

Complaint

107 F.T.C.

IN THE MATTER OF

THE ELECTRICAL BID REGISTRATION SERVICE OF
MEMPHIS, INC., ET AL.FINAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9183. Complaint, Aug. 6, 1984—Final Order, Feb. 12, 1986*

This final order requires a Memphis, Tenn. bid depository set up by electrical subcontractors, among other things, to cease taking disciplinary action against firms that negotiate prices after bidding is closed or that accept a contract at a price other than that filed with the registry. Additionally, respondents may not require firms using the registry to deal only with other registry participants and cannot restrict in any way negotiations between electrical subcontractors and general contractors. Further, respondents are required to reinstate any firm it suspended for violation of the illegal rules and remove the illegal provisions from its by-laws or other rules.

Appearances

For the Commission: *Truett M. Honeycutt, Douglas B. Brown and Harold E. Kirtz.*

For the respondents: *Carl H. Langschmidt, Jr., Boone, Wellford, Clark, Langschmidt & Apperton, Memphis, Tenn., for respondents The Electrical Bid Registration Service of Memphis, Inc., C.H. Dennis, Jr., James L. Overton, Wayne A. Allen and Jack Gross. James W. Watson and G. Patrick Arnoult, Watson, Arnoult & Quinn, Memphis, Tenn. for respondent The National Electrical Contractors Association, Memphis Chapter.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Electrical Bid Registration Service of Memphis, Inc., a corporation, and C. H. Dennis, Jr., individually and as an officer and director of said corporation, and James L. Overton, Wayne A. Allen, and Jack Gross, individually and as directors of said corporation, and The National Electrical Contractors Association, Memphis Chapter, a corporation, hereinafter sometimes referred to as respondents, have 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:

Definitions

(1) For the purposes of this complaint, the following definitions shall apply:

(a) The *greater Memphis area* consists of Memphis, Tennessee and some or all of the following twenty-three counties in Tennessee, Arkansas, and Mississippi: Shelby, Fayette, Lauderdale, and Tipton counties, Tennessee; Crittenden, Phillips, [2] St. Francis, Lee, Cross, and Mississippi counties, Arkansas; and DeSoto, Marshall, Benton, Tunica, Tate, Loachoma, Quitman, Panola, Lafayette, Tallahatchie, Yalobusha, Calhoun, and Granada counties, Mississippi; and

(b) The term *substantial* as applied to building construction contracts or projects means those contracts or projects for which the electrical subcontract is expected to be in excess of \$5,000.

Parties

(2) Respondent the National Electrical Contractors Association, Memphis Chapter (hereinafter referred to as the Memphis Chapter) is a nonprofit corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 2600 Poplar Avenue, Suite 101, Memphis, Tennessee. The Memphis Chapter was organized and is operated in substantial part for the pecuniary benefit of its members, who are electrical subcontractors.

(3) Respondent the Electrical Bid Registration Service of Memphis, Inc, (hereinafter referred to as the Registry) is a nonprofit corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 2600 Poplar Avenue, Suite 101, Memphis, Tennessee. As set forth below, the Registry was founded by the Memphis Chapter and its members, who (a) established the Registry as a corporation with a self-perpetuating board of directors, (b) appointed all of the members of the Registry's first board of directors, and (c) selected electrical subcontractors who were Memphis Chapter members to fill a majority of the seats on the Registry's board. A majority of the Registry's board has always consisted of electrical subcontractors who are Memphis Chapter members. The Registry was organized and is operated in substantial part for the benefit of the Memphis Chapter's members, who are de facto members of the Registry.

(4) Respondent C. H. Dennis, Jr. is an officer and director of the Registry, and respondents James L. Overton, Wayne A. Allen, and

Jack Gross are directors of the Registry. These individuals are sometimes referred to collectively as the individual respondents. They formulate, direct, and control the acts and practices of the Registry, including the acts and practices hereinafter set forth. Their address is the same as that of the Registry. Each individual respondent represents an electrical subcontractor that is a member of the Memphis Chapter.

Commerce

(5) Respondents maintain, and have maintained, substantial courses of business, including the acts and practices as [3] hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

Factual Allegations

(6) Firms and government entities often engage independent contractors to perform building construction work, and they often use competitive bidding to select a general contractor for construction of a project and enter into a prime contract with the general contractor for such work. When competitive bidding is used, the firm or government entity (commonly referred to as the awarding authority) frequently requests prime bids from general contractors based on plans and specifications depicting the work to be done and the materials to be furnished. The awarding authority also sets a date for submissions and opening of the prime bids made by the general contractors.

