

ORIGINAL

PUBLIC VERSION

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 FOR 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 Hillcrest Memorial Association MD, Inc. and Pleasant View Memorial Association, Inc. (collectively the “Acquirers”) of the Divestiture Businesses that include, respectively, the following two facilities: (i) Hillcrest Memorial Gardens, 1911 Forest Drive, Annapolis, Maryland 21401 and (ii) Pleasant View Memory Gardens, 2938 Charles Town Road, Kearneysville, West Virginia 25430. As explained in detail below, the Acquirers are owned in equal part by Guy N. Saxton and John L. Yeatman.

Subject to the Commission’s approval of this Petition, the Divestiture Businesses associated with these facilities (as defined in the Decision and Order, and hereinafter collectively referred to as the “Divestiture Assets”) will be sold to the

Acquirers pursuant to the Asset Sale Agreement dated April 25, 2014, by and among the Acquirers and S.E. Cemeteries of West Virginia, Inc. and Hillcrest Memorial Cemetery, Inc. (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 Acquirers, cause harm to the ongoing competitiveness of the Divestiture Assets, and impair 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, such that SCI and Acquirers are in a position to close the divestitures within a few days of such approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the public, the Acquirers, and the Respondents, because it will allow the Acquirers to move forward with their 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 the Acquirers 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 diligently has 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 April 25, 2014, SCI entered into the ASA with the Acquirers, which requires SCI to sell the Divestiture Assets to the Acquirers. The executed ASA is attached hereto as Confidential Exhibit A.

The ASA with the Acquirers complies with the requirements of Paragraph II of the Decision and Order.

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

Paragraph II.A.2 of the Decision and Order requires Respondents to grant a License to all Retained Intellectual Property that will permit the Acquirers to operate the relevant Divestiture Business in substantially the same manner as Respondents. Along with the Acquirers' current assets, Acquirers will have all the intellectual property they need to operate the Divestiture Assets in substantially the same manner as Respondents.

Acquirers have acknowledged that the Divestiture Assets, together with the Acquirer's existing resources, enable the Acquirers to operate the Divestiture Assets as ongoing entities and that no other assets are needed from SCI to do so. See ASA § 4.4.

* * *

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

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

The Commission is familiar with the owners of the Acquirers, having approved companies owned solely by them as divestiture buyers on a prior occasion. Guy N. Saxton ("Saxton") and John L. Yeatman ("Yeatman"), being the sole shareholders, formed the Acquirers for the purpose of purchasing the assets subject to the ASA. Saxton and Yeatman own equal shares of the Acquirers, which are similar in corporate structure to other entities they created in order to purchase divestiture assets of SCI—notably the assets of O'Hair & Riggs Funeral Services, Inc. and Ivers & Alcorn Merced Funeral Services, Inc.—and which the Commission approved as divestiture buyers in relation to SCI's acquisition of Alderwoods in 2007.²

Yeatman & Associates, Inc., a Saxton/Yeatman company, purchased its first property in June 2001 with the acquisition of a cemetery in California from The Loewen Group (the predecessor of Alderwoods). Over the last 13 years, Saxton and Yeatman have continued to grow their operations through several acquisitions. Companies controlled by Saxton and/or Yeatman currently own and/or operate 21 cemeteries, 10 funeral homes, and four crematories, with locations in California, Illinois, Louisiana, Maryland, New York, Oregon, and Texas. In

² See Press Release, Commission Approves Petition to Reopen and Modify Order in Matter of Duke Energy, et al.; FTC Approves Petitions for Proposed Divestitures in Matter of SCI/Alderwoods (Sept. 28, 2007), <http://www.ftc.gov/news-events/press-releases/2007/09/commission-approves-petition-reopen-and-modify-order-matter-duke>.

addition, Messrs. Saxton and Yeatman each individually own a cemetery in Pennsylvania. Together, these facilities provided approximately 7,100 calls or interments each year. The present acquisition by the Acquirers is consistent with Saxton and Yeatman's focus on facilities that they believe can be operated profitably.

