

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

COMMISSIONERS:

**Lina, M. Khan, Chair
Rebecca Kelly Slaughter
Alvaro M. Bedoya
Melissa Holyoak
Andrew Ferguson**

In the Matter of

Guardian Service Industries, Inc.,

a corporation.

**DECISION AND ORDER
Docket No. C-XXXX**

DECISION

The Federal Trade Commission initiated an investigation of certain acts and practices of Guardian Service Industries, Inc. (“Guardian” or “Respondent”). The Commission’s Bureau of Competition prepared and furnished to Guardian the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Guardian with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Guardian and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Guardian of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Guardian that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and determined that it had reason to believe that Guardian has violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Guardian is a corporation organized, existing, and doing business under, and by virtue of, the laws of New York State, with its executive offices and principal place of business at 55 Water Street, New York, NY 10041.
2. The Commission has jurisdiction of the subject matter of this proceeding and over Guardian, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Agreement” means any agreement, contract, understanding, or provision or term thereof, whether express or implied, written, or unwritten.
- B. “Commission” means the Federal Trade Commission.
- C. “Customer” means any Person, including building owners and building management companies, with whom Guardian has or had an Agreement for the provision of building services performed by a Guardian Employee.
- D. “No-Hire Agreement” means an Agreement between Guardian and a Customer that restricts, imposes conditions on or otherwise limits the Customer’s or any other Person’s ability to solicit, recruit, or hire a Guardian Employee, directly or indirectly, either during such Guardian Employee’s employment by Guardian or for any period of time after the conclusion of such Guardian Employee’s employment with Guardian, including by imposing fees or damages in connection with such conduct, or that otherwise inhibits competition between Guardian and any other Person for a Guardian Employee’s services.
- E. “Person” means both natural and artificial persons, including corporations, partnerships, and unincorporated entities.
- F. “Guardian” or “Respondent” means Guardian Service Industries, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Guardian Service Industries, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- G. “Guardian Employee” means a Person who provides building services and is employed by, has been employed in the previous six months by, or is in the process of being employed by, Guardian in the United States, whether directly or through any corporation, company, business, partnership, subsidiary, division, agent, servant, employee, trade name, or other

device.

II. Injunction

IT IS FURTHER ORDERED that Guardian, in connection with its activities in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall cease and desist from, directly or indirectly, entering or attempting to enter into, maintaining or attempting to maintain, enforcing or attempting to enforce, or threatening to enforce a No-Hire Agreement, or communicating to any prospective or current Customer or any other Person that any Guardian Employee is subject to a No-Hire Agreement.

III. Notice to Customers and Guardian Employees

IT IS FURTHER ORDERED that Guardian shall:

- A. No later than 30 days from the date this Order is issued, deliver to each Customer that is subject to a No-Hire Agreement or has been subject to a No-Hire Agreement in the last 3 years from the date this Order is issued a letter in the form of Appendix A and a copy of this Order. Guardian shall deliver said letter to each Customer by name:
1. By U.S. Mail, return receipt requested; or
 2. Via email transmittal with a proof of a read-receipt; or
 3. Hand delivered with proof of delivery.
- B. No later than 30 days from the date this Order is issued, deliver to each Guardian Employee that is subject, knowingly, or unknowingly, to a No-Hire Agreement between Guardian and a Customer a letter in the form of Appendix B and a copy of this Order. Guardian shall deliver said letter to each Employee by name:
1. By U.S. Mail, return receipt requested; or
 2. Via email transmittal with a proof of a read-receipt; or
 3. Hand delivered with proof of delivery.
- C. No later than 30 days from the date this Order is issued, and continuing for the duration of this Order, post clear and conspicuous notice: (1) in the documentation, electronic or otherwise, provided to each new Guardian Employee upon hire; and (2) in any shared Guardian Employee space such as a break room, including posting on any union bulletin board in any Guardian Employee space that states:

“IMPORTANT: Your employment with Guardian in this position is not and will not be subject to a No-Hire Agreement. This means that:

- You may seek or accept a job with the building owner directly.
- You may seek or accept a job with any company, including our competitors, that

wins the building's business from us.

