

Syllabus

IN THE MATTER OF

RIGHT WAY ROYALTY SYNDICATE, E. L. CHAPMAN,
H. F. MITCHELL AND A. J. CHAPMAN

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 930. Complaint, Nov. 20, 1922—Decision, Aug. 19, 1927

Where two individuals, trustees in a company organized by them under a declaration of trust, which provided, among other things that no certificate holder should have any rights in the management or control of its property, that the trustees should have authority to sell all or any part of its assets, at any time, and for any consideration which they might see fit, that any trustee should have the right, in his individual capacity, to sell to it royalties or other interests in oil and gas properties at a profit to such trustee individually, that such profit should be in addition to a commission of 10 per cent allowed the trustee individually for handling the transaction, that the trustees individually should receive a commission of 10 per cent of the proceeds from the sale of its assets, that the profits in excess of the par value received from the sale of securities should go to the trustee individually making the sale, and that the trustees might at any time dissolve, reorganize, incorporate, or merge the company; in offering and selling as stock or units of the company, their own individual stock, acquired by them in return for interests or properties sold by them to the company, under their powers under the aforesaid declaration, at prices fixed by themselves, substantially in excess of those paid by them for such interests or properties (in many cases resold by them, as trustees, after a brief period of ownership by the company, to another organization in which one of them was also trustee, at considerably lower prices than those paid therefor by the company);

- (a) Represented in advertisements in newspapers of general circulation, pamphlets and circulars, that the company had no salaried officers, no advertising expenses, paid no commission to agents to sell its stock or units, and incurred no expense beyond 10 per cent of the earnings, to the trustees for their services, under and by virtue of the articles of agreement and declaration of trust, the fact being that each individual, in pursuance of the privilege of selling their various interests in oil and gas properties to it at prices far in excess of the cost thereof to them, received within a few months after its organization, \$150,000 more than the 10 per cent represented to purchasers and prospective purchasers as their sole compensation;
- (b) Omitted from advertisements and newspapers, pamphlets, circulars and all other advertising matter utilized by them for the sale of such stock, any information concerning those provisions of the aforesaid articles and declaration, which invested the trustees with absolute control of the operations of the syndicate and its finances, and which allowed them to sell their property to the syndicate at prices far exceeding their cost to the trustees, and thereafter to cause the sale or transfer of such interests at such prices and under such conditions as they might deem advisable; and

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- (c) Concealed from purchasers or prospective purchasers the essential and material fact that the stock offered for sale was the individual stock of said individuals, received by them for properties or royalty interests conveyed to it;

With the effect of misleading and deceiving a substantial portion of the purchasing public into believing that 10 per cent of the earnings of the company constituted their only commission or compensation as its trustees, and that the stock or units offered for sale were its property, and inducing them to purchase the same because of and in reliance upon such belief:

Held. That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. James M. Brinson and Mr. John M. Burkett for the Commission.

Bouldin & Belle, of Mineral Wells, Tex., and *Baskin, Eastus & Greines*, of Fort Worth, Tex., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Right Way Royalty Syndicate, organized in Texas under so-called articles of agreement and declaration of trust, ostensibly for the general purpose of dealing in royalty or other interests in oil and gas properties, and with principal office and place of business at Fort Worth, and respondents E. L. Chapman, H. F. Mitchell and A. J. Chapman, its trustees, organizers and promoters, and its officers as well as its board of trustees, with misrepresenting offerings, advertising falsely or misleadingly, and withholding from purchasers and prospective purchasers material and essential facts, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, in marketing respondents syndicate's securities and as an inducement to purchasers and prospective purchasers to buy the same, in its advertisements in newspapers of general circulation, and in its prospectuses, circulars, etc., and through its agents and salesmen made "numerous false, misleading and deceptive statements and other representations of and concerning the business, management, operations, properties, prospects, etc., of respondent syndicate, and concerning the value of said securities, all of which statements and other representations, and each of them, were calculated, have the capacity and tendency, to, and do, mislead and deceive the said purchasers and prospective purchasers and thereby cause said purchasers to purchase said securities."

