franchisee that holds any overlapping exclusive territory pursuant to this proviso to notice its termination

of the franchise granted by the defendant or to notice its waiver of all other overlapping exclusive territorial rights granted by any other reposessor organization. If such franchisee does not terminate the franchise granted by the defendant, and declines to waive all other overlapping exclusive territorial rights granted by other reposessor organizations, the defendant shall terminate such franchise.

#### VIII

Except as provided in Paragraph V, the defendant is ordered to amend and eliminate from its bylaws, franchise agreements, manuals, rules, regulations and any other governing documents, any provision inconsistent with this Final Judgment, including but not limited to, deletion of any language relating to any fee schedule for repossession services provided by its franchisees.

#### IX

The defendant is ordered and directed:

- (A) to furnish within sixty (60) days after entry of this Final Judgment a copy of it to each of its officers, directors, employees and franchisees;
- (B) to furnish a copy of this Final Judgment to each person who in the ten (10) years after entry of this Final Judgment, becomes an officer, director, or franchisee within thirty (30) days after such person becomes associated with the defendant;
- (C) to direct each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs IX(A) and IX(B) to retain such copy as long as he or she is associated with the defendant;



(D) to require each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs IX(A) and IX(B) to sign and submit to the defendant, within thirty (30) days of receipt of a copy of this Final Judgment, a certificate in substantially the following form; and the defendant shall retain such certificates as long as this Final Judgment is in effect and for one year thereafter:

I (1) acknowledge receipt of a copy of the 1982 antitrust Final Judgment, (2) represent that I have read and understand the Final Judgment, and (3) acknowledge that I have been advised and understand that non-compliance with the Final Judgment may result in conviction for contempt of court and imprisonment and/or fines.

(E) at least once each year, during the ten (10) years after entry of this Final Judgment, to call to the attention of each of its officers, directors, employees and franchisees the limitations imposed upon them by this Final Judgment, and of the sanctions that may be imposed for non-compliance;

(F) to file with the court and serve upon the plaintiff, within one hundred-twenty (120) days from the date of the entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subparagraphs IX(A), IX(D) and IX(E); and

(G) to furnish the plaintiff within thirty (30) days after each anniversary date of the entry of this Final Judgment, for a period of ten (10) years, an affidavit as to the fact of and manner of securing and ascertaining compliance with, the provisions of Sections IV, V, VI,

VII, VIII, and subparagraphs IX(B), IX(C), IX(D), and IX(E) of this Final Judgment.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the defendant made to its principal office, any duly authorized representative of the Department of Justice shall be permitted:

(1) access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, franchisees, employees, or agents, of the defendant, who may have counsel present, regarding any such matters;

(B) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath, if required, with respect to any of the matters



contained in this Final Judgment as may be requested. No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

## XI

Jurisdiction is retained by the Court to enable only either of the named parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the modification of any of its

provisions, for the enforcement of compliance, and for the punishment of violations.

XII

This Final Judgment shall remain in effect until ten (10) years from date of entry.

XIII

Entry of this Final Judgment is in the public interest.

DATED: July 16, 1982

/s/ Judge Lucius D. Bunton, III  
LUCIUS D. BUNTON  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I served Bogdan Rentea, Esq., counsel for defendant, with true copies of the attached proposed Final Judgment and Competitive Impact Statement by Airborne Courier Service on March 23, 1982, addressed to:

Bogdan Rentea, Esq.  
312 East Second Street  
Odessa, Texas 79760

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