

FEDERAL TRADE COMMISSION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

DOCUMENT PROCESSING SECTION

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 PROPOSED DIVESTITURE

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 Angeleno Mortuaries, Inc. (“Angeleno”) of the following two Divestiture Businesses: (i) Halley-Olsen-Murphy Funerals & Cremations, 44831 N. Cedar Avenue, Lancaster, California 93534 and (ii) Antelope Valley Cremation Service, 619 West Milling, Lancaster, California 93534.¹ SCI additionally petitions the Commission to approve the Facilities Agreement between Angeleno and S.E. Funeral Homes of California, Inc.² dated February 24, 2014.

¹ Halley-Olsen Murphy Funerals & Cremations and Antelope Valley Cremation Service are located in the same building, but have separate addresses as required by California law.

² S.E. Funeral Homes of California, Inc. is a wholly-owned subsidiary of SCI.

The Divestiture Businesses associated with these facilities (as defined in the Decision and Order, and hereinafter collectively referred to as the “Lancaster Divestiture Assets”) will be sold to Angeleno pursuant to the Asset Sale Agreement (the “ASA”) dated February 24, 2014, by and among Angeleno and S.E. Funeral Homes of California, Inc.

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 Consent Agreement is presently before the Commission for final approval and issuance of the orders contained therein.

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Lancaster Divestiture Assets—the disclosure of which may prejudice Respondents and Angeleno Mortuaries, Inc., cause harm to the ongoing competitiveness of the Lancaster 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 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 Lancaster Divestiture Assets as soon as possible, following Commission approval thereof. All conditions other than Commission approval and those customarily satisfied at closing have already been satisfied, so that SCI and Angeleno are in a position to close the divestiture within a few days of such approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the public, Angeleno, and Respondents, because it will allow Angeleno to move forward with its business plans for the competitive operation of the Lancaster 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 Lancaster Divestiture Assets to Angeleno pursuant to the above-referenced ASA as soon as practicable after the close of the public comment period.

I. The Asset Sale Agreement Is Final and Consistent with the Decision and Order's Terms

Paragraph II.A of the Decision and Order requires 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.³ Pursuant to this requirement, SCI diligently has sought a buyer that would be acceptable to the Commission, through an extensive auction process that produced great interest in the property. As noted above, on February 24, 2014, SCI entered into the ASA with Angeleno. The ASA requires SCI to sell the Lancaster Divestiture Assets to Angeleno. The executed ASA is attached hereto as Confidential Exhibit A.

The ASA with Angeleno complies with the requirements of Paragraph II of the Decision and Order:

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

B. Paragraph II.B.1 requires that Respondents divest (i) Halley-Olsen-Murphy Funerals and Cremations (Halley-Olsen-Murphy), and (ii) Antelope Valley Cremation Service in Lancaster, California, to no more than one Acquirer. The ASA contemplates that Angeleno will acquire both Halley-Olsen-Murphy and Antelope Valley Cremation Service in Lancaster, California, satisfying this requirement. See ASA § 1.1.

* * *

As demonstrated above and in the accompanying ASA, SCI has entered into an agreement relating to the divestiture of the Lancaster Divestiture Assets that fully complies with

³ The Commission has not yet issued the Order as final.

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.

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

A. Background

Angeleno has extensive experience in the deathcare industry, has the financial wherewithal to make this acquisition, and will ensure that Halley-Olsen-Murphy and Antelope Valley Cremation Service remain strong and effective competitors in Lancaster, California.

Williams Hawkins founded Angeleno in 1997 in North Hollywood, California. Angeleno has grown both organically and through acquisition. Two Angeleno facilities—Angeleno Valley Mortuary (1997) and Angeleno Mortuary, Van Nuys (2004)—were founded from scratch and have grown to jointly serve over [REDACTED] calls in 2013. In 2011, while still maintaining a major focus on organic growth, Angeleno began a strategy of growth via acquisition. Angeleno acquired Lorenzen Mortuary in Reseda, California, in 2011 and acquired Reardon Simi Valley Funeral Home in Simi Valley, California, Ingold Funeral Chapel in Fontana, California, and Crawford Mortuary in Northridge, California, in 2013. The six facilities that comprise Angeleno Mortuaries served [REDACTED] calls in 2013.

Angeleno operates as a privately held inter-generational family business with each of the six locations being run as individual businesses with DBAs under the same main Federal Tax ID. The company has 37 employees and expects to serve over [REDACTED] families in 2014 through its six currently-owned facilities.

Angeleno's corporate structure is designed so that each business can operate both independently and with strong inter-dependence that allows for flexibility with

personnel/vehicles/facilities, branding, and economies of scale relative to cost of goods sold, preparation, storage, and other operating expenses.

Angeleno enjoys a strong reputation in the community as well as with industry organizations. Angeleno founder, William Hawkins, is a past president of the Los Angeles County Funeral Directors Association (LACFDA) and former board member of the California Funeral Directors Association (CFDA). Mr. Hawkins and Angeleno have a solid history with regulators and no pending regulatory issues.

As discussed in more detail below, Angeleno owns no competitive assets in Lancaster, California. The geographically closest asset to the to-be-acquired Lancaster Divestiture Assets to Angeleno's currently owned facilities is approximately 50 miles away in the San Fernando Valley.

B. Financial Capability

To acquire the Lancaster Divestiture Assets, Angeleno is obtaining a loan that will be financed by [REDACTED]. [REDACTED] has provided over \$60,000,000 of funding for various funeral home acquisitions industry-wide, with [REDACTED] to Angeleno for the acquisitions of Reardon Simi Valley Funeral Home and Crawford Mortuary combined in 2013.

Angeleno's founder, William Hawkins, has also [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Hawkins has a strong documented history of successfully operating businesses of similar sizes (including after acquisition). From the time of its founding until 2013, Angeleno Valley Mortuary in North Hollywood has grown to serve [REDACTED] calls in 2013. Additionally, Angeleno Mortuary in Van Nuys was founded in 2004 and has grown to serve [REDACTED] calls in 2013.

Despite the highly competitive landscape in the San Fernando Valley, Angeleno's three facilities that were in existence prior to the 2013 acquisitions—Angeleno Valley Mortuary in North Hollywood, Angeleno Mortuary in Van Nuys, and Lorenzen Angeleno in Reseda—had [REDACTED] call volume growth [REDACTED] between 2012 and 2013. This organic growth was seen across the board as all three locations individually experienced an increase in call volume.

The ability to grow an acquired business is shown by Angeleno's 2011 acquisition of Lorenzen Angeleno Mortuary from Lorenzen Mortuary. This acquisition involved an outpost facility of Lorenzen Mortuary. Since the acquisition in 2011, Lorenzen Angeleno Mortuary has had higher case volume and revenue than it had in the few years prior to the sale. In 2011, Lorenzen Angeleno Mortuary had [REDACTED] calls, but by 2013 this call volume had increased to [REDACTED].

The three businesses that Angeleno acquired in 2013 have all grown in business call volume since the time of their acquisition. At each of these three businesses, Angeleno retained all full time employees, invested significant operating profit into building, furniture, and fixture enhancements, and hired additional staff.

Angeleno similarly plans to enhance and improve both of the Lancaster Divestiture Assets to make them even stronger competitors post-divestiture. Specifically, Angeleno intends to spend approximately [REDACTED] on building a new preparation room at Halley-Olsen-Murphy in Lancaster. The facility does not have its own preparation room and has

been using another facility under common ownership until this time. Plans to build this preparation room are well underway. Mr. Hawkins has met multiple times with representatives of Flewelling & Moody (architectural firm) and Ashford Construction Company (builder), both of whom were involved in the 2013 construction of the Halley-Olsen-Murphy facility in Lancaster. Although formal engagement of these firms is pending FTC approval of this petition and closing of the purchase from SCI, both firms have committed to Angeleno to handle the project. Angeleno will promptly begin construction of a preparation room as soon as feasible. Angeleno has also engaged Duncan Stewart, an expert in preparation room design, to assist in the technical aspects of the preparation room design such as OSHA requirements and fixtures. Duncan Stewart is a well-known technical design firm in this industry and has been retained by several other death care industry firms, including SCI, Stewart Enterprises, and Angeleno. Angeleno has already begun to verify building and other specifications for the preparation room. Specifically, Angeleno has verified the locations of the building's firewalls and ensured that they will not need to be relocated to complete the preparation room. Angeleno has also verified the water and sewer access and plumbing for the to-be-developed room. Angeleno does not anticipate any significant issues in the development of the preparation room at Halley-Olsen-Murphy.

For a short period of time, not to exceed six months, while the preparation room is being built, Angeleno will obtain Transitional Services in the form of access to an SCI preparation room. These Transition Services will be provided pursuant to the Facilities Agreement between Angeleno and S.E. Funeral Homes of California, Inc. Respondents petition the Commission for approval of this Facilities Agreement, pursuant to Part II.F of the Decision & Order. A copy of the Facilities Agreement is enclosed as Confidential Exhibit B. Angeleno is

not required to purchase any minimum amount of preparation services under the agreement and may cease use of these services at any time, including upon completion of the preparation room at Halley-Olsen-Murphy. Nothing in this Facilities Agreement prevents Angeleno from utilizing its own existing preparation rooms located at the site of its currently-owned facilities in the San Fernando Valley.

