

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAN 2 1991

JACKSON, J. TPJ

91 0153

UNITED STATES OF AMERICA,
c/o Department of Justice
Antitrust Division
Washington, D. C. 20530,
Plaintiff,

v.

EQUITY GROUP HOLDINGS,
3524 Water Street, N.W.
Washington, D. C. 20007,
Defendant.

Civil Action No.

COMPLAINT FOR CIVIL PENALTIES FOR
VIOLATIONS OF PREMERGER REPORTING
REQUIREMENTS OF THE HART-SCOTT-RODINO ACT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil action to obtain monetary relief in the form of civil penalties, against the defendant named herein, and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Hart-Scott-Rodino Act"), to recover civil penalties for violations of the Hart-Scott-Rodino Act.

2. This Court has jurisdiction over defendant and over the subject matter of this action pursuant to 15 U.S.C. § 18a(g) and 28 U.S.C. §§ 1331, 1337, 1345 and 1355.

3. Venue is properly based in this District under 28 U.S.C. §§ 1391(b) and 1395(a).

II.

THE DEFENDANT

4. Equity Group Holdings ("Equity Group") is made a defendant herein. Equity Group is a general partnership located at 3524 Water Street, N.W., Washington, D. C. 20007 and is controlled by Steven M. Rales ("Steven Rales") and by Mitchell P. Rales ("Mitchell Rales") within the meaning of 16 C.F.R. § 801.1(b)(1).

III.

INTERCO INCORPORATED

5. Interco Incorporated ("Interco") is incorporated in the State of Delaware. Its principal offices are located at 101 South Hanley Road, St. Louis, Missouri 63105.

IV.

VIOLATION ALLEGED

6. The Hart-Scott-Rodino Act prohibits certain acquisitions of voting securities or assets until a notification has been filed with the Department of Justice and the Federal Trade Commission and a waiting period has expired.

7. Interco and defendant Equity Group at all times pertinent to this proceeding have been engaged in commerce, or in activities affecting commerce, within the meaning of Section (a)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(a)(1).

8. Interco and defendant Equity Group at all times pertinent to this proceeding had assets above the thresholds established by Section (a) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(a). Interco had total assets in excess of \$100 million and Equity Group had total assets in excess of \$10 million.

9. From May 2 through May 24, 1988, defendant acquired voting securities of Interco. These acquisitions were made in the name of City Capital Associates and were funded by Equity Group.

10. As a result of an acquisition of Interco voting securities, on May 18, 1988, defendant held an aggregate amount of Interco voting securities in excess of \$15 million.

11. From May 24 through July 27, 1988, defendant acquired additional Interco voting securities. These acquisitions were made through City Capital Associates Limited Partnership ("CCALP") and funded by Equity Group.

12. CCALP was formed on May 24, 1988, when a certificate of limited partnership was filed with the State of Delaware. CCALP announced a tender offer for all Interco voting

securities on or about August 15, 1988. CCALP allowed the tender offer to lapse on or about November 17, 1988.

13. According to the certificate of limited partnership, the general partners of CCALP were Boot GP I, Inc. and Boot GP II, Inc., each of which held a 49% general partnership interest. The limited partners of CCALP were Michael G. Ryan and Patrick W. Allender, each of whom held a 1% limited partnership interest. Ryan and Allender are employed by Steven and Mitchell Rales. Boot GP I, Inc. was incorporated in the State of Delaware on May 19, 1988, with Steven Rales as its sole stockholder and director and its President. Boot GP II, Inc. was incorporated in the State of Delaware on May 19, 1988, with Mitchell Rales as its sole stockholder and director and its President. On July 27, 1988, the names of Boot GP I, Inc. and Boot GP II, Inc. were changed to City GP I, Inc. ("GP I") and City GP II, Inc. ("GP II").

14. Two corporations, GP I and GP II, were each formed and utilized as 49% partners in CCALP for the purpose of avoiding the premerger notification and waiting period requirements of the Hart-Scott-Rodino Act. The use of these two corporations was an avoidance device under Section 801.90 of the premerger notification regulations, 16 C.F.R. § 801.90. The substance of the transactions involving CCALP was that of an acquisition by a limited partnership in which defendant Equity Group had a 98% interest.

15. The transaction described in Paragraph 10, by which Equity Group acquired an aggregate amount of voting securities of Interco in excess of \$15 million, and the transactions described in Paragraph 11, were subject to the notification and waiting period requirements of the Hart-Scott-Rodino Act and the regulations promulgated thereunder, 16 C.F.R. § 800 et seq. Before Equity Group acquired an aggregate amount of Interco voting securities in excess of \$15 million, the Hart-Scott-Rodino Act and regulations required a filing from both of the ultimate parent entities of Equity Group, Steven Rales and Mitchell Rales, or from entities that they controlled and authorized to file, such as Equity Group.

16. Neither defendant Equity Group nor its ultimate parent entities complied with the reporting and waiting period requirements before making the acquisitions described in Paragraphs 10 and 11.

17. On November 10, 1988, CCALP, through a wholly-owned subsidiary, submitted a notification and report form under the Hart-Scott-Rodino Act, stating that CCALP intended to acquire up to 100% of the outstanding shares of Interco. The Hart-Scott-Rodino Act waiting period relating to that filing expired on November 25, 1988.

18. Defendant Equity Group was continuously in violation of the Hart-Scott-Rodino Act from May 18, 1988, through November 25, 1988.

19. Section 18a(g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of the Act.

V.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that defendant Equity Group violated the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, and that defendant has been in violation of that Act each day from May 18, 1988, through November 25, 1988;

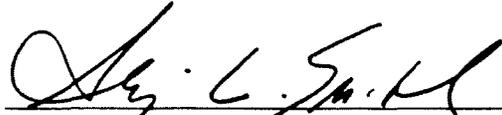
2. That defendant Equity Group be ordered to pay to the United States an appropriate civil penalty as provided by Section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1);

3. That plaintiff have such other and further relief as the Court may deem just and proper; and

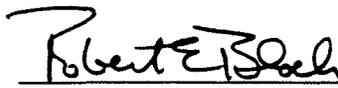
4. That the Court award plaintiff its costs of this suit.

DATED: January 25, 1991

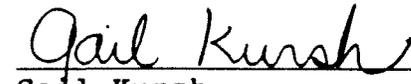
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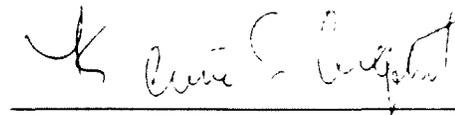


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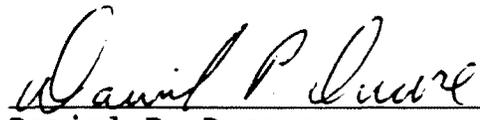
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COMMISSION



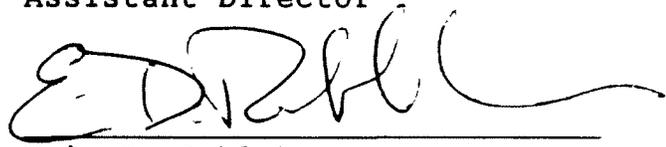
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