(7) In preparing a prime bid on a building construction project, a general contractor usually calculates the approximate cost of the work to be done by examining the specifications and estimating labor, materials, overhead, and profit. General contractors often do not perform specialty work, such as electrical work, and in order to prepare their prime bids general contractors generally obtain sub-bids from subcontractors relating to their particular specialties.

(8) Absent a bid depository or other mechanism that restricts the submission of bids by subcontractors to general contractors, the process of competitive bidding for building construction contracts can operate in the following manner. Each general contractor can obtain sub-bids from a variety of competing subcontractors in order to obtain what he considers the best proposal in terms of price and quality. Similarly, each subcontractor can submit sub-bids to a variety of competing general contractors. Until the deadline for the submission of prime bids to the awarding authority, general contractors and electrical subcontractors can engage in negotiations during which the subcontractors have an opportunity to revise their sub-bids. (Such negotiations are commonly referred to as pre-award bid shopping and

bid peddling.) After a general contractor has been awarded the prime contract, the winning general contractor and all interested subcontractors can engage in further negotiations, during which the general contractor may seek the most favorable price for the type and quality of the specialty work to be done, and subcontractors may attempt to win a subcontract by submitting lower acceptable bids. (Such further negotiations are commonly referred to as post-award bid shopping and bid peddling.)

(9) In the greater Memphis area, the process of competitive bidding for building construction contracts generally operates in the manner described in Paragraph Eight, except with respect to the submission of sub-bids by electrical subcontractors to general [4] contractors for substantial building construction contracts. The process by which electrical subcontractors submit bids and otherwise compete to be selected to work on substantial building construction projects in the greater Memphis area operates in a different manner because it is and has been governed by the rules of bid depositories established and maintained by electrical subcontractors, as set forth in Paragraphs Ten-Thirteen.

(10) Since approximately 1956, electrical subcontractors in the greater Memphis area have been engaged in a combination or conspiracy to restrict the manner in which they compete to be selected to work on substantial building construction contracts. The combination or conspiracy has been carried out by eliminating the open competitive process described in Paragraph Eight, which the electrical subcontractors believe puts unfair pressure on them to lower their bid prices, and instead establishing and operating bid depositories whose rules, policies, and practices place unreasonable restrictions on competition among electrical subcontractors. The Memphis Chapter and the Registry have participated in this combination or conspiracy, both as combinations of electrical subcontractors and as co-conspirators. Each of the individual respondents has participated in this conspiracy as a co-conspirator in his actions as an officer and/or director of the Registry.

(11) In furtherance of this combination or conspiracy, the Memphis Chapter has engaged in the following acts or practices, among others:

(a) In approximately 1956 the Memphis Chapter formed an in-house bid depository, and the Memphis Chapter operated this bid depository until 1976. The Memphis Chapter's depository established a deadline for electrical subcontractors' filing of bids and prohibited electrical subcontractors from offering a lower price or otherwise amending their bids after the deadline. In addition, Memphis Chapter members

were required to use the depository on all jobs handled by the depository;

(b) In 1976, the Memphis Chapter discontinued its in-house bid depository and formed a new bid depository, the Registry, which would be a separate corporation; and

(c) Since 1976, the Memphis Chapter and its members have supported and/or controlled the Registry.

(12) In furtherance of this combination or conspiracy, the Registry and the individual respondents have engaged in the following acts or practices, among others:

(a) The Registry has operated in accordance with the following rules, policies, and practices:

(i) The Registry has a deadline for electrical subcontractors' registering of bids and prohibits electrical [5] subcontractors from offering a lower price after the deadline. This prohibition on negotiations over price applies both before and after the award of the prime contract;

(ii) The Registry requires general contractors who accept the delivery of registered bids to agree that they will not award an electrical subcontract to any firm that did not have a bid registered with the Registry, and that all such awards must be at the price contained in the registered bid. This prohibition on negotiations over price applies both before and after the award of the prime contract;

(iii) An electrical subcontractor who uses the Registry on any particular job may not submit any bids for that job to any general contractor who is not using the Registry for that job; and

(iv) A general contractor who uses the Registry on any particular job may not accept a bid for that job from any electrical subcontractor who did not use the Registry on that same job unless the general contractor registers the non-participating electrical subcontractor's bid with the Registry before the Registry's deadline for registering bids.

