

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

)	
In the Matter of)	
)	Docket No. C-4617
)	
American Guild of Organists,)	
a corporation.)	
)	
)	

COMPLAINT

The Federal Trade Commission (“Commission”), pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, having reason to believe that the American Guild of Organists, Inc. (“Respondent” or “AGO”), a corporation, has violated and is violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

I. NATURE OF THE CASE

1. This case challenges the actions of a professional association of organists and choral conductors that have the purpose and effect of restraining competition among its members. The association directs its members not to seek contracts and business relationships where doing so would displace an existing service provider. And the association urges its members to forgo price competition, and instead to seek the terms of compensation specified by the association.

II. RESPONDENT

2. Respondent American Guild of Organists was originally chartered as a corporation by the New York State Educational Department and the University of the State of New York in 1896, and is organized, existing, and doing business under, and by virtue of, the laws of the State of New York, with its office and principal place of business located at 475 Riverside Drive, Suite 1260, New York, NY 10115.

3. Respondent is a national association of organists and choral conductors with approximately 15,000 members organized in more than 300 chapters throughout the United States and abroad.
4. Many of Respondent's members provide organ performance, choral conducting, or teaching services for a fee. Except to the extent that competition has been restrained as alleged herein, many of Respondent's members have been and are now in competition among themselves and with other organists and choral conductors.

III. JURISDICTION

5. Respondent conducts business for the pecuniary benefit of its members and is therefore a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.
6. The acts and practices of Respondent, including the acts and practices alleged herein, are in or affecting commerce as "commerce" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

IV. AGO'S CONDUCT IN RESTRAINT OF TRADE

A. AGO RESTRICTIONS ON COMPETITION

7. Respondent has acted as a combination of its members, and in agreement with at least some of those members, to restrain competition by:
 - A. Restricting members' freedom to seek or to accept positions and engagements; and
 - B. Developing, adopting, issuing, publishing, recommending, and promoting the use by its members of standard fees and approaches to determine compensation for members' services.
8. Respondent maintains a Code of Ethics applicable to the commercial activities of its members. The Code of Ethics is considered to be binding upon all voting members in good standing.
9. Specifically, Respondent's Code of Ethics adopted on October 23, 1933, as revised through October 4, 2014, requires:

"RULE 1. Members shall promote good working relationships within the American Guild of Organists and shall respect the employment of colleagues. Members shall address differences between themselves and other members by following the procedures outlined in the Discipline."

"RULE 2. Members shall not seek or appear to be seeking employment for themselves, a student, or a colleague, in a position held by someone else"

“RULE 3. Members shall obtain the approval of the incumbent musician before accepting an engagement for a wedding, funeral, or other service requested by a third party. In such cases, the incumbent should receive his/her customary fee, and the third party is expected to provide it. It is the responsibility of the guest member to inform the third party of this rule.”

“The Discipline” refers to the AGO’s enforcement regime for the association’s Code of Ethics and other standards of conduct. An “incumbent musician” is a musician member who has a contract or other arrangement with a school, church, or other venue.

10. Respondent has developed, adopted, issued, published, recommended, and promoted a schedule of compensation to be used by members to determine or secure compensation for their services. Respondent’s schedule specifies fees for various types of services (*e.g.*, performance at weddings, funerals, religious ceremonies) and for various time commitments (*e.g.*, full time, half time) and experience levels. Respondent’s schedule also specifies standard mileage charges and rates for travel to and from locations where services are provided.
11. Respondent’s schedule of compensation identifies one U.S. city as a basing point and specifies adjustment factors to accommodate regional differences in the cost of living. Respondent’s Chapters use Respondent’s schedule to develop regionally-applicable schedules of compensation.
12. Respondent generally updates its schedule of compensation annually.

B. AGO EXHORTS MEMBERS TO REFRAIN FROM COMPETING

13. Respondent has provided its members with interpretations of and answers to questions about its Code of Ethics. For example, regarding Rule 2, Respondent published the following interpretation and advice:

“Question: Can a member circulate a written announcement to prospective religious institution employers having incumbent employees stating that s/he is looking for employment?
Answer: No.”
14. Regarding Rule 3, Respondent advised its members not to offer their services to a prospective customer without permission from an incumbent organist, and to inform prospective customers that the customer must pay a fee to both organists, even though only one would provide services.
15. Respondent developed and published model contract provisions that are consistent with the Code of Ethics and with the schedule of compensation.

C. AGO's ENFORCEMENT REGIME

16. Respondent has adopted a Code of Professional Standards to guide members in fulfilling their obligations. The section of the Code of Professional Standards entitled "Respect for Colleagues" states, "Members address differences with other members of the American Guild of Organists by following the procedures outlined in the Discipline."
17. Respondent's Discipline, most recently amended on January 23, 2015, prescribes that "[t]he *Discipline* is to be used when an individual member of the AGO or an AGO Chapter Executive Committee wishes to file a complaint [with the AGO] against another Member for a violation of the *Code of Ethics*," and specifies that remedies may include censure, written reprimand, requiring a letter of apology, requiring payment of compensation to another member for lost income, and expulsion from membership.

V. VIOLATION CHARGED

18. The purpose, effect, tendency, or capacity of the combination, agreement, acts, and practices alleged in Paragraphs 7 through 17 has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among organists and choral directors, and by depriving consumers and others of the benefits of free and open competition among organists and choral directors.
19. The combination, agreement, acts, and practices alleged in Paragraphs 7 through 17 constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, agreement, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested herein.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-sixth day of May, 2017, issues this Complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: