

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
Service Corporation International,)	Docket No. C-4423
a corporation, and)	File No. 131 0163
)	
Stewart Enterprises, Inc.,)	
a corporation)	
)	

PETITION FOR APPROVAL OF DIVESTITURE BUYER

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2012), and Paragraphs II.A. of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“Decision and Order”), Respondent Service Corporation International (“SCI”) hereby petitions the Commission to approve the divestiture to Miami Memorial, LLC (“MMLLC”) of the Divestiture Businesses that include the following five facilities: (i) Funeraria Memorial Plan – San Jose, 250 East 4th Ave., Hialeah, FL 33010; (ii) Funeraria Memorial Plan – Westchester, 9800 SW 24th St., Miami, FL 33165; (iii) Branam Funeral Home, 809 N. Krome Ave., Homestead, FL 33030; (iv) Memorial Plan Flagler Memorial Park, 5301 W. Flagler St., Miami, FL 33134; and (v) Memorial Plan Miami Memorial Park, 6200 SW 77th Ave., Miami, FL 33143.

The Divestiture Businesses associated with these facilities (as defined in the Decision and Order, and hereinafter collectively referred to as the “Divestiture Assets”)

will be sold to MMLLC pursuant to the Asset Sale Agreement dated August 5, 2014, by and among MMLLC and SCI Funeral Services of Florida, Inc. (the “ASA”).

Background

On December 23, 2013, SCI and Respondent Stewart Enterprises, Inc. (“Stewart”) (collectively, the “Respondents”) executed an Agreement Containing Consent Orders that included the Decision and Order and Order to Hold Separate and Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s charges that the proposed acquisition by SCI of Stewart would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. On December 23, 2013, the Commission accepted the Consent Agreement for public comment, and on December 23, 2013, SCI consummated its acquisition of Stewart. Stewart is now a wholly owned subsidiary of SCI. The Commission issued the final order in this matter on April 29, 2014.

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Divestiture Assets—the disclosure of which may prejudice the Respondents and MMLLC, cause harm to the ongoing competitiveness of the Divestiture Assets, and impair Respondents’ ability to comply with their obligations under the Consent Agreement—Respondents have redacted such confidential information from the public version of this petition and its attachments. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(4) & 4.9(c) (2012), Respondents request that the non-public, confidential version of this petition and its attachments and the information contained herein be accorded confidential treatment. The confidential version of this

petition should be accorded such confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) (2012). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

Respondent SCI desires to complete the proposed divestiture of the Divestiture Assets as soon as possible, following Commission approval thereof. All conditions other than Commission approval and state approval have already been satisfied. MMLLC must obtain approval from the Florida Board of Funeral, Cemetery & Consumer Services. MMLLC expects to obtain this approval prior to Commission approval of this petition, so that SCI and MMLLC are in a position to close the divestiture within a few days of Commission approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the public, MMLLC, and the Respondents, because it will allow MMLLC to move forward with its business plans for the competitive operation of the Divestiture Assets. SCI accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2012), limit the public comment period to the customary 30-day period, and grant this petition by approving the divestiture of the Divestiture Assets to MMLLC pursuant to the above-referenced ASA as soon as practicable after the close of the public comment period.

I. The ASA Is Final and Consistent with the Decision and Order's Terms

The ASA with MMLLC complies with the requirements of Paragraph II of the Decision and Order.

Paragraph II.A of the Decision and Order requires the Respondents to divest the Divestiture Businesses (as defined in the Decision and Order) within 180 days of the date on which the Order is issued.¹ Pursuant to this requirement, SCI diligently has sought buyers that would be acceptable to the Commission, through an extensive auction process that produced great interest in the properties. As noted above, on August 5, 2014, affiliates of SCI entered into the ASA with MMLLC, which requires SCI to sell the Divestiture Assets to MMLLC. The executed ASA is attached hereto as Confidential Exhibit A.

Paragraph II.A.1 requires that the Respondents divest the Divestiture Assets, absolutely and in good faith. Pursuant to the ASA, MMLLC will acquire the Divestiture Assets. See ASA § 1.1.