Among such false, misleading and deceptive statements and other representations, the following are mentioned as illustrative of the general tenor thereof:

The false statement that respondent E. L. Chapman was under good and sufficient bond for the faithful performance of his duties in connection with respondent syndicate.

That the syndicate had no salaried officers, no advertising expenses, no office expenses and paid no commissions to agents or employees to sell its securities, and incurred no expenses beyond the 10 per cent of its earnings allowed its trustees, which was false, the fact, further, being that the expenses referred to included advertising and office expenses and office salaries, and that the syndicate and respondent individuals paid commissions to agents or employees for selling its securities; and

That the syndicate paid monthly cash dividends and paid 66 per cent cash dividends in 12 months, the fact being that it did not pay monthly dividends and that funds or the greater part thereof, distributed to security holders as dividends were not earnings of the syndicate.

Respondents further, as charged, "concealed and withheld at all times herein mentioned, and still so conceal and withhold, from the aforesaid purchasers and prospective purchasers throughout the United States, numerous unusual, material and essential facts and circumstances concerning the value of said securities, the business, finances, management, operations, holdings, etc., of respondent syndicate, which concealing and withholding of said unusual, material and essential facts and circumstances were calculated and intended by respondent persons and respondent syndicate, and have the capacity and tendency, to, and did mislead and deceive the said purchasers and prospective purchasers into the belief that said unusual, material and essential facts and circumstances, and each of them, did not and do not exist and respondent persons and respondent syndicate thereby induced aforesaid purchasers to purchase said securities."

Among such practices and circumstances, thus concealed and withheld, the following are mentioned as illustrative:

That respondent persons had received large sums as individual profits in the management of respondent syndicate and other dealings therewith; that such profits exceeded the sum of \$147,000 and were in addition to the sums received as the trustees so-called 10 per cent commission; that they had individually sold interests in oil and gas properties to the syndicate at inflated and exorbitant prices at a large profit to themselves individually; and, among other things, that under the articles of agreement and declaration of trust no certificate holder of the syndicate had any right to manage or control any part of the syndicate property and that the trustees had full

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authority to sell all or any portion thereof for any consideration at any time they saw fit.¹

According to the complaint the practices, acts and conduct of respondents were all to the prejudice of the public and respondent's competitors and unfair methods of competition, within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (the Federal Trade Commission Act), the Federal Trade Commission issued and served upon the respondents its complaint, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereupon, respondents, E. L. Chapman, H. F. Mitchell, and A. J. Chapman, entered their appearances and filed answers. Formal hearing was had before an examiner of the Commission and thereafter briefs were submitted by counsel and the matter having come on regularly for decision, and the Commission having considered the record, and being advised in the premises, makes this its report in writing and states its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, E. L. Chapman, A. J. Chapman and H. F. Mitchell, on December 15, 1920, caused respondent, Right Way Royalty Syndicate, to be organized under and by virtue of so-called articles of agreement and declaration of trust, for the declared purpose of acquiring and dealing in oil and gas properties and royalty interests therein. Its authorized capitalization was \$500,000, divided into 50,000 shares or so-called units or divisional units, each of the par value of ten dollars. The individual respondents became and at all times hereinafter mentioned were the trustees and officers, and constituted the so-called board of trustees of the respondent syndicate, with principal office and place of business at Fort Worth, Tex. The so-called articles of agreement and declaration of trust contained, among others, the following provisions in substance, to wit:

That no certificate holder of respondent syndicate shall have any right to manage or control all or any portion of the respondent syndicate's property;

¹ The substance of certain terms of the aforesaid articles and declarations are stated in the "Findings."

