

Syllabus

IN THE MATTER OF
CHARLES V. HERRON, RYON GRAIN COMPANY, AND Mc-
LAUGHLIN, WARD & COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3916. Complaint, Oct. 6, 1939—Decision, Jan. 27, 1940

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE OR COMMISSION
PROVISIONS—SELLER TO BUYER PAYMENTS—SERVICES RENDERED CLAUSE—
BROKER-DEALER OWN ACCOUNT PURCHASES.

Where broker-dealer received from sellers, on own account purchases, allowance
of money in lieu of brokerage, *held*, as matter of law, no services rendered
by broker-dealer on such purchases, notwithstanding denial by both broker-
dealer and sellers involved. *Biddle Purchasing Company v. Federal Trade
Commission*, 96 F. (2d) 687, certiorari denied 305 U. S. 634; *Oliver Brothers
v. Federal Trade Commission*, 102 F. (2d) 763; *The Great Atlantic & Pacific
Tea Company v. Federal Trade Commission*, 106 F. (2d) 667, certiorari denied
January 2, 1940, 308 U. S. 625.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE OR COMMISSION
PROVISIONS—SELLER TO BUYER PAYMENTS—BROKER-DEALER OWN ACCOUNT
PURCHASES.

Where an individual engaged in buying and selling of beans for his own account
and in business of and acting as broker in sale of foodstuffs, grocery prod-
ucts, canned goods and allied commodities purchased, sold, and distributed
by him in commerce among the various States, and in selling and distribut-
ing own account purchases in commerce, and shipping and transporting
such commodities pursuant to sales to customers in Kentucky, Illinois,
and Indiana—

Received from corporate sellers engaged, from their respective Michigan places
of business, in sale and distribution of beans and other foodstuffs and allied
commodities in commerce among the various States, and in causing said
beans, etc., to be shipped and transported from said places of business to
purchasers thereof in the various States for use in resale therein, and on
purchases for his own account therefrom, allowance of 6 cents per bag of
beans in lieu of brokerage upon such purchases in commerce from said cor-
porate sellers; and

Where said corporate sellers engaged, as aforesaid, in sale and distribution of
said products from their respective Michigan places of business to purchasers
thereof in the various States—

Paid and transmitted to said individual, on own account purchases, allowances
of 6 cents per bag of beans in lieu of brokerage upon such purchases in com-
merce from them:

Held, (1) That said individual violated provisions of Subsection (c) of Section
2 of statute in question by receiving and accepting from said sellers allowance
as aforesaid; and

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- (2) That said corporate sellers violated provisions of said subsection and section of law in question by making and granting to said individual, on own account purchases, allowance as aforesaid in lieu of brokerage upon sales of beans by them in commerce to said individual on own account purchases.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Frank Hier for the Commission.

Mr. Forrest M. Condit, of Evansville, Ind., for Charles V. Herron.

Mr. William P. Smith, of Washington, D. C., for Ryon Grain Co. and along with *Whiting, Kleinstiver & Anderson*, of Jackson, Mich., for McLaughlin, Ward & Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, section 13), issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Charles V. Herron is an individual, doing business under the firm name and style of Charles V. Herron Co., a sole proprietorship, and has his principal office and place of business at 101 North Governor Street, Evansville, Ind., and has been prior to June 19, 1936, and is now engaged in the buying and selling, for his own account, of beans, and also engaged in the business of and acting as broker in the sale of foodstuffs, grocery products, canned goods, and allied commodities. Respondent buys, sells, and distributes said commodities in commerce between and among the various States of the United States, causing said commodities to be shipped and transported to him from the various place of business of those from whom respondent purchases said commodities located in States other than the State of Indiana, and sells and distributes the commodities so purchased for his own account in commerce and ships and transports said commodities pursuant to said sales to his customers located in the States of Kentucky, Illinois, and Indiana.

PAR. 2. Respondent Ryon Grain Co. is a corporation organized and existing under the laws of the State of Michigan with its principal office and place of business located at 428 Mutual Building, Lansing, Mich., and has been and is engaged in the business of selling and distributing grain and beans in commerce between and among the various States of the United States, causing said grain and beans to be shipped and transported from said place of business in Lansing, Mich., to purchasers

thereof located in the various States of the United States for use and resale within said States.

PAR. 3. McLaughlin, Ward & Co. is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 200 East Pearl Street, Jackson, Mich., and has been and is engaged in the sale and distribution of beans and other foodstuffs and allied commodities in commerce between and among the various States of the United States, causing said beans, foodstuffs, and allied commodities to be shipped and transported from its place of business in Jackson, Mich., to purchasers thereof located in the various States of the United States, for use and resale within said States.

PAR. 4. In the course and conduct of his business as aforesaid since June 19, 1936, respondent Charles V. Herron, trading as Charles V. Herron Co., has been and is now making purchases of beans in commerce from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., which said beans are shipped or caused to be shipped by said seller respondents from the State of Michigan into the State of Indiana and in the course of making said purchases in commerce, for his own account, of said beans from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Company, said respondent Charles V. Herron, trading as Charles V. Herron Company, has been and is now receiving and accepting from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., and said seller respondents have been and are now making and granting to respondent Charles V. Herron, trading as Charles V. Herron Co., an allowance of 6 cents per bag of beans in lieu of brokerage upon said purchases in commerce from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., for which said allowance upon said purchases so made in commerce no services whatsoever have at any time been rendered or are now being rendered by respondent Charles V. Herron, trading as Charles V. Herron Co.

PAR. 5. The aforesaid acts of the respondents constitute a violation of the provisions of subsection (c) of section 2 of the above mentioned Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, section 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (title 15, section 13), the Federal Trade Commission on October 16,

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1939, issued and served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with violating the provisions of paragraph (c) of section 2 of said act as amended. After the issuance and service of said complaint, separate answers on behalf of each of said respondents were filed by their counsel. Thereafter, pursuant to motions filed by each of said respondents through counsel, the Commission entered its order permitting all of said respondents to withdraw the answers theretofore filed by them and to file in lieu thereof substitute answers, which said substitute answers were duly filed by each of said respondents and which said substitute answers admitted all of the material allegations of fact alleged in the complaint to be true, with the exception that each of said answers expressly denied that no services were rendered by said respondent Charles V. Herron, trading as Charles V. Herron Co., to said respondents Ryon Grain Co. and McLaughlin, Ward & Co. upon sales of beans made by said respondents Ryon Grain Co. and McLaughlin, Ward & Co. to said Charles V. Herron, trading as Charles V. Herron Co.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers filed thereto, and the Commission having fully considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That respondent Charles V. Herron is an individual doing business under the firm name and style of Charles V. Herron Co., a sole proprietorship, and has his principal office and place of business at 101 North Governor Street, Evansville, Ind., and that he has been, prior to and since June 19, 1936, engaged in the buying and selling of beans for his own account and is also engaged in the business of, and acting as, broker in the sale of foodstuffs, grocery products, canned goods and allied commodities. That respondent buys, sells, and distributes said commodities in commerce between and among the various States of the United States, causing said commodities to be shipped and transported to him from the various places of business of those from whom respondent purchases said commodities located in States other than the State of Indiana, and sells and distributes the commodities so purchased for his own account in commerce, and ships and transports said commodities, pursuant to said sales, to his customers located in the States of Kentucky, Illinois, and Indiana.

PAR. 2. That respondent Ryon Grain Co. is a corporation organized and existing under the laws of the State of Michigan and has its prin-

cipal office and place of business located at 428 Mutual Building, Lansing, Mich., and has been and is engaged in the business of selling and distributing grain and beans in commerce between and among the various States of the United States, causing said grain and beans to be shipped and transported from its said place of business in Lansing, Mich., to purchasers thereof located in the various States of the United States for use and resale within said States.

PAR. 3. That respondent McLaughlin, Ward & Co. is a corporation organized and existing under and by virtue of the laws of the State of Michigan with its principal office and place of business at 200 East Pearl Street, Jackson, Mich., and has been and is engaged in the sale and distribution of beans and other foodstuffs and allied commodities in commerce between and among the various States of the United States, causing said beans, foodstuffs, and allied commodities to be shipped and transported from its place of business in Jackson, Mich., to purchasers thereof, located in the various States of the United States, for use and resale within said States.

PAR. 4. That in the course and conduct of his business as aforesaid, since June 19, 1936, respondent Charles V. Herron, trading as Charles V. Herron Co., has been making purchases of beans in commerce from said seller respondents Ryon Grain Co. and McLaughlin, Ward & Co., which said beans are shipped or caused to be shipped by said seller respondents from the State of Michigan into the State of Indiana and that in the course of making said purchases in commerce, for his own account, of said beans from the said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., said respondent Charles V. Herron, trading as Charles V. Herron Co., has been, since June 19, 1936, receiving and accepting from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., an allowance of 6 cents per bag of beans in lieu of brokerage upon said purchases in commerce from said seller respondents and said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., have been, since June 19, 1936, making and granting to respondent Charles V. Herron, trading as Charles V. Herron Co., an allowance of 6 cents per bag of beans in lieu of brokerage upon such said purchases in commerce from them by said respondent Charles V. Herron, trading as Charles V. Herron Co.