Paragraph II.B requires that Respondents divest the facilities in Miami, Florida, to no more than one Acquirer. These facilities are: (i) Funeraria Memorial Plan – San Jose, 250 East 4th Ave., Hialeah, FL 33010; (ii) Funeraria Memorial Plan – Westchester, 9800 SW 24th St., Miami, FL 33165; (iii) Branam Funeral Home, 809 N. Krome Ave., Homestead, FL 33030; (iv) Memorial Plan Flagler Memorial Park, 5301 W. Flagler St., Miami, FL 33134; and (v) Memorial Plan Miami Memorial Park, 6200 SW 77th Ave., Miami, FL 33143. The ASA provides that MMLLC will acquire all of these facilities, satisfying Paragraph II.B of the Decision and Order. See ASA § 1.1.

Paragraph II.C.1.(e) of the Decision and Order provides that Respondents may use the trade name “Funeraria Memorial Plan” for a period of up to twelve months from the relevant

Divestiture Date, as that term is used in the Decision and Order, for the funeral homes located at 1717 SW 37th Avenue, Miami, Florida 33145 and 7355 SW 117th Avenue, Miami, Florida 33183. Pursuant to the ASA, SCI may utilize the trade name “Funeraria Memorial Plan” at these two funeral home locations for a period of up to twelve months from the Divestiture Date. See ASA §5.28(b).

Paragraph II.C.1.(f) of the Decision and Order provides that Respondents may use the trade name “Memorial Plan” for a period of up to twelve months from the relevant Divestiture Date, as that term is used in the Decision and Order, for the cemeteries located at 14200 SW 117th Avenue, Miami, Florida 33186, 1301 NW Opa Locka Boulevard, Miami, Florida 33167, and 15000 West Dixie Highway, North Miami, Florida 33181. Pursuant to the ASA, SCI may utilize the trade name “Memorial Plan” at these three cemetery locations for a period of up to twelve months from the Divestiture Date. See ASA §5.28(a).

MMLLC has acknowledged that the Divestiture Assets, together with MMLLC’s existing resources, enable MMLLC to operate the Divestiture Businesses as ongoing entities and that no other assets are needed from SCI to do so. See ASA § 4.4.

* * *

As demonstrated above and in the accompanying ASA, SCI has entered into an agreement relating to the divestiture of the Divestiture Assets that fully complies with the Commission’s Decision and Order with respect to the divestiture of these assets. Accordingly, Respondents hereby seek Commission approval of the proposed divestitures pursuant to Paragraph II.A of the Decision and Order.

¹ The Commission issued the Order on April 29, 2014.

II. The Proposed Acquirer Will Be a Strong and Effective Competitor

A. Background

The principals of MMLLC have extensive experience in acquiring and operating funeral homes and cemeteries, MMLLC has the financial wherewithal to make this acquisition, and the acquisition of the businesses in question by MMLLC will assure that those businesses remain strong and effective competitors in Miami, Florida.

MMLLC is comprised of a group of accomplished death-care professionals and is led by Mr. Frank Bango, an experienced operator in the death care industry. Mr. Bango graduated in 1971 from The University of Florida School of Architecture with a Bachelor's Degree in Building Construction. After working with a major construction company for several years, Mr. Bango joined American Funeral Services as Senior Vice President in 1987, and he served as a member of the Board until the time of sale to SCI in 1992.

In 1992, Mr. Bango began serving as Market Manager for SCI Miami and later became Area Vice President for South Florida and Vice President for the State of Florida in 1996. Until 1993, he was board member of both the ALPAR (Asociacion Latinoamericana de Parques Cementarios y Servicios Exequiales), an association that integrates people and companies linked to the funeral industry in the international environment, and the Florida Cemetery Association. In 1999, he moved to Madrid, Spain, where he served as Senior Managing Director for SCI Spain and Portugal, as well as President of SCI Latin America, which included Chile, Argentina, and Uruguay.

From 2001 until the present, Mr. Bango has served as Senior Managing Director for SCI Hispana, responsible for various locations in California, Arizona, Texas, Florida, and Puerto Rico. In this role, Mr. Bango has been responsible for [REDACTED] in revenues, dedicated mostly to Hispanic customers. His responsibilities included management of the five

funeral homes and cemeteries that comprise the Divestiture Assets. He is intimately familiar with the business and operations of these properties and is well situated to run them going forward.