(b) The Registry has implemented and enforced these rules, policies, and practices in the following manner:

(i) The Registry has imposed or threatened to impose sanctions, including suspension from the Registry and imposition of fines or liquidated damages; and

(ii) The Registry has notified all general and electrical contractors who regularly use the Registry of the identity of parties that have been sanctioned by the Registry.

(13) Most electrical subcontractors in the greater Memphis area are members of the Memphis Chapter. The Registry staff, which is also the staff of the Memphis Chapter, chooses what jobs will be on the

Registry, and most competitively bid substantial building construction jobs in the greater Memphis area are selected to be on the Registry. When a job is on the Registry, electrical subcontractors generally use the Registry if they desire to bid on the job. Because the Registry's rules prohibit electrical subcontractors using the Registry from dealing with general contractors who are not using the Registry, general contractors in the greater Memphis area are as a practical matter required to use the Registry, whether or not they would prefer to use the Registry or believe the Registry provides any benefits, if they want to receive bids from the electrical subcontractors who desire to bid on the job. [6]

Purposes and Effects

(14) The actual or probable purposes or effects of the combination or conspiracy alleged in Paragraph Ten and the acts and practices alleged in Paragraphs Eleven-Thirteen are or have been to restrict competition for electrical subcontracting for substantial building construction contracts in the greater Memphis area in the following ways, among others:

(a) General contractors have been restrained from seeking, negotiating for, and obtaining bids lower than those submitted by electrical subcontractors through the Registry;

(b) Electrical subcontractors have been restrained from offering lower prices or otherwise amending the bids that they have submitted through the Registry;

(c) Price negotiations and contractual relationships between willing general contractors and electrical subcontractors have been prevented by rules against dealing with firms not using the Registry;

(d) There is pressure on general contractors to use the Registry whether or not they would prefer to use the Registry or believe that the Registry provides any benefits;

(e) Firms that have been suspended from the Registry for engaging in price competition prohibited by the Registry's rules have been prevented from submitting bids to or obtaining bids from other firms using the Registry on particular jobs;

(f) There is an increased likelihood that electrical subcontractors may engage in bid rigging or otherwise agree not to compete on the basis of price; and

(g) The cost of electrical subcontracting services has been increased.

Violations

(15) Respondents' combination or conspiracy, and the acts or practices in furtherance thereof, have had or are having the purpose or

effect of restraining competition for electrical subcontracting for substantial building construction contracts in the greater Memphis area. These restraints on competition are unreasonable, because their anticompetitive effects are not outweighed by any procompetitive effects. Thus, respondents have violated Section 5 of the Federal Trade Commission Act by engaging in unfair methods of competition. Respondents' combination or conspiracy, or the effects thereof, are continuing and will continue in the absence of the relief herein requested. [7]

Commissioners Miller and Calvani voted in the negative.

INITIAL DECISION BY

MORTON NEEDELMAN, ADMINISTRATIVE LAW JUDGE

NOVEMBER 21, 1985

I

STATEMENT OF THE CASE

The complaint in this proceeding was issued on August 6, 1984. It charges that in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, the electrical subcontractors in the Memphis, Tennessee area have conspired or combined to restrain competition by means of a bid depository operated from 1956 until 1976 by the Memphis Chapter of the National Electrical Contractors Association ("Memphis Chapter"), and thereafter by the Electrical Bid Registration Service ("Registry"), which allegedly was organized by the Memphis Chapter for the purpose of continuing and refining the Memphis Chapter's earlier bid depository activities. According to the complaint, the Registry's rules relating to the bidding process between general contractors and electrical subcontractors has restrained price competition by:

Holding electrical subcontractors to their submitted bids, which means that they cannot be changed by negotiation either before or after the Registry's deadline for submitting electrical bids;

Requiring general contractors to agree that if they use the Registry on a particular job, they must use one of the registered bids;

Preventing electrical subcontractors who use the Registry on any particular job from submitting bids for that job to general contractors who are not using the Registry. [2]

The complaint alleges that these rules are enforced by imposing fines

and other sanctions, mainly suspension from the Registry's bidding system. The actual or probable effect of the alleged restraints is said to be that prices for electrical subcontractor services are raised without any countervailing efficiency justifications. The complaint further charges that the operation of the Registry is conducive to bid rigging or other forms of agreements not to compete on the basis of price.

