

IN THE MATTER OF

AMREP CORPORATION

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9018. Complaint, March 11, 1975—Final Order, Nov. 2, 1983

This Final Order requires a New York City land sales company, among other things, to cease representing that the purchase of land is a sound investment; that resale is not difficult and that the price set by the company is the land's fair market value, unless such claims can be substantiated by competent and reliable data. The order requires that all advertising, promotional materials and sales contracts include prescribed disclosures advising purchasers of the risk involved in undeveloped land and of the importance of obtaining a property report and inspecting the land prior to purchase. Respondent is prohibited from misrepresenting the present or potential development of any land by others; the direction of population growth or other demographic factors; and the true nature and purpose of any promotional event or activity. Respondent is further prohibited from discouraging purchasers from consulting with a real estate specialist prior to purchase; using high pressure sales tactics; and utilizing certain contractual provisions, including one whereby defaulting purchasers forfeit all payments made. Additionally, respondent must provide customers with cooling-off periods; make specific disclosures regarding rights to cancellation and refunds; and maintain a surveillance program designed to ensure compliance with the order's provisions.

Appearances

For the Commission: *George E. Schulman, Perry W. Winston and Jon R. Calhoun.*

For the respondent: *Solomon H. Friend, Theodore R. Schreier, Michael E. Schoeman and Peter Williamson, Friend, Dorfman & Marks, New York City and Louis Barton, in-house counsel, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that AMREP Corporation, a corporation, hereinafter sometimes referred to as respondent, by itself and through its wholly-owned subsidiaries, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent AMREP Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its principal office and place of business located at 16 West 61st Street, New York, New York.

PAR. 2. Respondent AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of its land sales and housing sales subsidiaries.

PAR. 3. Respondent AMREP Corporation is now, and for some time past has been, engaged, by itself and through its wholly-owned subsidiaries, in the business of acquiring undeveloped land, subdividing said land into lots, and advertising, offering for sale, and selling said lots to the public. Among the subdivisions in which lots have been and are being offered for sale by respondent are the subdivisions known as Rio Rancho Estates, New Mexico; Silver Springs Shores, Florida; Oakmont Shores, Missouri; and Eldorado at Santa Fe, New Mexico. The acreage of each of these subdivisions is substantial. Such subdivisions are the property of wholly-owned subsidiaries of AMREP Corporation. Land sales are generally effected through sales offices operated by wholly-owned subsidiaries which are located in approximately 20 states.

PAR. 4. Respondent sells the lots in its subdivisions to purchasers by use of standard form contracts, entitled "Reservation and Purchase Agreements" (hereinafter sometimes referred to in this [2] Complaint as a "contract.") whereby the purchaser pays monthly installments over terms ranging from 5 to 8 years. According to the provisions of the contract, title to the lot remains in respondent until final payment is made, at which time title to the lot is to pass to the purchaser. Purchasers do not, during the term of the contract, have any rights of ownership and cannot use the lot. Purchasers pay interest to respondent during the contract term on the unpaid balance owing on the contract.

PAR. 5. In the course and conduct of its business as aforesaid, respondent now causes, and for some time past has caused, its advertisements, promotional materials, contracts and various business papers to be transmitted through the U.S. mail and other interstate instrumentalities from its various places of business to agents, representatives, employees, customers, and prospective customers in various other States of the United States. Respondent now maintains and operates, and for some time past has maintained and operated, places of business and has made substantial sales to purchasers in various States of the United States. Respondent has been, and is now, engaged in the practice of conducting tours for prospective purchasers and purchasers of land at its subdivisions. Such tours include the transportation of the prospective purchasers and purchasers from

various States in the United States to subdivisions in Florida and New Mexico. Such tours, and the sales of land and houses made pursuant thereto, constitute a significant amount of respondent's business. Respondent maintains and at all times mentioned herein has maintained, a substantial course of trade in the undeveloped land and houses in or affecting commerce, as defined in the Federal Trade Commission Act.