In 1987, Mr. Bango created Memorial Plan as a brand designed to cater to the Latin families that predominantly characterize the Miami death care industry. In addition to Mr. Bango's 27 years of experience, the proposed MMLLC senior management team has over 65 years of experience in the death care industry.

MMLLC's objective is to use their experience in the death care industry, generally, and their expertise in the Miami market, specifically, to become a vital competitor in Miami. In order to be successful in the Miami area, MMLLC intends to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] MMLLC's management has considerable experience in building a sales force with the SCI organization in Miami of more than 150 sales counselors, as well as a sales organization of over 500 counselors in the major U.S. and Latin American markets.

B. Financial Capability

MMLLC will [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Operations Experience

As explained above, Mr. Bango and the members of the proposed management team for MMLLC have had long and successful careers in the death care industry, many of which have been dedicated to Miami, Florida. Specifically, MMLLC intends to retain several key employees currently working for SCI with responsibilities for the Divestiture Assets.

MMLLC has sufficient operating expertise to not only ensure the continued competitiveness of the Divestiture Assets, but to enhance it. During years 2014 and 2015, MMLLC intends to invest in [REDACTED]

III. The Proposed Divestiture Agreement Will Achieve the Purposes of the Decision and Order and Result in No Harm to Competition

The proposed divestiture of the Divestiture Assets, as embodied in the ASA, will achieve the purposes of the Decision and Order. The principals of MMLLC are experienced operators of funeral homes and cemeteries, with a proven track record of successfully operating and enhancing the funeral homes and cemeteries that they have played leading roles in acquiring. MMLLC enjoys a strong financial position that will enable it to complete this acquisition, continue the operation of the Divestiture Assets and enhance their competitiveness in the market for funeral and cemetery services. Combining the Divestiture Assets with MMLLC's experience and financial wherewithal will ensure that the objectives of the Commission's Decision and Order will be realized.

The proposed divestiture will result in no harm to competition. Neither MMLLC nor its principals currently compete in any market, as defined in the Commission's Complaint, in

which the Divestiture Assets operate.² Consequently, there is no overlap between the operations of MMLLC and the Divestiture Assets, and the proposed divestiture does not raise any competitive issue.

In sum, the proposed divestiture will remedy any alleged anticompetitive effects that could result from the Acquisition. The ASA will achieve the Commission's stated purposes of ensuring the continued use of the Divestiture Assets in the same business in which they were engaged at the time of the announcement of the Acquisition and remedying the lessening of competition as alleged in the Commission's Complaint.

Conclusion

For the foregoing reasons, the Respondents respectfully request that the Commission approve the proposed divestiture of the Divestiture Assets to MMLLC, as embodied in the ASA, as soon as practicable after expiration of the public comment period.

Respectfully submitted,



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Counsel for Respondents

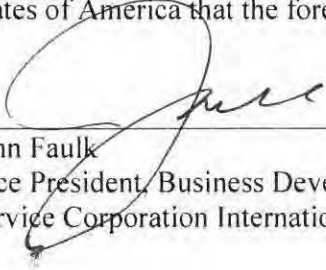
Dated: August 7, 2014

² Mr. Bango currently is employed by SCI, but will not continue his employment upon the acquisition of the Divestiture Assets.

CERTIFICATION OF SERVICE CORPORATION INTERNATIONAL

The facts and information related in the foregoing Petition, insofar as they pertain to Service Corporation International, its subsidiaries, and its assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

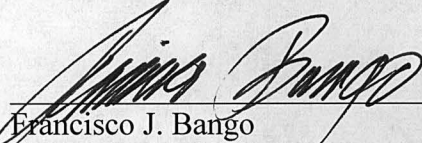


John Faulk
Vice President, Business Development
Service Corporation International

CERTIFICATION OF MIAMI MEMORIAL, LLC

The facts and information related in the foregoing Petition, insofar as they pertain to Miami Memorial, LLC, their subsidiaries, and their assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Francisco J. Bango
Chief Executive Officer & Managing Member
Miami Memorial, LLC

Confidential Exhibit A