CONCLUSION

All respondents denied, as hereinabove set forth, that no services were rendered by the respondent Charles V. Herron, trading as Charles V. Herron Co., to the seller respondents Ryon Grain Co. and McLaughlin, Ward & Co., but the Commission, on the basis of the

facts above found, concludes as a matter of law that no services were rendered by the respondent Charles V. Herron, trading as Charles V. Herron Co., to the aforesaid seller respondents Ryon Grain Co. and McLaughlin, Ward & Co. in connection with purchases made from them by him for his own account and in his own name (*Biddle Purchasing Co. v. Federal Trade Commission*, 96 F. (2d) 687, certiorari denied 305 U. S. 634; *Oliver Brothers v. Federal Trade Commission*, 102 F. (2d) 763; *The Great Atlantic & Pacific Tea Co. v. Federal Trade Commission*, 106 F. (2d) 667, certiorari denied January 2, 1940, 308 U. S. 625.¹

The Commission further concludes that the respondent, Charles V. Herron, trading as Charles V. Herron Co., has violated the provisions of said subsection (c) of section 2 of said statute by receiving and accepting from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co. an allowance of 6 cents per bag of beans in lieu of brokerage upon purchases in commerce from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., by said respondent Charles V. Herron, trading as Charles V. Herron Co.

The Commission also concludes that the respondents, Ryon Grain Co. and McLaughlin, Ward & Co., have violated the provisions of said subsection (c) of section 2 of said statute by making and granting to respondent Charles V. Herron, trading as Charles V. Herron Co., an allowance of 6 cents per bag of beans in lieu of brokerage upon sales of beans by them in commerce to said respondent Charles V. Herron, trading as Charles V. Herron Co.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answers filed herein by the respondents, and the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that said respondents have violated a provision of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, section 13).

It is ordered, That respondent Charles V. Herron, trading as Charles V. Herron Co. or in or under any other trade name, his agents, employees, representatives, successors, or assigns, in connection with the purchase by him of beans in interstate commerce, do forthwith cease

¹ Cases before Commission respectively reported in 25 F. T. C. 564, 26 F. T. C. 200, and 26 F. T. C. 486.

and desist from receiving or accepting from respondents, Ryon Grain Co. and McLaughlin, Ward & Co., any commission, brokerage or other compensation or any allowance or discount in lieu thereof upon such purchases of beans by said respondent Charles V. Herron outright and for his own account, whether trading under the name Charles V. Herron Co., or in or under any other name.

It is further ordered, That respondents, Ryon Grain Co. and McLaughlin, Ward & Co., and their successors or assigns, their officers, agents, employees, and representatives, in connection with the sale and distribution of beans in interstate commerce, do forthwith cease and desist from making, granting, or allowing, or causing or permitting to be made, granted, or allowed to respondent Charles V. Herron, trading as Charles V. Herron Co., or in or under any other name, or to any agent, employee or representative of his, any commission, brokerage, or other compensation or allowance or discount in lieu thereof upon sales of beans to the said respondent Charles V. Herron, trading as Charles V. Herron Co. or in or under any other name.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
MILTON S. KRONHEIM & SON, INC., ET AL.

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

Docket 3400. Complaint, May 5, 1938—Decision, Feb. 9, 1940

Where five concerns engaged in sale and shipment of alcoholic beverages at wholesale in commerce in the District of Columbia to licensed retail package stores located throughout said District, for resale to ultimate consumers, and in purchasing such beverages from various distillers, sellers, and selling agencies located without such District, and in causing products thus purchased to be shipped into the District from the various States in which said distillers, etc., were located, and, as thus engaged, in substantial competition with others likewise engaged in the wholesaling of alcoholic beverages in commerce in the District aforesaid;

In carrying out and making effective a system or policy of merchandising, which they adopted, established, and maintained, of setting up specified standard and uniform minimum resale prices, discounts and markups at which their said products should be sold at retail, and in the maintenance of which they solicited and secured active support and cooperation of District Retail Liquor Dealers Association, some 175 members of said Association, and secretary thereof, who was its chief administrative officer—

- (a) Entered into unlawful contracts, agreements, and understandings with retail dealers, directly and through instrumentality of their said retail association, and through said wholesalers' own association, with intent of binding such retailers and wholesalers and their said associations to maintenance of said uniform minimum resale prices, discounts, or markups, and in pursuance of aforesaid contracts, etc., and with purpose and effect of obtaining and maintaining fixed uniform minimum resale prices of such beverages sold to and by various retail liquor dealers in such District, unlawfully combined, confederated, and agreed, among themselves and with retail liquor dealer members of said retail association and other retailers, and with retail association itself, to accept, cooperate in, maintain, and enforce the said fixed uniform minimum resale price maintenance system and policy of their said wholesale association and its members; and

Where said wholesale association and wholesalers, and each of them, pursuant to said policy——

- (b) Entered into agreements and understanding with each other and with their respective retail dealer vendees, and with aforesaid retail association, with intent and effect of maintaining specified standard or uniform minimum resale price, discount, and markup at which such alcoholic beverages were to be sold by said wholesalers and resold by retail dealer members of said retail association and others; and

Where said wholesalers, acting directly and through agency of such wholesale association, in attempting to enforce and enforcing resale of such alcoholic beverages at specified standard or uniform minimum resale prices, etc.,