That said trustees of respondent syndicate shall have full authority to sell all or any portion of respondent syndicate's assets for any consideration and at any time they may see fit;

That any member of the said board of trustees shall in his individual capacity have the right to sell to respondent syndicate royalty or other interests in oil and gas properties at a profit to said member individually;

That said profit shall be in addition to the commission of 10 per cent to be allowed said trustee individually for handling the transaction with respondent syndicate;

That said trustee individually shall receive a commission of 10 per cent of the proceeds from the sale of respondent syndicate's assets;

That the profits in excess of the par value received from the sale of aforesaid securities shall go to the respective trustee, individually, making the said sale;

That the said board of trustees may at any time increase the authorized capital stock of respondent syndicate;

That the said trustee may at any time dissolve, reorganize, incorporate or merge said respondent syndicate.

PAR. 2. Immediately after the organization of respondent, Right Way Royalty Syndicate, respondents, E. L. Chapman and H. F. Mitchell, exercised the privilege of selling to respondent, Right Way Royalty Syndicate, from time to time, interests in various oil or gas properties at prices fixed by themselves as trustees of said respondent syndicate and which prices were at all times substantially in excess of the prices paid by them for such properties. They also initiated and followed the practice, authorized by said articles of agreement and declaration of trust, of selling and transferring, at a price considerably less than that paid them by the syndicate, or causing to be sold and transferred, such properties or some of them after a brief period of ownership by respondent, Right Way Royalty Syndicate, in most instances to the Mutual Oil Operators, another organization also formed under a declaration of trust and of which respondent, E. L. Chapman, was trustee. Respondents, E. L. Chapman and H. F. Mitchell, in the course of such practice sold to the respondent syndicate of which they were trustees, 54 various interests in oil or gas properties and received in payment therefor shares or units of said syndicate at their par value. All the interests owned or purchased by respondent, Right Way Royalty Syndicate, were purchased from respondents, E. L. Chapman and H. F. Mitchell.

PAR. 3. After respondents, E. L. Chapman and H. F. Mitchell, had acquired stock or units of the Right Way Royalty Syndicate, as described in paragraph 2, they thereupon offered for sale and sold such stock or units in commerce among the various States of the United States, as and for stock or units of respondent, Right Way Royalty Syndicate, in competition with individuals, partnerships, corporations and associations selling oil stocks and other securities in com-

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merce between the States of the United States, by means of and through advertisements in newspapers of general circulation, circulars and pamphlets which they caused to be transported from Fort Worth, Tex., into and through other States of the United States and distributed among purchasers and prospective purchasers, containing the representations that the Right Way Royalty Syndicate had no salaried officers, no advertising expenses, paid no commission agents to sell said stock or units and incurred no expense beyond 10 per cent of the earnings of the syndicate to the trustees for their services, under and by virtue of the articles of agreement and declaration of trust. In truth and in fact, such trustees, respondents, E. L. Chapman and H. F. Mitchell, in pursuance of the privilege of selling their various interests in oil and gas properties to the respondent at prices far in excess of the cost of such properties to them received within a few months after the organization of the syndicate as described in paragraph 2 hereof, \$150,000 more than the 10 per cent represented to the purchasers and prospective purchasers as their sole compensation.

PAR. 4. Respondents, E. L. Chapman and H. F. Mitchell, omitted from advertisements and newspapers, pamphlets, circulars and all other advertising matter utilized by them for the sale of such stock or units any information concerning those provisions of the articles of agreement and declaration of trust which invested the trustees with absolute control over the operations of the syndicate and its finances and which allowed them to sell their properties to the syndicate at prices far exceeding their cost to the trustees and thereafter to cause the sale or transfer of such interest at such prices and under such conditions as they might deem advisable. Respondents also concealed from purchasers or prospective purchasers the essential and material fact that the stock or units offered for sale was the individual stock of said respondents, received by them for properties or royalty interest conveyed to the syndicate.

PAR. 5. The false and misleading statements or representations made by respondents, E. L. Chapman and H. F. Mitchell, as described in paragraph 4, in offering for sale and selling the stock or units of respondent, Right Way Royalty Syndicate, and their failure to advise purchasers or prospective purchasers of their powers, profits and financial advantages in connection with the promotion and management of said syndicate and the sale of its units, had the capacity and tendency to mislead and deceive and did mislead and deceive a substantial portion of the purchasing public into the belief that 10 per cent of the earnings of the Right Way Royalty Syndicate constituted the only commission or compensation of said respondents as its trustees, and that the stock or units offered for sale

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were the property of respondent, Right Way Royalty Syndicate, and induced them to purchase such stock or units because of and in reliance upon such belief.