While the Registry's answer denies most of the substantive allegations of the complaint, it admits that the Registry (1) establishes a deadline for submitting electrical subcontracting bids, (2) requires general contractors who accept registered bids to agree that they will not award a subcontract to any firm that did not have a bid filed with the registry, (3) prohibits an electrical subcontractor using the registry from submitting bids to any general contractor not using the registry, and (4) limits the discretion of a general contractor in using nonparticipating electrical subcontractors. The answer filed by the Memphis Chapter puts into issue the same points raised by the Registry, and also denies the complaint allegations respecting the role of the Memphis Chapter in forming or controlling the Registry.

In the prehearing stage both sides were allowed discovery including depositions or interviews with all prospective witnesses. Proposed exhibits were exchanged, and prior to the formal hearings, the parties were given an opportunity to file objections to all exhibits that were to be offered without supporting testimony. Complaint counsel's case-in-chief was heard between June 4 and June 18, 1985. The defense case was presented during the week of July 15. Rebuttal testimony was offered by complaint counsel on August 14, and the record was closed for the receipt of evidence on August 23. During the hearings, counsel for both sides were given full opportunity to be heard and to cross-examine the witnesses. The parties filed their main briefs and proposed findings on September 23. Reply briefs were filed on October 7. [3]

After reviewing all the evidence, as well as the proposed findings and briefs submitted by the parties, and based on the entire record, including my observation of the demeanor of witnesses, I make the following findings of fact:¹ [4]

¹ Proposed findings not adopted in the form or substance proposed are rejected, as either not supported by the entire record or as involving immaterial or irrelevant matters.

The following abbreviations are used throughout in citing to the record:

CX - (Complaint counsel's exhibits)

RX - (Respondents' exhibits)

Joint Exhibit 1A-Z is the Tennessee Contractors Licensing Act. Testimony is cited by the name of the witness, followed by transcript page, as in Birrell 1196. Complaint counsel's Exhibit 1 and respondents' Exhibit 4 are the indices required by § 3.46(b) of the Commission's Rules.

The appearances of the witnesses were as follows:

(footnote cont'd)

II

FINDINGS OF FACT

A. Introduction: Construction Job Bidding

1. Private firms and governmental units, commonly referred to in the construction industry as "awarding authorities", may use com-

| <u>Name</u> | <u>Called By</u> | <u>Tr. Pages</u> |
|--|-------------------------------|-------------------------|
| William K. Arnold (General Contractor) | Complaint counsel ("C.C.") | 53-202 |
| Frank Inman, Jr. (General Contractor) | C.C. | 205-272 |
| Cheryl Lynn Mann (Electrical Subcontractor) | C.C. | 272-317 |
| Roger James Peters (General Counsel of a General Contractor) | C.C. | 327-415 |
| Fred Talmoth Baker (Electrical Subcontractor) | C.C. | 419-541 |
| Robert E. Morrison (General Contractor) | C.C. | 553-666 |
| Cecil Raymond Boucher, Jr. (General Contractor) | C.C. | 671-717 |
| Joe Rayburn Hales (Senior Electrical Inspector, Shelby County) | C.C. | 720-748 |
| Irvin McGroom (General Contractor) | C.C. | 759-805 |
| Jesse M. Zellner (General Contractor) | C.C. | 809-882 |
| Roosevelt "Curley" Morgan (General Contractor) | C.C. | 885-957 |
| Russell H. Clark (Electrical Subcontractor) | C.C. | 958-1048 |
| Waylon R. Naylor (General Contractor) | C.C. | 1051-1093 |
| Frederick Ellsworth Wade (General Contractor) | C.C. | 1100-1167 |
| George S. Birrell (Associate Professor of Civil Engineering, Case Western Reserve University, Expert) | C.C. | 1168-1300 |
| John Frederick Stewart (Associate Professor of Economics, University of North Carolina, Expert) | C.C. | 1307-1504, 2042-2099 |
| Thomas Cooper Barnett (General Contractor and President of the Registry) | Respondents ("resp.") | 1571-1622 |
| David Bronson Martin (General Contractor) | resp. | 1626-1702 |
| Johnny Chester (Electrical Engineer, member of the board of directors of the Registry) | resp. | 1703-1747 |
| Gene Strong (Architect, member of the board of directors of the Registry) | resp. | 1751-1845 |
| Charles Dennis, Jr. (Electrical Subcontractor, Vice President and member of the board of directors of the Registry) | resp. | 1845-1936 |
| Earl Scurlock (Secretary-Manager of the Memphis Chapter and Manager of the Registry) [5] | resp. | 1949-2028 |

