

Syllabus

IN THE MATTER OF

A. FLETCHER SISK, THEODORE E. FLETCHER, AND
HAROLD E. STARK, TRADING AS ALBERT W. SISK &
SON

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 4275. Complaint, Aug. 28, 1940—Decision, Nov. 30, 1940

Where three individuals engaged in Maryland as field brokers, in acting as agents of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers, and as thus engaged in effecting, in some instances, sales of such commodities for sellers through corresponding or local brokers whom they employed to assist them in making such sales, and in effecting, in other instances, sales of such commodities directly to purchasers, and in effecting sales as aforesaid, in either event, to purchasers in States other than that in which respective sellers were located, and in compensating, in those cases in which sales were effected through corresponding or local brokers employed by them, such corresponding or local brokers through a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to them, and amounting to, usually 4 percent of purchase price paid by purchaser for commodities in question—

(a) Granted and allowed brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts to purchasers in those cases in which they effected, as above set forth, sale of commodities in question directly to purchasers, rather than through the medium of said corresponding or local brokers, as above described:

Held, That said individuals, in granting and allowing brokerage fees and commissions, or allowances and discounts in lieu thereof, to purchasers in connection with their respective purchases of commodities from sellers, as above set forth, violated section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act; and

Where said individuals, engaged in the business of purchasing for their own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers, such canned fruits and vegetables, from sellers in other States, pursuant to which purchases commodities were shipped and transported by sellers from respective States in which located across State lines, either to them or, pursuant to their instructions and directions, to respective purchasers to whom they had resold such commodities, and from, in many instances, sellers, located in State of Maryland, and who, pursuant to their instructions and directions, caused commodities thus purchased by them to be shipped and transported from said State across State lines to respective purchasers to whom they had resold such commodities—

(b) Received and accepted from sellers, in connection with purchases of such commodities by them for their own account in interstate commerce, as aforesaid set forth, brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts; and

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(c) Granted and allowed brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, to purchasers in other States of such commodities purchased by them for their own account, and to which purchasers they had resold, as above set forth, said commodities: *Held*, That said individuals, in receiving and accepting brokerage fees and commissions, or allowances and discounts in lieu thereof, from sellers upon their purchases of commodities, and in granting and allowing brokerage fees and commissions, or allowances and discounts in lieu thereof, to purchasers upon the resale of commodities, as respectively above set forth, violated section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John Darsey, for the Commission.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and 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, sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents, A. Fletcher Sisk, Theodore E. Fletcher, and Harold E. Stark, are individuals, trading as Albert W. Sisk & Son, with their principal office and place of business located in Preston, Md. Respondents are engaged in the business of field brokers, acting as agents of sellers in transactions of sale and purchase of canned vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities are effected for sellers by respondents through brokers, commonly known as corresponding or local brokers, who are employed by respondents to assist them in making such sales. In other instances sales of such commodities are effected for sellers by respondents to purchasers directly.

PAR. 2. For services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondents receive from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities are effected for sellers by respondents through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to respondents for services in connection with such sales is granted and allowed by respondents to such corresponding or local brokers for brokerage services rendered to respondents in connection with such sales.

In the instances where sales of such commodities are effected for sellers by respondents to purchasers directly, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by the sellers to respondents for services in connection with such sales, or an allowance or discount in lieu thereof, is granted and allowed by respondents to such purchasers.

PAR. 3. In the course and conduct of their said business since June 19, 1936, respondents have effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by respondents to purchasers directly as set forth in paragraph 2 hereof, respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondents are also engaged in the business of purchasing canned vegetables for their own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of Maryland pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondents or, pursuant to instructions and directions from respondents, to the respective purchasers to whom such commodities have been resold by respondents.

Since June 19, 1936, respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of Maryland, which sellers, pursuant to instructions and directions from respondents, have caused the commodities so purchased by respondents to be shipped and transported from the State of Maryland across State lines to the respective purchasers to whom such commodities have been resold by respondents.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by respondents for their own account in interstate commerce as set forth in paragraph 5 hereof, respondents have received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

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PAR. 7. Since June 19, 1936, respondents have resold such commodities purchased for their own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Maryland, pursuant to which sales respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the resale of such commodities in interstate commerce as aforesaid, respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 8. The granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; the receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondents upon the purchases of commodities by the respondents as set forth in paragraph 6 hereof; and the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers upon the resale of commodities by respondents as set forth in paragraph 7 hereof are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

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 an act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 28th day of August 1940, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of the provisions of subsection (c) of section 2 of the said act.

After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, waiving all intervening procedure and further hearings as to said facts and waiving the filing of briefs and presentation of oral argument, which substitute answer was duly filed in the office of the Commission on October 7, 1940. Thereafter the proceeding regularly came on for final hearing before the Commission

on the complaint and answer as aforesaid, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by the respondents named in the caption hereof, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. Respondents, A. Fletcher Sisk, Theodore E. Fletcher, and Harold E. Stark are individuals trading as Albert W. Sisk & Son, with their principal office and place of business located in Preston, Md. Respondents for a number of years have been engaged in the business of field brokers, acting as the agents of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities have been effected for sellers by the respondents through brokers, commonly known as corresponding or local brokers, who have been employed by the respondents to assist them in making such sales. In other instances sales of such commodities have been effected for sellers by respondents to purchasers directly.

