

Complaint

67 F.T.C.

Commissioner Reilly concurring in the decision except for the holding that respondent advertising agency, W. B. Doner & Company, should be included in the order to cease and desist. Commissioner MacIntyre dissented as to that portion of the decision relating to fictitious pricing, and has filed a dissenting opinion.

IN THE MATTER OF

JOHN A. GUZIAK TRADING AS SUPERIOR
IMPROVEMENT COMPANY

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

Docket 8614. Complaint, Jan. 20, 1964—Decision, June 28, 1965

Order requiring a Little Rock, Ark., distributor of aluminum and simulated stone siding materials to cease making deceptive pricing and discount representations, falsely guaranteeing its products, misrepresenting that it is connected with any aluminum manufacturer, and representing to any prospective purchaser that his house will be used as a "model home."

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 John A. Guziak, an individual, formerly trading through the instrumentality of General Aluminum Company, a corporation, and now trading through the instrumentality of Superior Improvement Company, a corporation, hereinafter referred to as the respondent, 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 John A. Guziak is an individual formerly trading through the instrumentality of General Aluminum Company, a Tennessee corporation with his principal office and place of business located at 630 Third Avenue, South, in the city of Nashville, State of Tennessee, and now trading through the instrumentality of Superior Improvement Company, an Arkansas corporation, with his principal office and place of business located at 1605 Main Street, in the city of Little Rock, State of Arkansas.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution

1158

Order

or indirectly, the purchase of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations or misrepresentations prohibited in paragraph A. above.

Respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

III

Respondent W. B. Doner & Company and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of foods, drugs, cosmetics or devices, do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, through the use or display of any words, emblem, seal, symbol, certification, or otherwise, that merchandise has been approved or endorsed by an independent organization engaged in protecting the interests of consumers or in determining objectively the merits of such merchandise: *Provided*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish either that such representation is truthful in every material respect or that respondent neither knew nor had reason to know of the falsity of such representation.

B. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations or misrepresentations prohibited in paragraph A. above.

Respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

It is further ordered, That the charges contained in paragraphs seven, nine, twelve and thirteen of the complaint be, and they hereby are, dismissed.

being used only as a means to induce resistant purchasers into the buying of said merchandise under the mistaken impression that they were receiving some sort of special price because of their willingness to allow their homes to be used for this purpose and that they would receive a bonus of \$100 for each sale made by the respondent as a result of using that person's home as a model.

(2) Purchasers do not receive enough, if any, bonus money to offset the cost of their siding job.

(3) Respondent is not a manufacturer of siding materials.

(4) Aluminum siding materials sold by respondent are not manufactured by Alcoa, Kaiser or Reynolds Aluminum Company.

(5) Respondent is not connected or affiliated with Reynolds Aluminum Company.

(6) Aluminum siding sold by respondent is not applied by factory trained personnel.

(7) Aluminum siding sold by respondent will require painting and maintenance.

(8) The simulated stone siding sold by respondent will chip or crack, will require maintenance, and is not completely fireproof.

(9) Respondent's guarantee is not unconditional and it fails to set forth the nature and extent of the guarantee and the manner in which the guarantor will perform.

Therefore, the statements and representations as set forth in Paragraph Four hereof were and are false, misleading and deceptive.

PAR. 6. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of aluminum and simulated stone home and building siding materials of the same general kind and nature as that sold by respondent.

PAR. 7. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair, and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

1270

Complaint

of aluminum and simulated stone home and building siding materials to the public.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said products, when sold, to be shipped from his places of business in the States of Tennessee and Arkansas to purchasers thereof located in various other States of the United States and maintains, and at all times mentioned herein has maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent has, by statements and representations in advertisements in newspapers, in direct mail advertising, and by direct oral solicitations, represented, directly or by implication:

(1) That persons who allowed the siding materials installed by respondent to be used for model home demonstration purposes would receive,

(a) A special discount price from respondent's usual and regular price, and,

(b) A bonus of \$100 for each sale made by respondent as a result of using that person's home as a model.

(2) That purchasers can be assured of receiving enough bonus money from the use of their home as a model to offset the cost of their siding job.

(3) That respondent is a manufacturer of siding materials and consequently can offer such materials at lower prices.

(4) That aluminum siding materials sold by respondent are manufactured by Alcoa, Kaiser or Reynolds Aluminum Company.

(5) That respondent is connected or affiliated with Reynolds Aluminum Company.

(6) That respondent's siding materials are applied by factory trained installers.

(7) That aluminum siding sold by respondent will never need any painting and will never require maintenance.

(8) That the simulated stone siding sold by respondent will never chip or crack, will never require maintenance and is completely fireproof.

(9) That the application of siding materials by the respondent is unconditionally guaranteed.

PAR. 5. In truth and in fact:

(1) Respondent did not intend to use, nor did he use, the home of any of his purchasers for demonstration purposes, this statement

Initial Decision

67 F.T.C.

Tennessee, and on September 25, 1964, at Hopkinsville, Kentucky, at which testimony and other evidence were offered in support of and in opposition to the allegations of the complaint. At the conclusion of the hearings on September 25, 1964, the record was closed and in due course both parties filed proposed findings of fact, conclusions of law and briefs in support thereof. Consideration has been given to the proposed findings of fact, conclusions of law and briefs submitted by the parties and all proposed findings of fact hereinafter not specifically adopted are rejected. Based upon the entire record and his observation of the witnesses, the hearing examiner hereinafter makes his findings of fact, conclusions and order.

The Complaint

It should be noted at the outset that under the complaint as drafted, John A. Guziak, as an individual, is the sole respondent in this proceeding. Although the General Aluminum Company, a corporation, and Superior Improvement Company, a corporation, are referred to in the caption of the complaint, they were not joined as named parties in this proceeding, but were merely added for descriptive purposes to typify the individual respondent trading as said companies. At the opening of the hearings in Little Rock, Arkansas, on September 15, 1964, counsel for the individual respondent moved to dismiss this proceeding for the reason that the acts and practices complained of were the acts of the aforesaid corporations and that the individual respondent was carrying out his duties as an officer of said corporations. It was also counsel for respondent's position that without the two corporate entities being joined as parties to this proceeding, the complaint did not lie against the individual respondent. In denying the motion to dismiss, the hearing examiner expressed the opinion that notwithstanding the non-joinder of the two corporate entities, the complaint would be in proper form provided that it could be established that the individual respondent actively formulated, directed, managed, and controlled the policies of both of the corporations, or was aware of, responsible for or personally participated in the acts and practices complained of herein. The examiner, however, believes that it would have been preferable practice to have joined the corporate entities in this proceeding, but as indicated, the failure to do so would not be fatal.

Paragraph Four, the charging paragraph of the complaint, reads as follows:

PARAGRAPH FOUR: In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent has, by

1270

Initial Decision

Mr. DeWitt T. Puckett supporting the complaint.

Mr. Claude Carpenter and *Moses, McClellan, Arnold, Owen & McDermott* by *Mr. Harry E. McDermott*, Little Rock, Ark., for respondent.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

DECEMBER 24, 1964

This proceeding was commenced by the issuance of a complaint on January 30, 1964, charging the respondent, John A. Guziak, an individual trading as General Aluminum Company, a corporation, and as Superior Improvement Company, a corporation, with unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act, by making false and deceptive statements and representations in newspapers and direct mail advertisements and in oral solicitations regarding prices, discounts, bonuses, guarantees and other specifically enumerated claims in the sale of aluminum and simulated stone siding materials.

After being served with the complaint, the respondent appeared by counsel and on March 31, 1964, filed his answer admitting a number of the specific allegations in the complaint, but denying generally that he, as an individual, or to his knowledge any of the corporations with which he has been connected, made any of the statements and representations alleged in the complaint.

By order dated April 7, 1964, the hearing examiner scheduled a prehearing conference in this matter for the purposes of, among other things, simplification and clarification of the issues; obtaining stipulations, admissions of fact and authenticity of documents; exchanging lists of witnesses and documents; and the scheduling of the time and places of the hearings. As a result of the prehearing conference, counsel for both parties exchanged lists of witnesses and documents, agreed upon the time and places of the hearings and various other matters.

By order of the Acting Director, Hearing Examiners, dated August 24, 1964, the undersigned hearing examiner was substituted for Loren H. Laughlin, the hearing examiner heretofore appointed to take testimony and receive evidence in this proceeding who because of illness was unavailable.

Hearings were held in this matter on September 15, 16, 17, 1964, in Little Rock, Arkansas, September 21 and 22, 1964, at Nashville,

Initial Decision

67 F.T.C.

was not admissible. In fairness to complaint counsel, it should be noted that he was substituted in this proceeding on March 6, 1964, several months after the complaint was filed, and did not participate in the drafting of the complaint.

FINDINGS OF FACT

1. The respondent, John A. Guziak, is an individual engaged in advertising, offering for sale, sale and distribution of aluminum and simulated stone home and building siding materials to the public (Tr. 19).

2. In the latter part of 1960, respondent organized the General Aluminum Company, a Tennessee corporation, with an office and warehouse located at 630 Third Avenue, South Nashville, Tennessee, for the purpose of engaging in the aforesaid business (Tr. 21). General Aluminum Company closed its office and ceased operations in October or November 1962 (Tr. 21, 38, 54-56).

3. In the latter part of 1962 or early 1963, respondent left Tennessee and organized a similar type of business in Arkansas under the corporate name Superior Improvement Company, an Arkansas corporation, with an office and warehouse at 1605 Main Street, Little Rock, Arkansas. That business is still active (Tr. 21, 38).

4. Respondent Guziak is president of both corporations, sole owner of all the stock of each corporation and formulates, directs, manages and controls the policies, acts and practices of the two corporations (Tr. 20-24, 55-56).

5. Respondent Guziak was never a manufacturer of aluminum or simulated stone siding materials (Tr. 39, 44, 67-68), but purchased them during all times covered by the complaint herein from the following suppliers (Tr. 40-41, 43-44):

U.S. Aluminum Siding Corporation,
Franklin Park, Illinois
Terox Corporation of America,
Franklin Park, Illinois
Brixite Corporation,
South Carney, New Jersey
Pfeifer Wire Company,
Tuscaloosa, Alabama
Wolverine Corporation,
Michigan

Said products are shipped by the aforesaid suppliers from their above-mentioned addresses to respondent Guziak's warehouses in Nashville, Tennessee, or in Little Rock, Arkansas (Tr. 39-40). As materials are required for various jobs, the carpenters or workmen

1270

Initial Decision

statements and representations in advertisements in newspapers, in direct mail advertising, and by direct oral solicitations, represented, directly or by implication:

(1) That persons who allowed the siding materials installed by respondent to be used for model home demonstration purposes would receive,

(a) A special discount price from respondent's usual and regular price, and,

(b) A bonus of \$100 for each sale made by respondent as a result of using that person's home as a model.

(2) That purchasers can be assured of receiving enough bonus money from the use of their home as a model to offset the cost of their siding job.

(3) That respondent is a manufacturer of siding materials and consequently can offer such materials at lower prices.

(4) That aluminum siding materials sold by respondent are manufactured by Alcoa, Kaiser or Reynolds Aluminum Company.

(5) That respondent is connected or affiliated with Reynolds Aluminum Company.

(6) That respondent's siding materials are applied by factory trained installers.

(7) That aluminum siding sold by respondent will never need any painting and will never require maintenance.

(8) That the simulated stone siding sold by respondent will never chip or crack, will never require maintenance and is completely fireproof.

(9) That the application of siding materials by the respondent is unconditionally guaranteed.

During the course of the hearings, it developed that additional statements and representations regarding "free gift offers" and "the terms and conditions of financing" had been made by the respondent. Counsel for respondent objected to this line of testimony on the grounds that these matters were not included within the scope of Paragraph Four of the complaint. Complaint counsel was unable to relate these matters to any of the nine (9) specific sub-paragraphs of Paragraph Four, but took the position that such testimony fell within the overall scope of Paragraph Four. Upon reading Paragraph Four, the hearing examiner noted that the usual "catch-all" language was not included. In previous complaints, the examiner has observed that it was Commission practice to include, immediately after the introductory sentence and before the specifically enumerated sub-paragraphs, the following language:

Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following.

(See *In the Matter of Solmica, Inc.*, Docket No. C-817 [66 F.T.C. 566].) In view of the absence of such or similar language in the subject complaint, the examiner ruled that unless the additional matter was reasonably related to one of the nine sub-paragraphs of the complaint, such testimony or evidence would not be material and

Initial Decision

67 F.T.C.

these contracts were entered into by one of his salesmen who did not have authority to enter into contracts in Kentucky or to solicit jobs in Kentucky (Tr. 70-72, 623), but the record shows that the contract with Thomas and Nora Glass was personally signed by respondent (CX 44). In cases where respondent signs a contract, he has seen the customer (Tr. 26). Furthermore, Thomas and Nora Glass testified Guziak personally negotiated the transaction at their home in Kentucky (Tr. 550-570). With regard to the other two contracts performed in Kentucky, it appears that all contracts had to be approved by either respondent or one of his two office secretaries who had authority to approve or reject contracts (Tr. 25, 57, 75), and these contracts were so approved (Tr. 72-75). It should also be noted that each contract provided a space at the lower left hand corner for it to be "Accepted for General Aluminum Company," and the salesman merely signed in a box entitled "Order taken by" (CX 43, 44). Although it appears that in these two cases his agents negotiated these contracts without his knowledge and contrary to his instructions, the approval of these contracts by his office (Tr. 75), the release of the materials to the subcontractors by his office (Tr. 77) and respondent's subsequent action in permitting the work to be completed (Tr. 73, 622-625), constitutes ratification of the salesman's acts. In view of the foregoing, the examiner finds that of the three identified jobs performed in Kentucky, respondent personally executed one and either he or one of his office staff approved the other two contracts. Accordingly, to the extent of these three or four contracts, the examiner further finds that the respondent was doing business in Kentucky.

9. Respondent, trading as General Aluminum Company and Superior Improvement Company, contacts his prospective customers in four ways: by telephone solicitation (Tr. 28, 60); by direct approach, that is, respondent Guziak or one of his salesmen or both together contact home owners in person (Tr. 28); by newspaper advertising (CX 19); and by "direct mailing" of a circular or brochure to prospective customers (CX 8, 13, 20, 27, 28, 39). The last method is used most frequently.

10. The "direct mailing" of the circular or brochure is done by respondent's wife from Medford, Wisconsin, to home owners in Tennessee and Arkansas (Tr. 604, see also postmark on CXs 8, 13, 20, 27, 28). Medford, Wisconsin, is respondent's "home town" and where he has maintained a residence from 1946 to the present (Tr. 517). The circulars or brochures contain, on one side, pictures of houses to which siding materials appear to have been attached and various statements relative to such materials. On the other side of the circu-

1270

Initial Decision

who apply them pick them up at respondent's warehouses and haul them to the homes or buildings of respondent's customers. The carpenters or workmen who perform the labor and transport the materials are paid for their services by respondent on a job or contractual basis (Tr. 45-46, 68, 69, 228-229, 239).

6. Respondent, trading as General Aluminum Company and Superior Improvement Company, employs only two office girls and some part-time telephone solicitors paid by the hour (Tr. 51). The carpenters or workmen who perform the labor are subcontractors; the man in charge of the crew is paid on the basis of so much a square and he in turn pays his own workers (Tr. 45-56). Respondent's salesmen are paid on a commission basis, do not work full time and may be working for some other corporation at the same time (Tr. 46-50). Respondent supplies his salesmen with blank contract forms and sample cases of the materials (Tr. 62-63; CX 34, 38 a-c; RX 2, 3). Respondent instructs his salesmen on what to put in the contract and not to misrepresent the siding materials (Tr. 62). Respondent's salesmen operate under his supervision and control (Tr. 61-64). Materials from suppliers arrive at respondent's warehouses approximately once a month in large vans and are unloaded by hourly wage rate laborers obtained from the Tennessee Security Employment Office (Tr. 52).

7. The merchandise, equipment and parts used for Superior Improvement Company sales are never shipped direct from the manufacturers to the customer's residence, but are always picked up by the subcontractor's vehicles at its warehouse at 1605 Main Street, Little Rock, Arkansas, and delivered to the job site in Arkansas (Tr. 28, 35-36, 38-40, 79).