PAR. 6. In the further course and conduct of the aforesaid business, and at all times mentioned herein, respondent has been, and is now, in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of undeveloped land and houses.

PAR. 7. In the further course and conduct of the aforesaid business, respondent disseminates advertisements in various publications of general circulation, distributes promotional materials through the mail and in person to members of the public, and makes sales presentations by means of oral and written statements, slides and movies. By and through such means, respondent has made and is making, various statements and representations, directly or by implication, concerning the size, diversity, and assets of AMREP Corporation, the backing of respondent's land sales business by such assets, and the good reputation and integrity of the AMREP Corporation.

PAR. 8. By and through the use of such representations and statements, respondent AMREP Corporation has used and is [3] using its name and the prestige and diversification of its holdings for the purpose of selling its subsidiaries' land and houses and deriving pecuniary benefits therefrom.

PAR. 9. In the further course and conduct of the aforesaid business, respondent has made and is making various written and oral statements to the public concerning the purpose of contacting members of the public and inviting them to dinner parties or other gatherings, or offering goods and services free or at low cost. By and through such statements respondent has represented and is representing, directly or by implication, that the purpose in inviting members of the public to dinner parties or other gatherings, or in offering goods or services free or at low cost, is to inform people of the land situation in general, or to accomplish some purpose other than attempting to get invitees to sign contracts for undeveloped land.

PAR. 10. In truth and in fact, respondent's purpose in contacting members of the public, or holding dinner parties or other gatherings, or in offering goods or services free or at low cost, is to induce the signing of contracts for the purchase of respondent's land. Therefore, the acts and practices alleged in Paragraph Nine herein are deceptive and unfair.

PAR. 11. In the further course and conduct of the aforesaid business, respondent disseminates advertisements in various publications of general circulation, distributes promotional materials to members of the public, and makes sales presentations by means of oral and written statements, movies, and slides. By and through such means, respondent has made and is making various statements and representations concerning the supply of and demand for land; the liquidity or marketability of land; land prices and values; land as an investment; personal financial security; the stock market, banks and insurance; population growth and movement; the size and diversity of respondent's assets; and various options or financial protections afforded purchasers of respondent's land, including but not limited to purchasers' rights to cancel the contract within six months should they visit the property. By and through such statements and representations respondent has represented and is representing, directly or by implication, that the lots which respondent is offering for sale are an excellent investment for the price at which respondent is offering them for sale, that significant monetary gain can be achieved by purchasing such lots, and that there is little or no financial risk involved in the purchase of said lots at said prices.

PAR. 12. In truth and in fact, in a significant number of instances, lots which respondent has offered and is offering for sale, at the prices at which respondent has offered and is offering them for sale, have been and are poor investments involving a substantial amount of financial risk to purchasers. Therefore, the acts and practices alleged in Paragraph Eleven herein are deceptive and unfair. [4]

PAR. 13. In the further course and conduct of the aforesaid business, respondent, through statements in advertisements, booklets, pamphlets, letters, movies, slides, and oral presentations has represented and is representing, directly or by implication, that the resale of a lot purchased from respondent is not difficult.

PAR. 14. In truth and in fact, there is virtually no resale market for lots purchased at respondent's subdivisions. Therefore the representations, acts, or practices alleged in Paragraph Thirteen herein are deceptive and unfair.

PAR. 15. In the further course and conduct of the aforesaid business, respondent has offered and is offering for sale lots in its subdivisions without disclosing to prospective purchasers that the lots being offered are, at the price at which respondent is offering them, a risky investment in that, *inter alia*, the future value of the lots being offered is uncertain and the purchaser probably will be unable to sell his lot, or his interest in it under the contract, at or above the purchase price. Respondent therefore has failed to disclose material characteristics of its lots which, if known to customers, would be likely to

affect their consideration of whether or not to purchase a lot from respondent. The failure to disclose such information is a deceptive and unfair act or practice.