PAR. 6. Respondents, E. L. Chapman and H. F. Mitchell, caused certificates of the stock or units of the Right Way Royalty Syndicate, when sold, to be transported from Fort Worth, Tex., through and into other States of the United States to the purchasers thereof.

CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts constitute under the circumstances therein stated, unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, the testimony and evidence and briefs of counsel for the Commission and for the respondents, and the Commission having made its report stating its findings as to the facts with its conclusion that respondents, E. L. Chapman and H. F. Mitchell, have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents, E. L. Chapman and H. F. Mitchell, cease and desist from publishing, circulating or distributing, in connection with the offering for sale or selling in interstate commerce, stock or units of respondent, Right Way Royalty Syndicate, or of any other corporation, association, or syndicate, magazines, prospectuses, pamphlets, newspapers, circulars, circular letters, or any other form of printed or written matter containing any false or misleading statement of representation concerning the organization, resources, income, management, profits, progress, or prospect of the corporation, association, or syndicate, whose stock or units are offered for sale or sold, and which does not contain full information regarding the powers and privileges of the person or persons engaged in the promotion, conduct or management of said respondent, Right Way Royalty Syndicate, or such other corporation, association or syndicate, and the commission, compensation, or any other profit or financial advantage derived or to be derived by such person or per-

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sons from or out of the business or property, or at the loss or expense of said respondent, Right Way Royalty Syndicate, or the particular corporation, association or syndicate whose stock or units are offered for sale.

It is further ordered, That the complainant be and the same hereby is dismissed as to respondent, A. J. Chapman.

It is further ordered, That said respondents shall within 60 days from the date of the service of this order file with the Commission a report setting forth in detail the manner and form in which they have complied therewith.

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IN THE MATTER OF
DISPATCH PETROLEUM COMPANY, PORTER OAKES
AND JAMES T. CHILES

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 932. Complaint, Nov. 20, 1922—Decision, Aug. 19, 1927

Where an individual, in selling shares in a company organized under declaration of trust by himself and an associate, to which company the latter transferred oil and gas leases, and the other a "Sucker list", as agreed between them, it having been further agreed that the former should sell the company's stock to the public and receive 50 per cent of the proceeds as his proportion, and that the latter was to be paid from the proceeds of the other 50 per cent, \$110,000 for and on account of the leases transferred by him to the company; stated and represented in the prospectuses, pamphlets, and circular letters published and distributed by him among those prospective purchasers whose names appeared on the aforesaid list, and others, with the knowledge, consent and cooperation of his said associate that the company was earning large profits, was on a dividend paying basis, had two producing wells and a program of drilling 40 wells on a tract of 138 acres, and that the land was in proven territory where only shallow wells would be required to obtain oil, the fact being that the company was at all times after its organization indebted to said associate for the aforesaid leases, that so-called dividends distributed by the company consisted of money derived either from the sale of its stock, or borrowed by it, that at no time was it earning money applicable to payment of dividends, that it did not own two producing wells, and had only a seven-eighths interest in one well, which did not produce enough oil to enable it to pay any dividend, and had no program for drilling 40 wells on the land in question, and that such land was not in proven territory; with the effect of misleading and deceiving a substantial portion of the public into purchasing stock in said company in the belief that it owned two producing wells, earned profits from which it was paying and would pay dividends, and would prosecute a program of drilling 40 other wells on land known to be situated in proven territory.

Held, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. James M. Brinson and Mr. John M. Burkett for the commission.

Burns, Christian, Gumm & Gordon, of Fort Worth, Tex., for Dispatch Petroleum Co.

Mr. Charles S. Moore, of Washington, D. C., for Porter Oakes.

Mr. Grady Niblo, of Niblo & Crawford, of Dallas, Tex., for James T. Chiles.