8. The merchandise, equipment and parts used on contracts entered into by General Aluminum Company, are similarly transported from its warehouse at 630 Third Avenue, South Nashville, Tennessee, to the job sites in Tennessee (Tr. 68) with the exception of three contracts and possibly a fourth entered into and performed in and around Hopkinsville, Kentucky. (See testimony of Robert E. Frommel, Tr. 527-542; John C. Spurlin, Tr. 542-549; Thomas Glass, Tr. 550-563; Nora Glass, Tr. 564-570; Guziak, T. 78, 625; CX 43, 44).¹ On these contracts, the materials were transported from respondent's warehouse in South Nashville, Tennessee, to the job sites in and around Hopkinsville, Kentucky (Tr. 314). Respondent testified that

¹ Robert E. Frommel's contract was for \$3,240 (CX 43); John C. Spurlin's contract was for \$2,240 (Tr. 546); Thomas Glass' contract was for \$2,880 (CX 44) or a combined total of \$8,360.

pany for a siding job on their homes.² Sixteen of said witnesses testified that they received a circular through the mail, similar to or identical with CX 8; that they detached, signed and returned the self-addressed card, similar to or identical with the ones appearing as part of CX 28 or CX 39, and that thereafter Guziak and/or a representative of General Aluminum Company in Tennessee or Kentucky, or Superior Improvement Company in Arkansas, called on them.³ Irrespective of the method by which they were contacted, twenty-eight of the witnesses testified that Guziak or said representative stated that the prospect's house would be used for demonstration purposes and that for each house sold as a result thereof the prospective customer, the witness, would receive a bonus of one hundred dollars.⁴ With one exception, said witnesses testified that their houses were not used for demonstration purposes and that they never received any bonus payments. Thirteen of the customer-witnesses testified that respondent Guziak or the company representative represented that said witness would receive a special discount price from respondents usual and regular price (*i.e.*, at cost, a factory price or demonstration price), but that they never received a discount.⁵ Twelve of the witnesses testified that Guziak or his representative represented to them that they would receive enough bonus money from the use of their home as a model to offset the cost of their siding job, and each further testified that they never received any bonus money whatsoever.⁶

Respondent testified that he had never instructed his salesmen to make any bonus offers, that when it came to his attention, he instructed his salesmen to discontinue such practice and had fired salesmen for such activities (Tr. 508). Guziak, however, testified that he himself had made statements to customers that their houses would be used as demonstrators and that they would receive a \$100 bonus (Tr. 509-510):

The Witness: I have made that statement, yes, sir, acting in the authority as an officer of the corporation. (Tr. 510, lines 11-12.)

In subsequent testimony, the respondent also gave contradictory testimony (Tr. 628, lines 21-25, Tr. 629, lines 1-3).

² Tr. 98, 116, 181, 200, 215, 250, 255, 321, 335, 346, 357-8, 374, 379, and others. CX 1, 3, 5, 9, 10, 11, 12, 14, 15, 16, 17, 18, 21, 23, 24, 25, 26, 29, 30, 31, 32, 33, 43, 44 and RX 1.

³ Tr. 95, 110, 127, 143, 156, 169, 181, 195, 234, 296, 454, 544, and others.

⁴ Tr. 97, 111, 128, 144, 151, 157, 182, 196, 206, 215, 223, 236, 251, 260, 285, 296, 326, 331, 350, 371, 381, 455, 464, 471, 531, 546, 556, 567.

⁵ Tr. 96, 128, 151-2, 181-2, 196, 207, 287, 305-6, 355, 361, 371, 528, 546.

⁶ Tr. 251-2, 331, 337, 342, 457, 471 and others.

lar appears the name and address of a home owner, or a space therefor, the postmark "Medford, Wisconsin," an offer of a free gift to addressees who return the self-addressed, detachable card at the bottom of the circular. The detachable card is addressed to General Aluminum Company, 546 South 2nd Avenue, Medford, Wisconsin (CX 28), and Superior Improvement Company, 546 South 2nd Avenue, Medford, Wisconsin (CX 39), as the case may be.