PAR. 16. In the further course and conduct of the aforesaid business respondent, through oral statements and periodic increases in prices of lots, represents, directly or by implication, that the market value of the lots at its subdivisions is rising.

PAR. 17. In truth and in fact, the market value of the land has not been rising. Therefore, the acts or practices alleged in Paragraph Sixteen herein are deceptive and unfair.

PAR. 18. In the further course and conduct of the aforesaid business, respondent has, with respect to its various subdivisions, made representations through advertising, promotional materials and oral statements that the growth of land values at its subdivisions has corresponded and still corresponds to the growth of land values in certain other geographical areas. Through the use of such advertisements and oral statements, respondent has represented and is representing, directly or by implication, that lot values at its subdivisions increase at a rate comparable to those of the certain other geographical areas.

PAR. 19. In truth and in fact, lot values at respondent's subdivisions do not bear any significant relation to land values in these other geographical areas and do not increase at a rate similar thereto. Therefore the acts and practices described in Paragraph Eighteen herein are deceptive and unfair. [5]

PAR. 20. In the further course and conduct of the aforesaid business, respondent has, with regard to the subdivision Rio Rancho Estates, used advertisements, pamphlets, oral statements, movies and slides to give prospective purchasers the impression that the only direction in which the city of Albuquerque, New Mexico can expand is toward Rio Rancho Estates. Through the use of such representations, respondent has represented and is representing, directly or by implication, that the value of undeveloped land in Rio Rancho Estates will increase because of such an expansion.

PAR. 21. In truth and in fact, Rio Rancho Estates is not the only direction toward which the city of Albuquerque can grow. Therefore the acts and practices set forth in Paragraph Twenty herein are deceptive and unfair.

PAR. 22. In the further course and conduct of the aforesaid business, respondent has made and is making various oral and written statements and representations to purchasers under contract with respondent by which respondent has represented and is representing, directly or by implication, that the value of lots has increased significantly since the time of purchase from respondent.

PAR. 23. In truth and in fact, the value of lots has not increased significantly since the purchase from respondent. Therefore, the acts and practices alleged in Paragraph Twenty-two herein are deceptive and unfair.

PAR. 24. In the further course and conduct of the aforesaid business, respondent has made and is making oral statements and representations to members of the public concerning the present and future development of its subdivisions. By and through such statements and representations, respondent has represented and is representing, directly or by implication, that its subdivisions will, in the near future, be developed at least to the extent that all or most lots will be useable as homesites, with potable water, septic tanks or central sewage, electricity and telephone service available without extraordinary charges for hook-up to said utilities.

PAR. 25. In truth and in fact, respondent's subdivisions will not, in the near future, be developed to the extent that all or most lots will be useable as homesites, with potable water, septic tanks or central sewage, electricity and telephone service available without extraordinary charges for hook-up to said utilities. Therefore, the acts and practices alleged in Paragraph Twenty-four herein are deceptive and unfair.

PAR. 26. In the further course and conduct of the aforesaid business, respondent has represented and is representing, directly or by implication, that the particular lot a purchaser buys [6] will, in the near future, or at some specifically stated time, be useable as a homesite, with potable water, septic tanks or central sewage, electricity and telephone service available without extraordinary charges for hook-up to said utilities.

PAR. 27. In truth and in fact, many purchasers bought lots which were not useable as homesites, because potable water, septic tanks or central sewage, electricity and telephone service were not made available without extraordinary charges for hook-up to said utilities within the near future or such specifically stated time. Therefore, the representations alleged in Paragraph Twenty-six constitute deceptive and unfair acts or practices.

PAR. 28. In the further course and conduct of the aforesaid business, respondent has represented and is representing, directly or by implication, that land in the subdivision being offered would soon be unavailable, and therefore that prospective purchasers must purchase lots immediately or risk being unable to do so.

PAR. 29. In truth and in fact, respondent's land has not been and is not selling at such a rate that prospective purchasers could not wait a substantial period of time and still be able to obtain land in the

subdivision being offered. Therefore the acts and practices alleged in Paragraph Twenty-eight herein are deceptive and unfair.

PAR. 30. In the further course and conduct of the aforesaid business, respondent has made and is making oral statements concerning the location of the lots offered for sale. By and through such statements, respondent has represented and is representing, directly or by implication, that prospective purchasers must purchase immediately to ensure that they can obtain what respondent's employees refer to as "desirable locations."

PAR. 31. In truth and in fact, purchasers could wait a substantial amount of time and still have a substantial choice of lots with locations as "desirable" as those offered at the time the representations alleged in Paragraph Thirty are made. Therefore, the acts and practices alleged in Paragraph Thirty herein are deceptive and unfair.

PAR. 32. In the further course and conduct of the aforesaid business, respondent, through advertisements and oral statements, has represented and is now representing, directly or by implication, that the Rio Rancho Estates area is attracting a substantial amount of new industry, and that purchasers who decide to move there will not have difficulty obtaining jobs similar in nature and remuneration to those held in their former place of residence. [7]

PAR. 33. In truth and in fact, jobs for new residents of Rio Rancho Estates are difficult to obtain unless the new resident decides to take either a substantial reduction in salary or a substantially different job, or both. Therefore the use of the advertisements and oral statements alleged in Paragraph Thirty-two herein constitutes deceptive and unfair acts or practices.

PAR. 34. In the further course and conduct of the aforesaid business, respondent has, through oral statements and other means, represented that certain facilities or improvements in Rio Rancho Estates are presently available, or will be available in the near future.

PAR. 35. In truth and in fact, the facilities or improvements referred to in Paragraph Thirty-four herein are not now and will not soon be made available at Rio Rancho Estates. Therefore the acts and practices alleged in Paragraph Thirty-four herein are deceptive and unfair.

PAR. 36. Respondent's land sales contracts contain a declaration by the purchaser that the purchaser understands that no agent or representative of the seller shall have any authority whatsoever to make any other representation on behalf of the seller aside from what is stated in the written contract.

PAR. 37. Use by respondent of the aforesaid declaration is an unfair and deceptive act or practice because respondent and its employees make representations, through advertisements and publications of

general circulation, in promotional materials, and in sales presentations by means of oral statements, slides and movies, which differ in material respects from, or which obscure, the rights and obligations of purchasers and respondent under said contracts.

PAR. 38. In the further course and conduct of the aforesaid business, respondent has made and is making various oral statements in sales presentations concerning the import or significance of signing the contract for the purchase of respondent's land. By and through such statements, respondent (1) has represented and is representing, directly or by implication, that by signing a contract the purchaser is not entering into a binding obligation to purchase land, or (2) respondent has obscured and is obscuring the legal or practical significance of signing a contract.

PAR. 39. In truth and in fact, a person signing a contract which is later signed by respondent, has thereupon entered into a binding obligation to purchase land. Therefore the acts and practices alleged in Paragraph Thirty-eight are deceptive and unfair. [8]

PAR. 40. In the further course and conduct of the aforesaid business, respondent has used and is using in its standard form contracts a provision whereby defaulting purchasers forfeit all payments previously made to respondent under the contract. Respondent has received payments from purchasers who subsequently defaulted on their contracts and has failed to offer to refund or has refused to refund to such purchasers those amounts of the purchasers' total payments which exceed respondent's reasonable damages caused by the defaults. Respondent's continued retention of said amounts constitutes an unfair act or practice and/or an unfair method of competition.

PAR. 41. The use by respondent of the aforesaid contract provisions as described in Paragraph Forty constitutes an unfair act or practice.

PAR. 42. Respondent's contracts contain a six-month refund provision according to the terms of which the purchasers must visit the lot in order to obtain a refund of all monies paid under the contract. Respondent conducts tours to its subdivisions for purchasers ostensibly so that purchasers might examine their land and decide whether or not to request cancellation of the contract. However, respondent actually uses these tours to sell purchasers more land, and to discourage such purchasers from exercising their cancellation privilege.

PAR. 43. The use of the tours mentioned in Paragraph Forty-two to vitiate the effect of the six-month refund provision constitutes an unfair act or practice.

PAR. 44. In the further course and conduct of the aforesaid business, respondent has utilized and continues to utilize a provision in its standard form contracts giving purchasers of land the right to ex-

change parcels of undeveloped land for parcels of comparable value in a developed area. This exchange privilege has also been explained in sales presentations to prospective purchasers. Through the use of this provision and the explanations in sales presentations, respondent has represented and now represents, directly or by implication, that those who are ready to build homes on respondent's property will be able to get a lot of equal size in a developed area without paying additional cash.

PAR. 45. However, when purchasers wish to exchange for a lot in a developed area, respondent uses various means and devices to encourage or coerce purchasers to exchange their lots for smaller building lots and, moreover, to pay extra money to respondent. Among the devices used by respondent to discourage exchanges for equal size lots with no additional cash being paid are representations that such lots are less desirable than others because they require septic tanks, have overhead as opposed to underground utility lines, have no public transportation available, and because financing for homes to be built on them is more difficult to obtain. Respondent does not disclose to purchasers that such practices will be used to discourage them from receiving a lot of equal size in a developed area without paying additional cash, nor does respondent disclose that a substantial number of purchasers do in fact pay extra money and receive a smaller lot in return. Respondent therefore has failed to disclose material facts which, if known to certain purchasers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. Such failure to disclose is a deceptive or unfair practice.

PAR. 46. In the further course and conduct of the aforesaid business, respondent has presented and is presenting purchasers with a contract, a property report required to be provided to the purchaser by federal or state law, and in some instances additional lengthy or detailed documents. These documents contain information and provisions which could affect the decision of certain consumers on whether to sign a contract for the purchase of respondent's land. Respondent frequently has made and is making available the aforesaid documents at dinner parties or other gatherings sponsored by respondent in circumstances where it is likely that many purchasers will not read such documents at all because they are insufficiently aware of their utility or significance, or it is likely that many purchasers will not read such documents carefully, completely or with full comprehension of their meaning and import. In many instances respondent has withheld reports required to be provided to the purchaser by state or federal law until after an agreement is signed, which practice is in violation of federal or state laws. The soliciting or obtaining under such circumstances of an agreement to purchase respondent's land,

involving a substantial financial commitment by the purchaser, is a deceptive and unfair act or practice.

PAR. 47. In the further course and conduct of the aforesaid business, respondent has utilized and is utilizing contract provisions which are not understandable to many consumers or cannot be evaluated by many consumers. Respondent has made and is making the contract available to prospective purchasers, and solicits and obtains signatures to the contract from purchasers, in circumstances where the purchaser does not have the opportunity to seek assistance of counsel or other professional advice to aid in understanding said provisions. Respondent has discouraged purchasers from obtaining assistance of counsel or other professional advice in order to understand said provisions. The soliciting or obtaining of an agreement to purchase respondent's land, involving a substantial financial commitment by the purchaser, when the purchaser has not had an opportunity to seek assistance of counsel or other professional advice, together with the discouragement of purchasers who wish to seek assistance of counsel before entering into such an agreement, constitute unfair acts or practices.

PAR. 48. In the further course and conduct of the aforesaid business, respondent has utilized artificial props in [10] the production of motion pictures promoting the sale of land in its subdivisions. Typical of the motion pictures in which such props were used, was one for which grass was sprayed green and pine cones were hung from trees in order to make the area appear more appealing.

PAR. 49. The promotional motion pictures referred to in Paragraph Forty-eight purport to accurately and truthfully depict or describe the appearance or habitability of respondent's land. However, by and through the use of the artificial means alleged in Paragraph Forty-eight, said promotional motion pictures falsely represent said appearance or habitability. Therefore, said promotional motion pictures were and are unfair or deceptive.