- D. Provide notice pursuant to Paragraphs III.A and III.B in the native language(s) of each Guardian Employee and Customer.

IV. Compliance Obligations

IT IS FURTHER ORDERED that Guardian shall:

- A. No later than 30 days after the date on which this Order is issued: (1) take all steps necessary to void and nullify all existing No-Hire Agreements, and notify Commission staff in writing that all existing No-Hire Agreements are voided and nullified, once completed; and (2) not require any Person who is party to an existing No-Hire Agreement to pay any fees or penalties relating to a No-Hire Agreement.
- B. No later than 30 days after the date on which this Order is issued, provide a copy of this Order and the Complaint to Guardian's directors, officers, and employees with responsibility for hiring or recruitment of Guardian Employees or negotiating Customer contracts in the United States.
- C. For a period of 10 years from the date this Order is issued, provide a copy of this Order and the Complaint to any Person who becomes a director, officer, or employee of Guardian with responsibility for hiring or recruitment of employees or negotiating Customer contracts in the United States, and provide such copies within 30 days of the commencement of such Person's employment or term as a director or officer.
- D. Require each Person to whom a copy of this Order is furnished pursuant to Paragraphs IV.B and IV.C above to sign and submit to Guardian within 30 days of the receipt thereof a statement that (1) represents that the undersigned has read the Order, and (2) acknowledges that the undersigned has been advised and understands that non-compliance with the Order may subject Guardian to penalties for violation of the Order.
- E. For a period of 5 years after taking each action obligated by Paragraphs IV.A-D of this Order, Guardian shall retain documents and records sufficient to record Guardian's compliance with said obligations.

V. Compliance Reports

IT IS FURTHER ORDERED that Guardian shall file verified written reports (“Compliance Reports”) in accordance with the following:

- A. Guardian shall submit:
 - 1. Interim Compliance Reports 30 days after the date this Order is issued, and then 150 days thereafter for the first year;
 - 2. Annual Compliance Reports one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and
 - 3. Additional Compliance Reports as the Commission or its staff may request.
- B. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Guardian is in compliance with this Order. Conclusory statements that Guardian has complied with its obligations under the Order are insufficient. Guardian shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, (1) a full description of the measures Guardian has implemented and plans to implement to comply with each paragraph of this Order, including a list of all persons who received the notice required by Paragraphs III.A and III.B of this Order, together with proof of service of the notice (which service may be satisfied by sending the notice via email, as described in Paragraphs III.A and III.B) and (2) upon the Commission’s request, a copy of any Customer agreement that Guardian enters or implements after execution of the Consent Agreement.
- D. For a period of 5 years after filing a Compliance Report, Guardian shall retain all material written communications with each party identified in each Compliance Report as required by Paragraph IV.B and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Guardian’s obligations under this Order during the period covered by such Compliance Report. Guardian shall provide copies of these documents to Commission staff upon request.
- E. Guardian shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Guardian shall file its Compliance Reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov; as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a).

VI. Change in Guardian

IT IS FURTHER ORDERED that Guardian shall notify the Commission at least 30 days prior to:

- A. The dissolution of Guardian Service Industries, Inc.;
- B. The acquisition, merger, or consolidation of Guardian Service Industries, Inc.; or
- C. Any other change in Guardian, including assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon 5 days' notice to Guardian, that Guardian shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Guardian and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of Guardian related to compliance with this Order, which copying services shall be provided by Guardian at its expense; and
- B. To interview directors, officers, or employees of Guardian, who may have counsel present, regarding such matters.

VIII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and to prevent Guardian from entering into, attempting to enter into, maintaining or attempting to maintain, enforcing or attempting to enforce, or threatening to enforce a No-Hire Agreement.