petitive bidding to select a general or prime contractor for an institutional or industrial project. When competitive bidding is being used, the awarding authority requests that general contractors submit what is known as a "prime bid" for the overall project.² Since these general contractors normally do not perform specialty functions such as electrical work (installation of conduits, wiring, fixtures), they must obtain sub-bids from electrical and other subcontractors in order to prepare their prime bids.³ At issue here are the efforts of the Memphis Chapter and the Registry to establish a bid depository designed to control the electrical sub-bidding process, especially the elimination of "bid peddling",⁴ the practice whereby the general contractor discloses one electrical subcontractor's bid to another electrical subcontractor for the purpose of obtaining a lower bid.

B. Identity of Respondents

2. The National Electrical Contractors Association, Memphis Chapter ("Memphis Chapter"), is a nonprofit corporation organized and existing under the laws of [6] Tennessee, with its principal office and place of business located at 2600 Poplar Avenue, Suite 101, Memphis, Tennessee.⁵ The Memphis Chapter is engaged in various activities for the financial benefit of its 21 electrical subcontractor members, including counseling on price and profits, and the negotiation of a Memphis area labor contract.⁶

3. The Electrical Bid Registration Service of Memphis, Inc. ("Registry") is a nonprofit corporation organized and existing under the laws of Tennessee with its principal office and place of business located at 2600 Poplar Avenue, Suite 101, Memphis, Tennessee.⁷ The Registry operates a bid depository designed to serve the economic well-being of Memphis area electrical contractors by eliminating bid peddling.⁸

4. The individuals named as respondents, C. H. Dennis, Jr., James L. Overton, Wayne A. Allen, and Jack Gross, are either officers or owners of electrical subcontracting firms. All currently serve on the board of directors of the Registry; in addition, respondent Dennis is

² CX 2C, CX 3K, CX 4H; Birrell 1196.

³ Wade 1119, Birrell 1196.

⁴ During the course of the hearings, the witnesses generally drew no distinction between "bid peddling" and "bid shopping". But see Strong 1764 for a distinction based on whether the general contractor simply makes a survey of electrical prices (i.e., "shops") or actually uses (i.e., "peddles") the specific bid of one electrical subcontractor to drive down the price of another. For recognition by respondents of interchangeable use of the terms see CX 2D, CX 3K-L. Accordingly, throughout this initial decision I have used the terms interchangeably to refer to the negotiation for prices that are lower than those originally quoted in sub-bids submitted to a general contractor. A distinction is drawn, however, in several findings between pre-award and post-award bid peddling based on when the negotiations took place.

⁵ Memphis Chapter Answer, ¶ (2).

⁶ Memphis Chapter Answer, ¶ (2); Baker 500, Dennis 1895, Scurlock 1951-52.

⁷ Registry Answer, ¶¶ (2-3).

⁸ Barnett 1579-80, 1599; see also Finding 13.

vice president of the Registry.⁹

5. The record contains no evidence relating to the direct responsibility of the named individual respondents for the practices challenged in the complaint.¹⁰ But as complaint counsel would have it, an inference of control by them over the Registry's practices should be drawn from the fact that these four individuals, who are all identified [7] with electrical subcontracting firms, currently make up a majority of the Registry's board of seven, and included in the board's general power to manage the Registry's affairs, is the right to appoint the Registry's manager and to fill vacancies on the board itself.¹¹ There is no evidence, however, that the named individuals have collaborated to use this latent power in order to dictate to the three nonelectrical board members.¹² On the contrary, all that the record will allow on control of the Registry is that Earl Scurlock, acting on behalf of the Memphis Chapter, picked the members of the first board,¹³ that the first board picked the succeeding board and so on,¹⁴ and that Scurlock would probably designate their successors if the four named respondents were removed.¹⁵ And while the board also has the power to approve sanctions for violations of the Registry rules—this is the function of the board that is most relevant to this proceeding, see Findings 25, 45-54—the record shows that all disciplinary actions were imposed by a unanimous vote of all board members present, as required by Registry rules.¹⁶ As for the day-to-day business of the Registry—running a bid depository for electrical subcontracting jobs—this is carried out exclusively by Scurlock and his assistant (Juanita McClain), and there is no evidence that the named individual respondents in any way participate in this activity.¹⁷ [8]