As the Commission has previously recognized in approving companies operated by Saxton and Yeatman as divestiture buyers, Saxton and Yeatman have extensive experience in acquiring and operating funeral homes and cemeteries, have the financial wherewithal to make this acquisition, and the acquisition of the Divestiture Assets by the Acquirers will ensure that those businesses remain strong and effective competitors in Annapolis, Maryland, and Kearneysville, West Virginia.

B. Financial Capability

Saxton and Yeatman are experienced in obtaining funding for transactions, as evidenced by the fact that they have acquired all of their death care facilities through acquisitions. The Acquirers will fund the purchase of the Divestiture Assets [REDACTED]

[REDACTED]

[REDACTED]

C. Operations Experience

Mr. Yeatman will serve as President of the Acquirers. He currently serves as Vice President of the Maryland Cemetery, Funeral, and Cremation Association and Treasurer of the Pennsylvania Cemetery, Cremation, and Funeral Association.

Mr. Saxton will serve as Vice-President of the Acquirers. Mr. Saxton has also served as President of the Pennsylvania Cemetery, Cremation, and Funeral Association for a two year term over 2007-2008.

Saxton and Yeatman have a proven record of successful acquisition of funeral homes and cemeteries. Since their acquisition, each facility acquired by a Saxton/Yeatman company has experienced improved performance, and each has been profitable under the leadership of Saxton and Yeatman. Saxton and Yeatman have formed corporations to acquire the majority of their various business locations over the past 15 years. In substantially every case they have used the balance of the calendar year in which each location was acquired to hire and/or train a sufficient and appropriate management, sales and maintenance staff and to put their business model into effect. Historically, in the first full calendar year following the year of acquisition each location has generally experienced an increase in both gross receipts as well as net profitability. Saxton and Yeatman attribute this success to the development of location-specific incentives to motivate managers and focusing them on providing enhanced services to families, growing the businesses, and operating within budgets.

[REDACTED]

The Acquirers plan to grow the Divestiture Assets, not just maintain the status quo. The Acquirers expect to continue to implement strategies to attract families to the Divestiture Assets, including by marketing and improving public awareness of the facilities and by providing personalized services to ensure positive recommendations from the families they

serve. The Acquirers believe these initial measures along with Saxton and Yeatman's operating expertise will not only ensure the continued competitiveness of the Divestiture Assets, but will enhance it. As noted above, the Commission recognized the wherewithal of Saxton and Yeatman in the death care industry in its approval of certain divestitures in relation to SCI's acquisition of Alderwoods in 2007.

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. Saxton and Yeatman are experienced operators of funeral homes and cemeteries, with a proven track record of successfully operating and enhancing the funeral homes and cemeteries that their companies have acquired in the past. The Acquirers enjoy a strong financial position that will enable them to complete this acquisition, continue the operation of the Divestiture Assets, and enhance their competitiveness in the death care industry. Combining the Divestiture Assets with Saxton and Yeatman's experience and financial wherewithal will ensure that the objectives of the Commission's Decision and Order will be realized.

The proposed acquisition of the Divestiture Assets does not present competitive concerns because the Divestiture Assets do not directly compete with Saxton and/or Yeatman companies' current locations. Saxton/Yeatman companies do not currently compete for cemetery services, as defined in the Commission's Complaint, in Annapolis, Maryland, or Kearneysville, West Virginia. Consequently, the proposed divestiture 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 the Acquirers, as embodied in the ASA, as soon as practicable after expiration of the public comment period.

Respectfully submitted,

Amanda L. Wait
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Washington, D.C. 20037
Counsel for Respondents

Dated: April 30, 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 THE ACQUIRERS

The facts and information related in the foregoing Petition, insofar as they pertain to the Acquirers, 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.

John L. Yeatman
President, Hillcrest Memorial Association MD, Inc.
President, Pleasant View Memorial Association, Inc.

Confidential Exhibit A