11. The newspaper advertisement (CX 19) appeared on Sunday, April 29, 1962, in The Nashville Tennessean. The newspaper has a daily circulation of 564 and a Sunday circulation of 1,725 in Christian County, Kentucky, which includes Hopkinsville, Kentucky (Tr. 481). The copy for the advertisement was brought to respondent's attention by a salesman who worked for a company in Birmingham, Alabama, which had used the ad successfully. The ad was mailed to respondent's office in Nashville by the salesman and although respondent was out of town at the time and did not actually see it before it was run, he discussed it over the telephone with his office girl who, with his knowledge, approved the ad for publication (Tr. 594-597). Respondent admitted that when he saw the ad late on Saturday evening, as the first editions of the paper were being circulated, he became aware of obvious discrepancies and errors in the ad of which he did not approve and would never have run had he known of them in advance (Tr. 595-598).

12. When one of the detachable cards from a circular is mailed in or a telephone inquiry is received as a result of the newspaper ad, the prospective customer is called upon by either a salesman or respondent, or both. During the course of this visit, or as in some cases several visits, the customer is given a sales talk. If a transaction is consummated, a printed form contract is signed by the homeowner and his wife on the one hand, and the salesman or respondent, as the case may be, on the other hand. The customer's credit rating is then checked by respondent's office and, if approved by his office (Tr. 511), respondent's subcontractors in due course pick up the materials at respondent's warehouse, transport them to the customer's home and install the siding. After the job is completed, the customer is asked to sign a completion certificate (Tr. 33-34, see summary of witnesses' testimony, *infra*).

13. Thirty-two customers of respondent were called as witnesses and testified in support of the complaint. All of the aforesaid witnesses, except one, testified that they signed a contract with either General Aluminum Company or with Superior Improvement Com-

(Tr. 117), and that he signed a contract (CX 3). On cross-examination, the witness testified he was not really sure it was Guziak who came to see him (Tr. 121).

Thomas S. Taylor, Bauxite, Arkansas (Tr. 127-140), testified he "received a pamphlet through the mail" from Superior Improvement Company, that he wrote them he was interested, that Mr. Guziak came to his house (Tr. 127), that Guziak "demonstrated the siding, beat on it, showed how strong it was, and he said the insulation behind it was termite-proof and that the aluminum itself was guaranteed for life," that Guziak stated "the paint on it was guaranteed for twenty years of service," that Guziak stated "he was letting me have it at factory price for a demonstrating—for letting him demonstrate it and show it on television, and that he was going to bring people by there and each one that he brought by that I would have a bonus of a hundred dollars if they bought a siding job from him," that Guziak never brought anybody to look at it and he has never received any bonus payments (Tr. 128), that Guziak said he "would receive a written guarantee" which he has never received (Tr. 129), and that he signed a contract (CX 5).

H. D. Tompkins, Benton, Arkansas (Tr. 140-149), testified he got a card (CX 8) through the mail from Superior Improvement Company, that he and his wife detached the card, filled it out and mailed it back (Tr. 142), that Upchurch, a salesman came to his home and "made an appointment for a night," that "Mr. Guziak and him come back that night" (Tr. 143), that "he went on giving a sales talk about the aluminum and giving us a price, and he showed us the bonus we would get if we sold a job or if they brought somebody by there to look at our house and if they bought we would get a hundred dollars for every time, they would bring somebody by who bought the siding job, or if we gave them some contact and they made a sale we would get a hundred dollars" up to the amount of their contract (Tr. 144), that they "would guarantee the work, that all work would be guaranteed" (Tr. 145), that no one was ever brought by to look at the house and they never received any one hundred dollar bonus payments (Tr. 146), and that he signed a contract (CX 9, CX 10).

Opal Tompkins, Benton, Arkansas (Tr. 150-155), amplifying her husband's testimony, testified, looking directly at Guziak, that "he told that this stone or fiberglass would never chip, crack, fade or soak up with water, or anything like that, and I asked him then if the aluminum would ever need paint, and he said no. He said it would never need paint, and it was a life-time guarantee. And about the