Angeleno also plans to grow the Antelope Valley Cremation Services business. As the Commission is aware, Antelope Valley Cremation Services currently operates as an independent direct cremation business from Halley-Olsen-Murphy, but is physically located within the Halley-Olsen-Murphy funeral home building. Angeleno believes that this business can be more effectively operated, marketed, promoted and can better serve consumers from its own, separate location. To this end, Angeleno intends to move the Antelope Valley Cremation Services business to a storefront location directly across the street from Halley-Olsen-Murphy. In doing so, Angeleno intends to invest in Antelope Valley Cremation as an independent business by, among other improvements, adding an additional full-time employee.

C. Operations Experience

Angeleno has sufficient operating expertise to not only ensure the continued competitiveness of the Lancaster Divestiture Assets, but to enhance them.

Angeleno's founder, William Hawkins, was first employed in funeral service in 1963, left the industry in 1968, and returned as the owner of Angeleno in 1997. He currently owns and operates six funeral establishments through Angeleno. Mr. Hawkins is joined in the Angeleno business by Vice President/CFO/Area Manager, Andrew Hawkins. Mr. Andrew Hawkins was first employed by Angeleno in 2003. He is a licensed funeral director and location manager who is responsible at the executive level for the finances of the company, human

resources, compliance, and business strategy including merger and acquisition activity. Messers. Hawkins and Hawkins are joined by Area Manager/Location Manager, Jared Trexel, who was first employed in the funeral industry in 1963 and has over 50 years of experience. The majority of Mr. Trexel's experience is at the area manager level: previously with SCI and, since 1999, with Angeleno.

In addition to this executive-level team, Angeleno intends to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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 Lancaster Divestiture Assets, as embodied in the ASA, will achieve the purposes of the Decision and Order. Angeleno is an experienced operator of funeral homes, with a proven track record of successfully operating and enhancing the funeral homes that it has acquired in the past. Angeleno enjoys a strong financial position that will enable it to complete this acquisition, continue the operation of the Lancaster Divestiture Assets and enhance their competitiveness in the market for funeral and cremation services. Combining the Lancaster Divestiture Assets with Angeleno'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. Angeleno currently owns and operates the following six funeral homes:

1. Reardon Simi Valley Funeral Home, 2636 Sycamore Dr., Simi Valley, CA 93065
2. Crawford Mortuary, 8717 Tampa Ave., Northridge, CA 91324
3. Angeleno Mortuary, 5948 Van Nuys Blvd., Van Nuys, CA 91401
4. Angeleno Valley Mortuary, 5423 Tujunga Ave., North Hollywood, CA 91601
5. Ingold Chapel, 8277 Juniper Ave., Fontana, CA 92335-3499
6. Lorenzen Angeleno Mortuary, 18558 Sherman Way, Reseda, CA 91335

Each of these funeral homes is approximately 50 miles or more away from both Halley-Olsen-Murphy and Antelope Valley Cremation Service. Accordingly, there is no competitive overlap between the six funeral homes currently owned by Angeleno and the Lancaster Divestiture Assets under consideration in this petition.

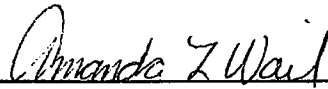
In sum, the proposed divestiture will remedy any alleged anticompetitive effects that could result in Lancaster, California, from SCI's acquisition of Stewart. The ASA will achieve the Commission's stated purposes of ensuring the continued use of the Lancaster Divestiture Assets in the same business 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.

[REST OF PAGE INTENTIONALLY BLANK]

Conclusion

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

Respectfully submitted,



Amada L. Wait
Hunton & Williams LLP
2200 Pennsylvania Ave, NW
Washington, D.C. 20037
(202) 955-1502
Counsel for Respondents

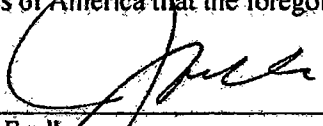
Dated: February 28, 2014

PUBLIC VERSION

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 ANGELENO MORTUARIES, INC

The facts and information related in the foregoing Petition, insofar as they pertain to Angeleno Mortuaries, Inc., 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.



William Hawkins
Founder/President/Funeral Director
Angeleno Mortuaries, Inc.

CONFIDENTIAL

EXHIBIT A

CONFIDENTIAL

EXHIBIT B