C. Commerce

6. The Memphis Chapter and the Registry are engaged in "commerce," as "commerce" is defined in the Federal Trade Commission

⁹ Registry Answer, ¶ (4); Memphis Chapter Answer, ¶ (4); CX 2"O"-T, CX 3D, K; Dennis 1849-50.

¹⁰ While Dennis was named in the complaint in his capacity as a director and an officer, there was no evidence introduced respecting his duties as vice president except that he presides at board meetings when Barnett, the president of the Registry, is absent. Barnett, who also serves on the board of the Registry, was not named as an individual respondent in any capacity.

¹¹ See CX 3C, K, CX 4A-D.

¹² See Strong 1756, Dennis 1867. Since its formation, the Registry board has consisted of four electrical subcontractors, an architect, an electrical engineer, and a general contractor. The president of the Registry has always been Cooper Barnett, a general contractor. Registry Answer, ¶ (3); Barnett 1573.

¹³ CX 2F; Barnett 1572, Strong 1755, Scurlock 1953-54, 1999, 2009.

¹⁴ CX 4B.

¹⁵ See Scurlock 1952-54.

¹⁶ Registry Answer, ¶ (12)(b)(i); CX 3F, M, CX 4S. No Registry business, including the imposition of sanctions, can be transacted without a quorum of five directors. This means that a sanction cannot be approved without the vote of at least one nonelectrical board member. CX 4S; Barnett 1575, 1589, Dennis 1867.

¹⁷ See Findings 12, 14-15; see also Chester 1733, Scurlock 1955, 2000.

Act as amended.¹⁸

D. The Role Of The Memphis Chapter In The Evolution Of The Memphis Area Electrical Bid Depositories

7. The Memphis Chapter operated a bid depository from January 1956 until August 1976.¹⁹ While the bid depository operated by the Memphis Chapter was intended to bind all members of the chapter to rules eliminating bid peddling,²⁰ these rules were not rigorously enforced, and this earlier depository was widely regarded as ineffectual.²¹

8. In 1976, the board of the Memphis Chapter directed their manager, Earl Scurlock, to explore the feasibility of organizing a bid depository modeled after The Bid Registration Service of Memphis, Inc., a depository operated by the mechanical subcontractors in the Memphis area which had effectively eliminated bid peddling in the mechanical sub-trade.²² Scurlock contacted B.V. Stevens, manager of the mechanical [9] subcontractors' bid depository, and Carl Langschmidt, counsel for respondent Registry herein, and in 1976 counsel for the mechanical subcontractors' bid depository. Stevens and Langschmidt advised Scurlock about the technical and legal requirements for setting up a bid depository patterned on the mechanical subcontractors' model.²³

9. Stevens' and Langschmidt's advice was reported back to the Memphis Chapter by Scurlock, who was then authorized by Memphis Chapter to inform Langschmidt to draw up the necessary legal documents incorporating the Registry on September 7, 1976.²⁴

10. In October 1976, the board of directors of the Memphis Chapter approved a \$2,000 loan to the Registry, which was intended to enable the Registry to begin its operations.²⁵ This unsecured loan was paid

¹⁸ CX 2C, CX 3B, J, CX 4J. The Registry operates in the following 23 Memphis area counties in Tennessee, and neighboring Mississippi and Arkansas: Shelby, Fayette, Lauderdale, and Tipton Counties, Tennessee; DeSoto, Marshall, Benton, Tunica, Tate, Coachoma, Quitman, Panola, Lafayette, Tallahatchie, Yalobusha, Calhoun, and Grenada Counties, Mississippi; and in Crittenden, Phillips, St. Francis, Lee, Cross, and the southern half of Mississippi County, Arkansas. CX 3B, J, CX 4A. The geographic jurisdiction of the Memphis Chapter is essentially the same as the area served by the Registry. CX 2"T".