IX. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission

April J. Tabor
Secretary

SEAL:

ISSUED:

APPENDIX A

[Letter to Customer]

[Guardian letterhead]

[Name and email address of Customer]

VIA U.S. MAIL, EMAIL, or HAND DELIVERED

Re: No-Hire Agreements in Contracts with Guardian Service Industries, Inc.

Dear [name of Customer]:

You are receiving this letter because you are an existing customer of Guardian Service Industries, Inc., or have been a customer of Guardian in the last three years, and may be affected by a Consent Order that we have entered into with the United States Federal Trade Commission (“Commission”).

We sometimes included no-hire agreements in our contracts that restricted our customers from directly or indirectly soliciting or hiring Guardian employees during or after their employment with Guardian. As of [X], all no-hire agreements in our customer contracts are null and void, and you, and any subsequent building services contractor you may hire are no longer subject to the restrictions or penalties related to the no-hire agreements in our contracts.

The Commission has been investigating the use of no-hire agreements in the building services industry. As part of this investigation, Guardian entered into a settlement agreement with the Commission. The Commission has alleged that Guardian’s use of no-hire agreements in its contracts with its customers restricts job mobility, harms competition, and is unlawful.

How the FTC Order Affects You

The FTC Order requires us to:

1. Cancel all no-hire agreements in contracts with current or former customers;
2. Stop including no-hire agreements in our contracts; and
3. Notify all current and former customers subject to no-hire agreements in our contracts that they are no longer enforceable.

Where To Get More Information

To learn more about this case, please read the attached FTC Order or visit [URL that goes to the [ftc.gov press release](#)]. This letter summarizes the main points of the matter, but the only official

source of information is the FTC Order. The FTC Order reflects an agreement between the FTC and Guardian that settles the FTC’s allegations. It does not constitute an admission by Guardian that it has violated the law or that any of the facts alleged by the FTC regarding Guardian’s conduct are true.

If you have concerns about whether Guardian is complying with its obligations under the Order—or questions about how the Order applies to you or your colleagues—contact [X] counsel for Guardian at [phone number], [email address], or the following FTC representatives: Victoria Lippincott, (202) 326-2983, vlippincott@ftc.gov, or Jacqueline Mendel, (202) 326-2603, jmendel@ftc.gov.

Sincerely,

[name and title]

APPENDIX B

[Letter to Employee]

[Guardian letterhead]

[Name and email address of Employee]

VIA U.S. MAIL, EMAIL, or HAND DELIVERED

Re: Your Ability to Seek Employment with other Companies

Dear [name of Employee]:

You are receiving this letter because you are an employee affected by a Consent Order that we have entered into with the Federal Trade Commission (“Commission”).

As you may know, Guardian included no-hire agreements in our customer contracts that did not allow our customers—the owners of the buildings where you work—or another company that may win the customer’s business from Guardian (our competitors) to solicit or hire Guardian employees during their employment with Guardian. As of [X], we have either rescinded all no-hire agreements in our customer contracts or no longer enforce the no-hire agreements in our customers contracts.

The Commission has been investigating the use of no-hire agreements in the building services industry. As part of this investigation, Guardian entered into a settlement agreement with the Commission. The Commission has alleged that Guardian’s use of no-hire agreements with its customers restricts job mobility, harms competition, and is unlawful. A no-hire agreement that may have affected your employment is now null and void.

How the FTC Order Affects You

The FTC Order requires us to:

1. Cancel all no-hire agreements in its contracts with its current or former customers;
2. Stop including no-hire agreements in our contracts; and
3. Release its current customers from the no-hire agreements it has in place with them so that you may work directly for our customers or for our competitors that win the customer’s business away from us.

Where To Get More Information

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If you have concerns about whether Guardian is complying with its obligations under the Order—or questions about how the Order applies to you or your colleagues—contact [X], Guardian’s counsel, at [phone number], [email address], or the following FTC representatives: Victoria Lippincott, (202) 326-2983, vlippincott@ftc.gov, or Jacqueline Mendel, (202) 326-2603, jmendel@ftc.gov.

Sincerely,

[name and title]