PAR. 50. Respondent maintains a number of wholly-owned subsidiaries which operate in various states and whose function is to sell vacant land in respondent's subdivisions. Many of such subsidiaries are given names consisting solely of initials. Prospective purchasers of land are often not informed that such sales companies are wholly-owned subsidiaries of respondent AMREP Corporation. Prospective purchasers have thus been and are led to believe that an independent sales company is promoting the purchase of land in respondent's subdivisions. Respondents therefore have failed to disclose material facts which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. Such failure to disclose is a deceptive and unfair act or practice.

PAR. 51. In the further course and conduct of the aforesaid business, respondent represents, directly or by implication, that financing for homes to be built in respondent's developments will be easily obtained.

PAR. 52. In truth and in fact, certain purchasers experience problems in obtaining home financing. Therefore, the representations alleged in Paragraph Fifty-one constitute unfair and deceptive acts or practices.

PAR. 53. The problems in obtaining home financing are material facts which if known to certain consumers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. Therefore, the failure to disclose such information is a deceptive and unfair act or practice.

PAR. 54. In the further course and conduct of the aforesaid business respondent has induced and is inducing members of the public through deceptive and unfair acts and practices, to pay to it, in advance of passage of title or the obtaining of any rights of enjoyment or possession, substantial sums of money towards the [11] purchase of lots in respondent's developments which are of little or no use or value to the purchasers as investments or for any other purpose. Respondent has received and is receiving the said sums, and has failed to offer to refund or has refused to refund said sums to purchasers. Respondent's continued retention of the sums obtained as alleged in this Paragraph constitutes an unfair act or practice and/or an unfair method of competition.

PAR. 55. The use by respondent of the aforementioned unfair and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were, and are, true, and to cause the purchase of substantial numbers of respondent's lots because of said mistaken and erroneous belief.

PAR. 56. The aforementioned acts and practices, as herein alleged, were and are all to the prejudice and injury of the public and respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY

PAUL R. TEETOR, ADMINISTRATIVE LAW JUDGE

JULY 18, 1979

SUMMARY OF PLEADINGS*

I. COMPLAINT

The Complaint in this matter issued on 3/11/75. A number of allegations concern Respondent's identity, its activities in and affecting interstate commerce and the Commission's jurisdiction over the subject matter of the Complaint.

Substantively, the Complaint (Par. 3) alleges that Respondent is in "the business of acquiring land, subdividing said land into lots, and advertising . . . and selling (them) to the public" at four large subdivisions known as Rio Rancho Estates, New Mexico, Silver Springs Shores, Florida, Oakmont Shores, Missouri, and Eldorado at Santa Fe, New Mexico. It describes Respondent's sales organization, generally operating through subsidiaries in some twenty states (Par. 3); its use of "standard form contracts" to make 5-8 year conditional (installment) sales of lots at the foregoing developments (Par. 4); and the nature of its selling methods, including dissemination of advertisements, distribution of promotional materials and oral and written statements, slides and movies, particularly at so-called "dinner parties" and similar gatherings (Pars. 7, 9).

The gist of the Complaint is contained in Paragraphs 11 and 12:

. . . . By and through such means, respondent has made and is making various statements and representations concerning the supply of and demand for land, the liquidity or marketability of land, land prices and values; land as an investment; personal financial security; the stock market, banks and insurance; population growth and movement; the size and diversity of respondent's assets; and various options or financial protections afforded purchasers of respondent's land, including but not limited [3] to purchasers' rights to cancel the contract within six months should they visit the property. By and through such statements and representations respondent has represented and is representing, directly or by implication, that the *lots which respondent*

* Abbreviations used:

TR - Transcript of Hearing
CX - Complaint Counsel's Exhibit
CTX - Court's Exhibit
RX - Respondent's Exhibit
R/A - Request for Admissions
CCPF - Complaint Counsel's Proposed Findings
RPF - Respondent's Proposed Findings
CCRB - Complaint Counsel's Reply Brief
RRB - Respondent's Reply Brief