¹⁹ Memphis Chapter Answer, ¶¶ (11)(a-b); CX 2A, CX 6B.

²⁰ Scurlock 2012.

²¹ Dennis 1905-08. Essentially, the rules of the Memphis Chapter's bid depository provided that sealed bids had to be submitted by electrical subcontractors to designated branches of a commercial bank on all jobs valued in excess of \$3,000. These sealed bids, which had to be submitted four hours prior to the deadline for the general contractors, could not be changed. The Memphis Chapter bid depository obtained no agreements from general contractors to use the bids submitted through the depository and, in practice, there were many instances when electrical contractors orally changed bids after the deadline. CX 2A-C, CX 15A—CX 17B; Dennis 1908-10, Scurlock 1995-97, 2011-12.

²² CX 2E-F, CX 6B; Dennis 1907-08, Scurlock 1952-54, 2010.

²³ CX 2E-F, CX 6B; Scurlock 1952-54.

²⁴ CX 2F, CX 6B, CX 7A-D; Scurlock 1952-54.

²⁵ CX 2F, CX 6B, CX 8D-H; Scurlock 2014.

back within a few months,²⁶ and since 1976, the Registry has received no other loans from the Memphis Chapter.²⁷

11. Of the seven members of the first board of directors of the Registry picked by Scurlock, four were officers or owners of electrical subcontracting firms that were members of the Memphis Chapter.²⁸ Subsequent Registry boards during the period 1977-1983 included four representatives of electrical firms that were members of the Memphis Chapter.²⁹ In 1984, three of the directors of the Registry were similarly affiliated with members of the Memphis Chapter,³⁰ and in 1985, of the seven Registry [10] board members, two—C.H. Dennis and James Overton—were connected with firms belonging to the Memphis Chapter.³¹ Since the Registry's inception, at least one officer or director of the Memphis Chapter has been on the Registry's board.³²

12. Scurlock, the manager of the Memphis Chapter, is also the only manager the Registry has ever had.³³ Scurlock, who is paid a salary and bonuses by the Memphis Chapter but receives no separate compensation as manager of the Registry,³⁴ is responsible for the day-to-day operations of both the Memphis Chapter and the Registry.³⁵ Since its inception (and to this day) the Registry operates out of the office of the Memphis Chapter.³⁶

E. The Operation Of The Bid Depository By The Registry

13. Since its creation in 1976 by the Memphis Chapter, the Registry has established and enforced rules designed to eliminate bid peddling in the Memphis area electrical trade.³⁷

14. Scurlock and his assistant, Juanita McClain, gather information from trade publications ("Builders Exchange Weekly Bulletin" and "Associated General Contractors [11] Weekly Bulletin"), news sources, as well as from subcontractors and general contractors, about

²⁶ CX 2F, CX 8D-H, CX 9—CX 10; Scurlock 2014.

²⁷ CX 8E.

²⁸ Vernon G. Goldecke, one of the members of the Registry's first board, was a director of the Memphis Chapter in 1976. Others who served on the first Registry board and who were also members of the Memphis Chapter were Jack Gross, David Haines, and Frank Pitt. CX 2F-G, K, CX 3R.

²⁹ CX 2"O" T, CX 3R-W.

³⁰ CX 2S, CX 3V.

³¹ Dennis, vice president of the Registry and a current member of the Memphis Chapter, was president of Memphis Chapter in 1976 when the Registry was organized. Dennis was also governor of Memphis Chapter in 1978-1979, 1982-1985. Dennis' firm, Byrd Electric, has been a member of the Memphis Chapter from 1967 to the present. CX 2G-H, P-T, CX 3D, K, CX 11A-S; Dennis 1848. Overton is a current member of the Memphis Chapter. CX 2H.

³² CX 2" T".

³³ CX 2G.

³⁴ Scurlock 2009.

³⁵ Chester 1733, Strong 1796, Scurlock 1955.

³⁶ CX 2G. The Registry pays the Memphis Chapter a negotiated monthly fee for use of office space and secretarial services. CX 2G, CX 26C; Barnett 1591-92, Scurlock 2001-02.

³⁷ CX 3L-N, CX 160B-C; Arnold 122, Mann 287, Baker 498, Boucher 679, Barnett 1579-80, 1599, 1603-04, Chester 1712.

