

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
Service Corporation International,)	Docket No. C-4423
a corporation, and)	File No. 131 0163
)	
Stewart Enterprises, Inc.,)	
a corporation)	
)	

PETITION APPROVAL OF PROPOSED DIVESTITURE

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2012), and Paragraphs II.A of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“Decision and Order”), Respondent Service Corporation International (“SCI”) hereby petitions the Commission to approve the divestiture to Cole & Garrett LLC (“Cole & Garrett”) of the Divestiture Business that includes the following facility: Cole & Garrett Funeral Home, 127 North Main Street, Goodlettsville, Tennessee 37072.

The Divestiture Business associated with this facility (as defined in the Decision and Order, and hereinafter collectively referred to as the “Divestiture Assets”) will be sold to Cole & Garrett pursuant to the Asset Sale Agreement dated March 24, 2014, by and among Cole & Garrett and an affiliate of SCI (the “ASA”).

Background

On December 23, 2013, SCI and Respondent Stewart Enterprises, Inc. (“Stewart”) (collectively, the “Respondents”) executed an Agreement Containing Consent Orders that included the Decision and Order and Order to Hold Separate and Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s charges that the proposed acquisition by SCI of Stewart would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. On December 23, 2013, the Commission accepted the Consent Agreement for public comment, and on December 23, 2013, SCI consummated its acquisition of Stewart. Stewart is now a wholly owned subsidiary of SCI. The Consent Agreement is presently before the Commission for final approval and issuance of the orders contained therein.

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Divestiture Assets—the disclosure of which may prejudice the Respondents and Cole & Garrett, cause harm to the ongoing competitiveness of the Divestiture Assets, and impair the Respondents’ ability to comply with their obligations under the Consent Agreement—Respondents have redacted such confidential information from the public version of this petition and its attachments. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(4) & 4.9(c) (2012), Respondents request that the non-public, confidential version of this petition and its attachments and the information contained herein be accorded confidential treatment. The confidential version of this petition should be accorded such confidential treatment under 5

U.S.C. § 552 and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) (2012). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

Respondent SCI desires to complete the proposed divestiture of the Divestiture Assets as soon as possible, following Commission approval thereof. All conditions other than Commission approval and those customarily satisfied at closing have already been satisfied, so that SCI and Cole & Garrett are in a position to close the divestiture within a few days of Commission approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the public, Cole & Garrett, and Respondents because it will allow Cole & Garrett to move forward with its business plans for the competitive operation of the Divestiture Assets. SCI accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2012), limit the public comment period to the customary 30-day period, and grant this petition by approving the divestiture of the Divestiture Assets to Cole & Garrett pursuant to the above-referenced ASA as soon as practicable after the close of the public comment period.

I. The ASA Is Final and Consistent with the Decision and Order's Terms

Paragraph II.A of the Decision and Order requires the Respondents to divest the Divestiture Businesses (as defined in the Decision and Order) within 180 days of the date on

which the Order is issued.¹ Pursuant to this requirement, SCI has diligently sought buyers that would be acceptable to the Commission, through an extensive auction process that produced great interest in the properties. As noted above, on March 24, 2014, an affiliate of SCI entered into the ASA with Cole & Garrett, which requires SCI to sell the Divestiture Assets to Cole & Garrett. The executed ASA is attached hereto as Confidential Exhibit A.

The ASA with Cole & Garrett complies with the requirements of Paragraph II of the Decision and Order.

Paragraph II.A.1 requires that Respondents divest the Divestiture Assets, absolutely and in good faith. Pursuant to the ASA, Cole & Garrett will acquire the Divestiture Assets. See ASA § 1.1.

Paragraph II.A.2 of the Decision and Order requires Respondent to grant a License to all Retained Intellectual Property that will permit the Acquirer to operate the relevant Divestiture Business in substantially the same manner as Respondents. Cole & Garrett has all the intellectual property it needs to operate the Divestiture assets in substantially the same manner as Respondents.

Paragraph II.C of the Decision and Order provides that Respondents may use the “Cole & Garrett” trade name for the funeral homes located at 212 Highway 76, Whitehouse, Tennessee 37188, and 182 West Main Street, Hendersonville, Tennessee 37075. The ASA does not include a license to SCI as contemplated by this Paragraph.

Cole & Garrett has acknowledged that the Divestiture Assets, together with Cole & Garrett’s and Family Legacy’s existing resources, enable Cole & Garrett to operate the

¹ The Commission has not yet issued the Order as final.

Divestiture Business as an ongoing entity and that no other assets are needed from SCI to do so.
See ASA §4.4.

* * *

As demonstrated above and in the accompanying ASA, SCI has entered into an agreement relating to the divestiture of the Divestiture Assets that fully complies with the Commission's Decision and Order with respect to the divestiture of these assets. Accordingly, Respondents hereby seek Commission approval of the proposed divestitures pursuant to Paragraph II.A of the Decision and Order.

II. The Prospective Acquirer Will Be a Strong and Effective Competitor

A. Background

Cole & Garrett's owner, William Gregory, has extensive experience in acquiring and operating funeral homes and cemeteries, has the financial wherewithal to make this acquisition, and the acquisition of the Divestiture Assets by Cole & Garrett should provide the assurance that the business will remain a strong and effective competitor in Goodlettsville, Tennessee.

Cole & Garrett is wholly owned and operated by William Gregory, who formed Cole & Garrett for the purpose of acquiring and operating certain funeral homes, including the Divestiture Assets. Mr. Gregory also owns Family Legacy LLC, the Tennessee limited liability company under which Cole & Garrett will operate. Mr. Gregory has worked in the cemetery and funeral home industry for 34 years. He currently owns (through various limited liability companies) three funeral homes and five cemeteries, and he directly manages another funeral home and cemetery (Harpeth Hills Memory Gardens & Funeral Home, owned by the Crowe

Marital Trust and the Crowe Residual Trust).² Additional information regarding the above-referenced funeral homes and cemeteries is available at www.afamilylegacy.com.

Mr. Gregory operated Harpeth Hills Funeral Home and Memory Gardens for many years. He started and constructed the Harpeth Hills Funeral Home in 1990 prior to starting his own funeral home in 1994. In 2002, he acquired his first cemetery from SCI and subsequently constructed a funeral home on the property. In 2004, he purchased three cemeteries (Crestview Memorial Gardens, Sumner County Memory Gardens, and Robertson County Memorial Gardens) and constructed a funeral home on the Crestview property; Mr. Gregory continues to operate these facilities. In 2013, he acquired a cemetery (Joelton Hills Memory Gardens) from the trusts that own Harpeth Hills Funeral Home and Memory Gardens. The entire organization (consisting of three limited liability companies, a Subchapter S corporation, and the Crowe Marital Trust and Crowe Residual Trust) owned and/or managed by Mr. Gregory has approximately 70 employees. Collectively, these facilities provided [REDACTED] cemetery interments and had [REDACTED] calls during calendar year 2012. Total 2012 combined revenues were over [REDACTED].

Mr. Gregory has built a strong management team enabling him to manage his existing funeral homes and cemeteries at the highest level of industry standards. The Tennessee Department of Insurance and Commerce frequently refers other funeral and cemetery

² The three LLCs and one Subchapter S corporation controlled by Mr. Gregory and the trust managed by him are as follows:

1. West Harpeth Funeral Home LLC, which owns West Harpeth Funeral Home and Crematory;
2. Hendersonville Memory Gardens LLC, which owns Hendersonville Funeral Home and Memory Gardens;
3. Crestview Memory Gardens LLC, which owns Crestview Funeral Home, Memory Gardens and Cremation, Sumner County Memorial Gardens, and Robertson County Memorial Gardens;
4. Joelton Hills Memory Gardens, Inc., which owns Joelton Hills Memory Gardens; and
5. Crowe Marital Trust and Crow Residual Trust, which own Harpeth Hills Memory Gardens and Funeral Home.

establishments to Mr. Gregory for assistance in the proper management of their businesses and in compliance with state regulations.

B. Financial Capability

Pinnacle Financial Partners provided a letter establishing a [REDACTED] borrowing capacity for the purposes of acquiring properties in the SCI/Stewart Enterprises offerings. The security for this borrowing capacity was the excess valuation of the owned funeral homes and cemeteries above the current debt of [REDACTED]. Thus the total market valuation of the Family Legacy LLC was [REDACTED]. Current debt to equity is [REDACTED]. The funding for this acquisition will be [REDACTED].

Family Legacy has a strong banking relationship with Pinnacle Financial Partners. Family Legacy's experience of producing successful business startups and acquisitions has further established Family Legacy as a creditworthy banking partner. Family Legacy currently has no debt covenants with Pinnacle Financial Partners.

Cole & Garrett plans to spend [REDACTED] to upgrade the facilities of the Divestiture Assets. Such improvements will include: [REDACTED]

[REDACTED] Moreover, Cole & Garrett plans to [REDACTED]

C. Operations Experience

In addition to Mr. Gregory, Family Legacy has a superior leadership team composed of Gregg Accas, Chief Financial Officer; Cindy Foree, Chief Operating Officer; Kevin Armistead, Vice President of Grounds; and Rodney Edwards, Development. In addition to Mr.

Gregory's 34 years in the death care industry, the remaining management team represents over 80 years of experience in the death care industry.

Beyond the management team members, Family Legacy has maintained a low employee turnover rate, which is further testament to the high level of experience and superior treatment that defines the entire Family Legacy organization. Family Legacy would expect this low turnover to continue at the Divestiture Assets.

Cole & Garrett plans to [REDACTED]

[REDACTED].

Family Legacy LLC (through its various limited liability companies and Subchapter S corporation) has proven its ability to purchase and improve cemeteries as well as build and operate funeral homes. Family Legacy intends to improve the competitive position of the Divestiture Assets. For example, Cole & Garrett management have communicated with the Garrett family, founders of Cole & Garrett, and anticipate increased calls based upon this renewed relationship. Members of the Garrett family have agreed to attend visitations and funerals of key community families and to assist Cole & Garrett with development of strategic marketing initiatives to reestablish Cole & Garrett – Goodlettsville as the preeminent funeral service provider in the area. Moreover, Family Legacy believes that it can increase call volume at the Divestiture Assets by involving the funeral directors in community affairs and will provide incentives (such as paid attendance time, payment of dues, and other community-related expenditures) for their participation.

III. The Proposed Divestiture Agreement Will Achieve the Purposes of the Decision and Order and Result in No Harm to Competition

The proposed divestiture of the Divestiture Assets, as embodied in the ASA, will achieve the purposes of the Decision and Order. William Gregory and Family Legacy are

experienced operator of funeral homes and cemeteries with a proven track record of successfully operating and enhancing the funeral homes and cemeteries that they have acquired in the past. William Gregory and Family Legacy through Cole & Garrett enjoys a strong financial position that will enable Cole & Garrett to complete this acquisition, continue the operation of the Divestiture Assets and enhance their competitiveness for funeral services. Combining the Divestiture Assets with William Gregory and Family Legacy's experience and financial wherewithal will ensure that the objectives of the Commission's Decision and Order will be realized.

The proposed divestiture will result in no harm to competition. Family Legacy LLC and/or William Gregory currently owns/operates the following seven facilities:

1. Harpeth Hills Memory Gardens Funeral Home & Cremation Center, 9090 Highway 100, Nashville, TN 37221 (operates)
2. Crestview Funeral Home, Memory Gardens & Cremation, 1623 Highway 109 N, Gallatin, TN 37066 (owns)
3. Hendersonville Memory Gardens, Funeral Home, & Cremation Center, 353 Johnny Cash Parkway, Hendersonville, TN 37075 (owns)
4. West Harpeth Funeral Home & Crematory, 6962 Charlotte Pike, Nashville, TN 37209 (owns)
5. Robertson County Memorial Gardens, 4005 Memorial Blvd., Springfield, TN 37172 (owns)
6. Sumner Memorial Gardens, 420 Albert Gallatin Rd., Gallatin, TN 37066 (owns)
7. Joelton Hills Memory Gardens, 6216 Clarksville Pike, Joelton, TN 37080 (owns)

Family Legacy does not currently compete in Goodlettsville, Tennessee, and the other facilities owned by Family Legacy are sufficiently removed from Goodlettsville, such that no competitive overlap will be created by the proposed acquisition of the Divestiture Assets. Consequently, the proposed acquisition of the Divestiture Assets does not raise any competitive issue.

In sum, the proposed divestiture will remedy any alleged anticompetitive effects that could result from the Acquisition. The ASA will achieve the Commission's stated purposes

of ensuring the continued use of the Divestiture Assets in the same business in which they were engaged at the time of the announcement of the Acquisition and remedying the lessening of competition as alleged in the Commission's Complaint.

Conclusion

For the foregoing reasons, the Respondents respectfully request that the Commission approve the proposed divestiture of the Divestiture Assets to Cole & Garrett, as embodied in the ASA, as soon as practicable after expiration of the public comment period.

Respectfully submitted,



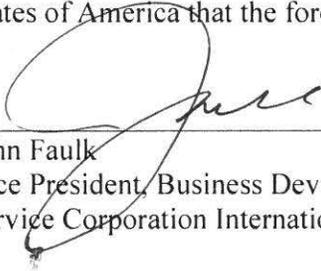
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Counsel for Respondents

Dated: March 24, 2014

CERTIFICATION OF SERVICE CORPORATION INTERNATIONAL

The facts and information related in the foregoing Petition, insofar as they pertain to Service Corporation International, its subsidiaries, and its assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



John Faulk
Vice President, Business Development
Service Corporation International

CERTIFICATION OF COLE & GARRETT, LLC

The facts and information related in the foregoing Petition, insofar as they pertain to Cole & Garrett, LLC, their subsidiaries, and their assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in cursive script, appearing to read "William Gregory", is written over a horizontal line.

William Gregory
Single Member
Cole & Garrett, LLC

Confidential

Exhibit A