

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of)	
)	Docket No. C-4111
Robert Lewis, James Sowder,)	
Gerald Wear, and Joel R.)	
Yoseph, individually.)	
)	
)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (“FTC Act”), 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 Robert Lewis, James Sowder, Gerald Wear, and Joel R. Yoseph, hereinafter collectively referred to as “Respondents,” have violated Section 5 of the FTC 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 in that respect as follows:

NATURE OF THE CASE

1. This matter concerns Respondents’ actions in organizing horizontal agreements, among 43 competing attorneys who constitute most of the attorneys who provide criminal defense services to indigents in the Clark County, Washington, area, to fix price and other terms charged to the government payor. In furtherance of their agreements, the Respondents organized a boycott against the payor of criminal indigent defense services for the Clark County area. The boycott culminated in a written agreement among the 43 competing attorneys titled "Indigent Defense Bar Consortium Contract." The agreement appointed the Respondents as the exclusive representatives, in negotiating the 2002 and 2003 Superior Court Felony Indigent Defense Contract: Homicide and Persistent Offender cases, for the 43 criminal indigent defense attorneys that were negotiating with the payor of criminal indigent defense services for the Clark County area. Respondents negotiated collectively agreed upon price and other contract terms with the payor, and Respondents and the other competing attorneys agreed to refuse to negotiate individually with the payor. This conduct raised the price of criminal indigent legal services in the Clark County area.

RESPONDENTS

2. Respondent Robert Lewis, an individual, is an attorney who represents indigent criminal defendants. His principal address is 430 NE Everett Street, Camas, WA 98607. He was one of four leaders and organizers of the boycott.

3. Respondent James Sowder, an individual, is an attorney who represents indigent criminal defendants. His principal address is 1600 Daniels, P.O. Box 27, Vancouver, WA 98666. He was one of four leaders and organizers of the boycott.

4. Respondent Gerald Wear, an individual, is an attorney who represents indigent criminal defendants. His principal address is 207 East 19th Street, Vancouver, WA 98663. He was one of four leaders and organizers of the boycott.

5. Respondent Joel R. Yoseph, an individual, is an attorney who represents indigent criminal defendants. His principal address is 1305 Main Street, Vancouver, WA 98660. He was one of four leaders and organizers of the boycott.

6. Respondents' general business practices, including the acts and practices herein alleged, are in or affecting "commerce" as defined in the FTC Act, as amended, 15 U.S.C. § 44.

ALLEGATIONS OF VIOLATIONS

7. Except to the extent that competition has been restrained as herein alleged, the Respondents and the other criminal indigent defense attorneys that participated in the boycott have been and are now in competition among themselves and with other attorneys in deciding independently whether and to what extent they will seek criminal indigent cases at fees offered by Clark County, as opposed to other legal work, and in obtaining appointments to represent indigent criminal defendants for homicide and persistent offender cases in the Superior Court of Clark County.

8. Near the end of 2001, Clark County started its biennial contract negotiations with the private attorneys that had provided criminal indigent defense services during the preceding contract period. Early in these negotiations, the Respondents presented the County with a document titled "Indigent Defense Bar Consortium Contract" (hereinafter "Consortium Contract") that was signed by 43 of the criminal indigent defense attorneys who had signed felony contracts with the County during the previous contract period.

9. The Consortium Contract appointed the Respondents as the group's exclusive contract negotiators. Moreover, it stated:

The 2002 contract for indigent defense services with Clark County Superior Court will be accepted on the condition it contains the following:

- a. All non-death penalty aggravated murders will be paid at the rate of \$65.00 per hour. The appointed attorney shall be guaranteed a minimum \$12,500.00. There will be a cap of \$50,000.00, subject to review by the assigned judge.
- b. Non-aggravated murders, including vehicular homicides, and persistent offender cases, shall be paid at the rate of \$55.00 per hour with a minimum guarantee of \$7,800.00 and a cap of \$30,000.00, subject to review by the assigned judge.
- c. Attempted murders, first degree manslaughter and second degree manslaughter shall be paid at the rate of \$50.00 per hour with a minimum guarantee of \$3,450.00, and a cap of \$15,000.00, subject to review by the assigned judge.
- d. Death penalty cases shall be paid at the rate of \$75.00 per hour with a minimum guarantee of \$15,000.00, and a cap of \$100,000.00 per attorney, subject to review by the assigned judge.

These fee demands were significantly higher than the fees the County paid in the previous year's contract and were also much higher than the County was offering in the current negotiations.

10. The Consortium Contract also included provisions to bind its signatories to its terms. In particular, it stated that "[t]he undersigned have agreed not to contract with Clark County for felony defense services in any manner inconsistent with the above and if such acts are taken, shall be subject to liability for attorney fees for any lawsuit or arbitration engaged in by the Consortium to uphold this agreement. This would include restraining orders and money damages."

11. In addition to the actions referenced in Paragraphs 8 through 10, Respondent James Sowder acted as a representative for many criminal indigent defense attorneys from 1990 to 2002 in contract negotiations with Clark County, where he negotiated prices and other competitively significant terms on behalf of competing criminal indigent defense attorneys and facilitated the competing criminal indigent defense attorneys' coordinated responses to contract offers.

RESPONDENTS HAVE ENGAGED IN RESTRAINTS OF TRADE

12. Respondents have acted to restrain competition by, among other things, organizing and acting as the exclusive representatives of the Consortium Contract and thereby facilitating, negotiating, entering into, and implementing agreements among competing criminal indigent defense attorneys on price and other competitively significant terms.

**RESPONDENTS' ACTIONS HAVE HAD SUBSTANTIAL ANTICOMPETITIVE
EFFECTS**

13. Respondents' actions described in Paragraphs 8 through 12 of this Complaint have had, or have tended to have, the effect of restraining trade unreasonably and hindering competition in the provision of criminal indigent defense services in the Clark County area in the following ways, among others:

- a. price and other forms of competition among Respondents and the other signatories to the Consortium Contract were unreasonably restrained;
- b. prices for criminal indigent defense services for homicides, attempted homicides, and persistent offenders were increased; and
- c. Clark County and its taxpayers were deprived of the benefits of competition among criminal indigent defense attorneys.

14. The combination, conspiracy, acts, and practices described above 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, conspiracy, acts, and 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 twenty-third day of July, 2004, issues its Complaint against Respondents.

By the Commission.

Donald S. Clark
Secretary

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