

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

_____)	
In the Matter of)	
)	
Alan B. Miller,)	
a natural person;)	
)	
Universal Health Services, Inc.,)	
a corporation;)	Docket No. C-4309
)	
and)	
)	
Psychiatric Solutions, Inc.,)	
a corporation.)	
)	
_____)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Universal Health Services, Inc. (“UHS”), a corporation controlled by Alan B. Miller and subject to the jurisdiction of the Commission, has agreed to acquire Respondent Psychiatric Solutions, Inc. (“PSI”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Alan B. Miller is a natural person with his offices and principal place of business located at 367 South Gulph Road, PO Box 51448, King of Prussia, PA 19406-0958.

2. Respondent UHS is controlled by Respondent Alan B. Miller and is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 367 South Gulph Road, PO Box 61588, King of Prussia, PA 19406-0958. UHS is, among other things, engaged in the sale and provision of acute inpatient psychiatric services.

3. UHS owns or operates 25 general acute care hospitals and 102 behavioral health facilities located in 32 states, Washington, D.C., and Puerto Rico. UHS's revenues from all operations totaled approximately \$5.2 billion in 2009. UHS's 102 behavioral health facilities generated approximately \$1.3 billion in revenue (25% of total revenues) from nearly 8,000 licensed beds and over 2 million patient days.

4. Respondent PSI operates 94 inpatient behavioral health facilities in 32 states, Puerto Rico, and the U.S. Virgin Islands. The company also manages behavioral health programs for 109 general acute care hospitals owned by third parties. PSI's revenue for the twelve months ending December 31, 2009 was approximately \$1.8 billion. Behavioral health facilities and residential treatment centers generated 93% of PSI's 2009 revenues; the contract management business accounted for the remaining 7%.

II. JURISDICTION

5. Respondent Alan B. Miller is and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Respondent UHS is and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

7. Respondent PSI is and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

8. Pursuant to an Agreement and Plan of Merger dated May 16, 2010, UHS proposes to purchase all of the outstanding voting securities of PSI ("the Acquisition").

9. The Acquisition would combine two of the largest providers of acute inpatient psychiatric services in three geographic markets: the Las Vegas, Nevada Metropolitan Statistical Area; the State of Delaware; and the Commonwealth of Puerto Rico. Respondents UHS and PSI both own and operate psychiatric facilities in these areas and compete and promote their businesses based on name recognition, reputation, location, price, range of available services, quality of service, associated product offerings, and the appearance of facilities.

IV. THE RELEVANT PRODUCT MARKET

10. The relevant line of commerce in which to analyze the Acquisition is the provision and sale of acute inpatient psychiatric services, meaning inpatient psychiatric services for the diagnosis, treatment, and care of patients deemed, due to an acute psychiatric condition, to be a threat to themselves or others or unable to perform basic life functions.

V. THE RELEVANT GEOGRAPHIC MARKETS

11. The relevant geographic markets in which to assess the competitive effects of the Acquisition are: the Las Vegas, Nevada, Metropolitan Statistical Area; the State of Delaware; and the Commonwealth of Puerto Rico.

VI. CONCENTRATION

12. Each of the three affected local markets for the provision and sale of acute inpatient psychiatric services already is highly concentrated, and the Acquisition will substantially increase concentration in each market as measured by the Herfindahl-Hirschman Index (“HHI”).

13. The combined market share of UHS and PSI – based on bed counts, analysis of discharge data, and other information obtained by the Commission – is 60 percent or more in each of the relevant geographic markets.

14. Post-acquisition, UHS would have a market share of about 66 percent based on beds in the Las Vegas market for acute inpatient psychiatric services. The Acquisition would increase the HHI by 2610 points, from 2782 to 4942, leaving only two meaningful competitors to UHS and eliminating substantial and close competition between the Respondents.

15. UHS would have a post-merger market share of approximately 60 percent based on beds in the market for acute inpatient psychiatric services in the State of Delaware. The Acquisition would increase the HHI by 1428 points, from 2488 to 3916, and reduce from three to two the number of meaningful competitors in the State of Delaware.

16. In the Commonwealth of Puerto Rico, UHS would control at least 62 percent of the acute inpatient psychiatric beds post-Acquisition. The Acquisition would increase the HHI by 1641 points, from 2275 to 3916, and combine the two largest providers of acute inpatient psychiatric services in Puerto Rico.

VII. ENTRY CONDITIONS

17. Entry into the relevant markets would not be timely, likely, or sufficient to prevent or deter the likely anticompetitive effects of the Acquisition. Significant entry barriers include the time and cost associated with constructing or expanding an acute care psychiatric

services facility, as well as the need to satisfy regulatory and licensing requirements that govern such services.

VIII. EFFECTS OF THE ACQUISITION

18. The Acquisition, if consummated, may substantially lessen competition for acute inpatient psychiatric services in the three geographic markets, identified in Paragraph 9, in the following ways, among others:

- (a) by eliminating direct and substantial competition between UHS and PSI;
- (b) by increasing the likelihood that Respondent UHS will unilaterally exercise market power; or
- (c) by increasing the likelihood of, or facilitating, coordinated interaction between or among participants in the relevant markets.

IX. VIOLATIONS CHARGED

19. The agreement described in Paragraph 8 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, Federal Trade Commission on this fifteenth day of November, 2010, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL