

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

In the Matter of)
Kenclaire (West) Electrical Agencies, Inc.) Case No. 93-47

ORDER

The Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce (“Department”), having determined to initiate an administrative proceeding pursuant to Section 1 l(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 1999)) (the “Act”)* and the Export Administration Regulations (currently codified at 15 C.F.R Parts 730-774 (1999)) (the “Regulations”), against Kenclaire (West) Electrical Agencies, Inc. (“Kenclaire”), a domestic concern resident in the State of California, based on allegations set forth in the Proposed Charging Letter, dated March 1, 2000, a copy of which is attached hereto and incorporated herein by this reference;

*The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 9 17 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 50 1 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), and August 10, 1999, (64 Fed. Reg. 44101 (August 13, 1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1 706 (1991 & Supp. 1999)).

The Department and Kenclaire having entered into a Settlement Agreement, incorporated herein by this reference, whereby the parties have agreed to settle this matter; and

I, the Assistant Secretary for Export Enforcement, having approved the terms of the Settlement Agreement:

IT IS ORDERED THAT,

FIRST, a civil penalty of \$104,000 is assessed against Kenclaire;

SECOND, Kenclaire shall pay to the Department in complete settlement of this matter the sum of \$33,000 in the following manner: \$11,000 on or before July 1, 2000; \$11,000 on or before June 1, 2001; and \$11,000 on or before June 1, 2002. Payment of the \$71,000 remaining civil penalty will be suspended from the date this Order is entered until June 15, 2002 and will thereafter be waived, provided that, during the period of suspension, Kenclaire does not violate the Act, the Regulations or this Order and provided further that, Kenclaire makes timely payment of the sum of \$33,000 in the manner prescribed above.

THIRD, pursuant to the Debt Collections Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1999)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due dates specified herein, Kenclaire will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

FOURTH, as authorized by Section 1 l(d) of the Act, the timely payment of the sum of \$33,000 is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be granted, to Kenclaire. Accordingly, if Kenclaire should fail to pay the sum of \$33,000 in the manner prescribed by this Order, I will enter an Order under the authority of Section 1 l(d) of the Act denying all of Kenclaire's export privileges for a period of one year from the date of the entry of this Order; and

FIFTH, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public, and a copy of this Order shall be served upon Kenclaire.

This Order is effective immediately.


F. Amanda DeBusk
Assistant Secretary for Export Enforcement

Entered this 15th day of June, 2000

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The check should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The check should be mailed to:

U.S. Department of Commerce
Bureau of Export Administration
Room 688 1
14th & Constitution Avenue, N. W.
Washington, D.C. 20230

Attention: Zoraida Vazquez

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty and the rights, if any, that Kenclaire may have to seek review, both within the U.S. Department of Commerce and the courts. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1999)) and the Federal Claims Collection Standards (4 C.F.R. Parts 101-105 (1999)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed Kenclaire is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and Kenclaire will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The foregoing constitutes the initial written notice and demand to Kenclaire in accordance with Section 102.2(b) of the Federal Claims Collection Standards (4 C.F.R. § 102.2(b)).

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

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In the Matter of)
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Kenclaire (West) Electrical Agencies, Inc.)
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Case No. 93-47

SETTLEMENT AGREEMENT

This agreement is made by and between Kenclaire (West) Electrical Agencies, Inc. (“Kenclaire”), a domestic concern resident in the State of California, and the Office of Antiboycott Compliance, Bureau of Export Administration, United States Department of Commerce (“Department”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the “Regulations”), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 1999)) (the “Act”).’

‘The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 9 17 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 50 1 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)) and August 10, 1999, (64 Fed. Reg. 44101 (August 13, 1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

WHEREAS, the Department has notified Kenclaire of its intention to initiate an administrative proceeding against Kenclaire pursuant to Section 11 (c) of the Act by issuing the Proposed Charging Letter dated March 1, 2000, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, Kenclaire has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; Kenclaire fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and Kenclaire states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, Kenclaire neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Kenclaire agrees to be bound by the appropriate Order ("Order") when entered;

NOW. THEREFORE, Kenclaire and the Department agree as follows:

1. Under the Act and the Regulations, the Department has jurisdiction over Kenclaire with respect to the matters alleged in the Proposed Charging Letter.
2. The Department will impose a civil penalty on Kenclaire in the amount of \$104,000. Kenclaire will pay to the Department, in accordance with the terms of the Order, when entered, the amount of \$33,000 in complete settlement of all matters set forth in the Proposed Charging Letter. Payment of the \$71,000 remaining civil penalty will be suspended from the date the Order is entered until June 15, 2002 and will thereafter be waived, provided that, during the period of suspension, Kenclaire does not violate the Act, the Regulations, this Settlement Agreement or the Order, when entered, and provided further that Kenclaire makes timely payment of the sum of \$33,000 in the manner prescribed in the Order.
3. As authorized by Section 11(d) of the Act, timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Kenclaire. Failure to make payment of this amount shall result in the denial of all of Kenclaire's export privileges for a period of one year from the date of entry of the Order.

4. Subject to the approval of this Settlement Agreement, pursuant to paragraph 9 hereof, Kenclaire hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the Order, when entered) including, without limitation, any right to:
 - A. An administrative hearing regarding the allegations in the Proposed Charging Letter;
 - B. Request a refund of the funds paid by Kenclaire pursuant to this Settlement Agreement and the Order, when entered; or
 - C. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.

5. The Department, upon entry of the Order, will not initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against Kenclaire, with respect to any violation of Section 8 of the Act or Part 769 or redesignated Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by the Department in the course of its investigation.

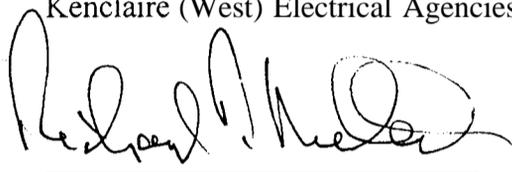
6. Kenclaire understands that the Department will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the Order, when entered.

7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by Kenclaire that it has violated the Regulations or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary for Export Enforcement, the Department may not use this Settlement Agreement against Kenclaire in any administrative or judicial proceeding.

8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances herein addressed. This paragraph shall not limit Kenclaire's right to challenge any action brought by any other agency based on a referral by the Department or any employee thereof, in contravention of paragraph 5 of this Settlement Agreement.

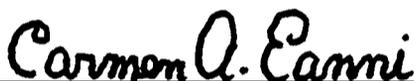
9. This Settlement Agreement will become binding on the Department only when approved by the Assistant Secretary for Export Enforcement by entering the Order.

Kenclaire (West) Electrical Agencies, Inc.



President

DATE: 4/15/00



Carmen A. Eanni,
Counsel for Kenclaire (West)

U.S. DEPARTMENT OF COMMERCE



Dexter M. Price
Director
Office of Antiboycott Compliance

DATE: April 28, 2000



PROPOSED CHARGING LETTER

March 1, 2000

Kenclaire (West) Electrical Agencies, Inc.
1326 W. Herndon Ave.
Fresno, CA 93711

Case No. 93-47

Gentlemen/Ladies:

We have reason to believe and charge that you, Kenclaire (West) Electrical Agencies, Inc., have committed thirty violations of Section 769 of the Export Administration Regulations, currently codified at 15 C.F.R. Parts 730-774 (1999), (the "Regulations")¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999) (the "Act")).²

We charge that, with intent to comply with, further, or support an unsanctioned foreign boycott, you knowingly agreed on eleven occasions to refuse to do business a with other persons, pursuant

¹ The alleged violations occurred in 1992 and 1993. The Regulations governing the violations at issue are found in the 1992-1993 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992-1993)). Those Regulations define the violations that we allege occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations established the procedures that apply to the matters in this letter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), August 13, 1998 (3 C.F.R., Comp. 294 (1999)) and August 10, 1999 (64 Fed. Reg. 44101, August 13, 1999) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§1701-1706 (1991 & Supp. 1999)).



to an agreement with, a requirement of or a request from or on behalf of a boycotting country, in violation of Section 769.2(a) of the former Regulations.

Additionally, we charge that, on nineteen occasions, you failed to report to the Department your receipt of requests to engage in restrictive trade practices or unsanctioned foreign boycotts, in violation of Section 769.6 of the former Regulations

We allege that:

1. You are a domestic concern resident in the State of California and, as such, you are a United States person as defined in Section 760.1(b) of the Regulations.
2. During the period January 1992 through April 1993, you engaged in transactions involving the sale of goods from the United States to Saudi Arabia, activities in the interstate or foreign commerce of the United States, as defined in Section 769.1(d) of the former Regulations.
3. In connection with the transactions referred to in paragraph 2 above, you received, on nineteen occasions, purchase orders for the sale of goods, described more fully in Table A, which is attached and incorporated by this reference. The purchase orders included conditions that require U.S. persons to agree not to sell goods made by manufacturers "banned under the Arab Boycott rules."
4. By filling eleven of the orders, described in paragraphs 2 and 3 above, without deleting, rejecting, amending, or otherwise taking exception to these conditions, you knowingly agreed, on eleven occasions, to refuse to do business with other persons, pursuant to an agreement with, or requirement of or a request from or on behalf of a boycotting country, activities prohibited by Section 769.2(a) of the former Regulations, and not excepted. We therefore charge you with eleven violations of that section.
5. In connection with the transactions described in paragraphs 2 through 4 above, you received requests to take an action which has the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott. Further, you knew or had reason to know that the purpose of this language was to enforce, implement, or otherwise further, support, or secure compliance with a restrictive trade practice or unsanctioned foreign boycott. You failed to report to the Department your receipts of those boycott-related requests, as required by Section 769.6 of the former Regulations. We therefore charge you with nineteen

violations of that section.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions.'

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. You are entitled to be represented by counsel, and under Section 766.18 of the Regulations, to seek a settlement agreement.

If you fail to answer the allegations contained in this letter within thirty days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

As provided in Section 766.3, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between The Bureau of Export Administration and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matter set forth in this letter. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

U.S. Coast Guard ALJ Docketing Center
40 South Gay Street
Baltimore, Maryland 21202-4022

Attention: Administrative Law Judge

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer should also be served on

³ Administrative sanctions may include any or all the following:

- a. A civil penalty of \$10,000 per violation (see §764.3(a)(1) of the Regulations);
- b. Denial of Export privileges (see §764.3(a)(2) of the Regulations); and/or
- c. Exclusion from practice (see §764.3(a)(3) of the Regulations).

the Bureau of Export Administration at:

Office of the Chief Counsel for Export Administration
U.S. Department of Commerce
Room H-3839
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Sincerely,

Dexter M. Price
Director
Office of Antiboycott Compliance

Attachment

TABLE A

KENCLAIRE (WEST) ELECTRICAL AGENCIES, INC.
Case No. 93-47

Schedule of Alleged Violations

Section 769.2(a) : Agreements to Refuse to do Business = *
Section 769.6 : Failures to Report Boycott Requests = +

ITEM	REFERENCE #	DATE SHIPPED (ON or ABOUT)	COUNTRY	BOYCOTT LANGUAGE	ALLEGED VIOLATION
1	KW-3713	02.14.92	Saudi Arabia	A	+
2	KW-3772	03.17.92	Saudi Arabia	A	+
3	KW-3754	04.11.92	Saudi Arabia	A	* +
4	KW-3835	05.08.92	Saudi Arabia	A	* +
5	KW-3825	05.29.92	Saudi Arabia	A	* +
6	KW-3842	06.11.92	Saudi Arabia	A	* +
7	KW-3910	07.07.92	Saudi Arabia	A	+
8	KW-3919	08.07.92	Saudi Arabia	A	* +
9	KW-3922	08.21.92	Saudi Arabia	A	* +
10	KW-4013	09.01.92	Saudi Arabia	A	+
11	KW-3941	09.17.92	Saudi Arabia	A	* +
12	KW-4005	10.02.92	Saudi Arabia	A	* +
13	KW-3999	10.20.92	Saudi Arabia	A	* +
14	KW-4038	11.13.92	Saudi Arabia	A	* +
15	KW-4289	02.15.93	Saudi Arabia	A	+
16	KW-4241	02.16.93	Saudi Arabia	A	* +
17	KW-4344	03.25.93	Saudi Arabia	A	+
18	KW-4379	04.14.93	Saudi Arabia	A	+
19	KW-4397	04.21.93	Saudi Arabia	A	+

Key to Prohibited and Reportable Language (The following language for each item above comprises both a §769.2(a) **and 5769.6** violation), as indicated:

A. "No items or components thereof made by manufacturer covered and banned under the Arab Boycott Rules shall be sold to the Buyer. Seller shall be fully responsible to replace all such items at no costs to Buyer. Seller shall be further responsible to pay for all penalties and expenses for defying the Arab Boycott laws."