

Syllabus

IN THE MATTER OF

WILLIAM E. SILVER AND FRANCIS S. SILVER, TRADING
AS WILLIAM SILVER & 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 4340. Complaint, Oct. 9, 1940—Decision, Nov. 30, 1940

Where an individual engaged in Maryland as field broker, in acting as agent 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 in effecting, in some instances as thus engaged, sales of such commodities for sellers through corresponding or local brokers employed by him to assist him in making such sales, and, in other instances in effecting sales of such commodities for sellers to purchasers directly, and pursuant to which sales, whether effected by said individual through aid of such corresponding or local brokers or directly, commodities thus sold were shipped and transported by sellers thereof across State lines to respective purchasers, and as thus engaged, in compensating such corresponding or local brokers in former cases through payments to such brokers of certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to him for services in connection with such sales and usually amounting to 4 percent of the purchase price paid by the purchaser for such commodities—

- (a) Granted and allowed, in connection with the sales of such commodities in interstate commerce effected by him for sellers to purchasers directly, brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amounts, to such purchasers, and amounting, usually, to 50 percent of the brokerage fee or commission paid by the sellers to him for services in connection with such sales, or allowance or discount in lieu thereof:

Held, That 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, said individual violated provision of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act; and

Where said individual, engaged in business of purchasing canned fruit and vegetables for his own account, for resale to jobbers, wholesalers, retail chain stores, and other purchasers and, as thus engaged, in making many purchases of such commodities from sellers located in other States and pursuant to which purchases said commodities were shipped and transported by sellers from the respective States in which they were located across State lines, either to said individual or, pursuant to instructions and directions from him, to the respective purchasers to whom such commodities had been resold by said individual, and in also making many purchases of such commodities for his own account as aforesaid from sellers located in State of Maryland, by which sellers, pursuant to instruc-

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tions and directions from said individual, commodities thus purchased were caused to be shipped and transported from said State across State lines to the respective purchasers to whom said commodities had been resold by him;

- (b) Received and accepted from sellers brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, in connection with the purchases of such commodities by said individual for his own account in interstate commerce as above set forth; and
- (c) 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 individual for his own account, and resold as aforesaid, to purchasers located in other States and pursuant to which sales he caused such commodities to be shipped and transported across States lines to such purchasers:

Held, That in receiving and accepting brokerage fees and commissions, or allowances and discounts in lieu thereof, from sellers upon his 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 individual violated the provisions of 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, William E. Silver and Francis S. Silver, are individuals, trading as William Silver & Co., with their principal office and place of business located in Aberdeen, Md. Respondents are engaged in the business of field brokers, 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.

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 fruits and 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

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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 States 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.

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 9th day of October 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.

On October 9, 1940, the respondent William E. Silver filed his 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. On October 19, 1940, the respondent Francis S. Silver filed a motion to dismiss the complaint insofar as it related to him for the reason that he had not been connected with the business involved in the complaint since June 1, 1936. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, and motion 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 respondent William E. Silver, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, William E. Silver, is an individual, trading as William Silver & Co., with his principal office and place of business located in Aberdeen, Md. Respondent for a number of years has been engaged in the business of a field broker, acting as the agent 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 respondent through brokers, commonly known as corresponding or local brokers, who have been employed by the respondent to assist him in making such sales. In other instances sales of such commodities have been effected for sellers by respondent 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, respondent has 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 respondent through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to the respondent for services in connection with such sales has been granted and allowed by the respondent

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to such corresponding or local brokers for brokerage services rendered to the respondent in connection with such sales.

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

PAR. 3. In the course and conduct of his said business since June 19, 1936, the respondent has 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 the respondent to purchasers directly as set forth in paragraph 2 hereof, the respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

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

Since June 19, 1936, the respondent has made many purchases of such commodities for his 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 respondent or, pursuant to instructions and directions from the respondent, to the respective purchasers to whom such commodities have been resold by the respondent.

Since June 19, 1936, the respondent has also made many purchases of such commodities for his own account as aforesaid from sellers located in the State of Maryland, which sellers, pursuant to instructions and directions from the respondent, have caused the commodities so purchased by the respondent 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 respondent.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by the respondent for his own account in inter-

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state commerce as set forth in paragraph 5 hereof, the respondent has 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 respondent has resold such commodities purchased for his 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 respondent has caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the sale of such commodities in interstate commerce as aforesaid, the respondent has 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 Commission finds that the respondent Francis S. Silver, prior to the issuance of complaint herein, dissociated himself from the business in connection with which the practices involved herein are found to have been engaged in.

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 his 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 respondent has 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 respondent William E. Silver, in which answer said respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and upon the motion to dismiss filed by respondent Francis S. Silver, and the Commission having made its findings as to the facts and its conclusion that the respondent William E. Silver

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has 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 respondent in the capacity of a field broker, and in connection with the resale in interstate commerce of commodities purchased by respondent, the respondent William E. Silver, trading under the name William Silver & Co., or any other name, his 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 effected by respondent to other customers of an amount representing, in whole or in part, brokerage currently being paid by respondent to corresponding or local brokers for brokerage services or sales assistance rendered to respondent 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 respondent William E. Silver, trading under the name William Silver & Co., or any other name, his agents, employees, and representatives, do forthwith cease and desist from:

1. Making purchases of commodities for respondent's 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 respondent's own account.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent Francis S. Silver for the reason that it appears that this respondent, prior to the issuance of

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the complaint herein, dissociated himself from the business in connection with which the practices involved herein were alleged and are found to have been engaged in.

It is further ordered, That the respondent William E. Silver shall, within 30 days after service upon him of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