PAR. 2. For the services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondents have received from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities have been effected for sellers by the respondents through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to the respondents for services in connection with such sales has been granted and allowed by the respondents to such corresponding or local brokers for brokerage services rendered to the respondents in connection with such sales.

In the instances where sales of such commodities have been effected for sellers by respondents to purchasers directly, a certain percentage usually 50 percent of the brokerage fee or commission paid by the sellers to the respondents for services in connection with such sales, or an allowance or discount in lieu thereof, has been granted and allowed by the respondents to such direct purchasers.

PAR. 3. In the course and conduct of their said business since June 19, 1936, the respondents have effected sales of such commodities for

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sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by the respondents to purchasers directly as set forth in paragraph 2 hereof, the respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondents for a number of years have also been engaged in the business of purchasing canned fruits and vegetables for their own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, the respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of Maryland, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to the respondents or, pursuant to instructions and directions from the respondents, to the respective purchasers to whom such commodities have been resold by the respondents.

Since June 19, 1936, the respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of Maryland, which sellers, pursuant to instructions and directions from the respondents, have caused the commodities so purchased by the respondents to be shipped and transported from the State of Maryland across State lines to the respective purchasers to whom such commodities have been resold by the respondents.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by the respondents for their own account in interstate commerce as set forth in paragraph 5 hereof, the respondents have received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, the respondents have resold such commodities purchased for their own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Maryland, pursuant to which sales the respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

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Since June 19, 1936, in connection with the sale of such commodities in interstate commerce as aforesaid, the respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

CONCLUSION

In granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; in receiving and accepting brokerage fees and commissions or allowances and discounts in lieu thereof from sellers upon their purchases of commodities as set forth in paragraph 6 hereof; and in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities as set forth in paragraph 7 hereof, the respondents have violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents named in the caption hereof, in which answer said respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That in connection with sales of commodities in interstate commerce effected for sellers by respondents in the capacities of field brokers, and in connection with the resale in interstate commerce of commodities purchased by respondents, the respondents A. Fletcher Sisk, Theodore E. Fletcher, and Harold E. Stark, trading under the name Albert W. Sisk & Son, or any other name, their agents, employees, and representatives, do forthwith cease and desist from:

1. Granting or making any allowances or discounts in lieu of brokerage to any purchaser in such transactions by selling commodities to any of such purchasers at a price reflecting a reduction from the prices at which sales of such commodities are currently being

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effected by respondents to other customers of an amount representing, in whole or in part, brokerage currently being paid by respondents to corresponding or local brokers for brokerage services or sales assistance rendered to respondents in effecting sales of such commodities to other purchasers thereof; and

2. Granting or allowing in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof to any purchaser in such transactions.

It is further ordered, That in purchasing commodities in interstate commerce the respondents A. Fletcher Sisk, Theodore E. Fletcher, and Harold E. Stark, trading under the name Albert W. Sisk & Son, or any other name, their agents, employees, and representatives, do forthwith cease and desist from:

1. Making purchases of commodities for respondents' own account at a price or on a basis which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling commodities to other purchasers thereof any amount representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through, their said brokers; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly anything of value as a commission, brokerage, or other compensation or any allowance and discount in lieu thereof upon purchases of commodities made for respondents' own account.

It is further ordered, That the respondents named in the caption hereof shall, within 30 days after service upon them of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

WALTER W. THRASHER, WILLOUGHBY J. ROTHROCK,
LINTON A. THRASHER AND WAINWRIGHT CHURCHILL,
TRADING AS THOMAS ROBERTS & 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 4282. Complaint, Aug. 28, 1940—Decision, Nov. 30, 1940

Where three individuals, engaged in Pennsylvania in purchasing canned fruits and vegetables for their own account, and in reselling same to jobbers, wholesalers, retail chain stores, and other purchasers and, as thus engaged, in making many purchases of such commodities for their own account, for resale as aforesaid, from sellers in other States and pursuant to which such commodities were shipped and transported by such sellers from the respective States in which they were located across State lines either to said individuals, or, pursuant to their instructions and directions to the respective purchasers to whom such commodities had been resold by said individuals, and also in making many purchases of such commodities for their own account as above set forth from sellers located in said State of Pennsylvania by which sellers, pursuant to instructions and directions from said individuals, commodities thus purchased were shipped and transported from said State across State lines to the respective purchasers to whom such commodities had been resold by said individuals—

- (a) Received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amount, through usually purchasing commodities in question at prices lower than those at which such commodities were being sold to other purchasers thereof by an amount which reflected all or a portion of the brokerage which was currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers; and
- (b) Granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amounts, to the purchasers of such commodities bought by said individuals for their own account as above set forth, and resold to such purchasers and shipped, pursuant to such resale, to purchasers in question across State lines:

Held, That in receiving and accepting brokerage fees and commissions or allowances and discounts in lieu thereof from sellers upon their purchases of commodities, and that in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities, as respectively above set forth, said individuals violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. John Darsey, for the Commission.

Montgomery & McCracken, of Philadelphia, Pa., for respondents.