

Complaint

IN THE MATTER OF

T. A. WARD, CARR WARD, AND WILMA WARD, TRADING
AS MINETREE BROKERAGE 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 4285. Complaint, Aug. 29, 1940—Decision, Dec. 19, 1940

Where three individuals who were engaged, in Poplar Bluff, in conducting brokerage business, and of whom two were president and secretary-treasurer of Ward Stores, Inc., and Poplar Bluff Wholesale Grocery Co., and owned and controlled 98 percent and 88 percent, respectively, of outstanding capital stock of said corporations, doing business in southeastern Missouri, and of whom third was employed by other two to render services of an executive nature to their enterprises, and particularly those above named—Received and accepted brokerage fees and commissions, which consisted of certain percentage, and usually from $2\frac{1}{2}$ to 5 percent, of sales prices of purchases placed by said Wholesale Grocery Co. with sellers, mostly located in other States, and through said brokerage firm, and constituting substantial portion of goods, wares, and merchandise, and particularly foodstuffs, required in ordinary conduct of its business by said Wholesale Grocery Co., and which were transmitted and paid by sellers to said brokers or brokerage firm on transactions in question, in all of which transactions three individuals involved acted in fact for and on behalf of such Wholesale Grocery Co.:

Held, That in accepting and receiving brokerage fees or commissions consisting of certain percentage, and usually from $2\frac{1}{2}$ to 5 percent, of sales prices upon purchases of commodities of such Wholesale Grocery Co. in interstate commerce, as above set forth, said individuals, individually and trading as brokerage company, violated provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. P. C. Kolinski for the Commission.

Mr. Lawrence E. Tedrick, of Poplar Bluff, Mo., for respondents.

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 (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents, T. A. Ward and Wilma Ward, are individuals residing in the city of Poplar Bluff, Mo. Said respondents, T. A. Ward and Wilma Ward, own and control 88 percent

of the outstanding capital stock of the Poplar Bluff Wholesale Grocery Co. and 98 percent of the outstanding capital stock of Ward Stores, Inc., which operates a chain of 44 retail stores located in southeastern Missouri. Said T. A. Ward and Wilma Ward are, respectively, president and secretary-treasurer of these companies.

PAR. 2. Respondent Carr Ward is an individual residing in the city of Poplar Bluff, Mo. This respondent is engaged with respondents T. A. Ward and Wilma Ward in the brokerage business under the trade name Minetree Brokerage Co. with an office and principal place of business located in Poplar Bluff, Mo.

Respondent Carr Ward is the son of respondent T. A. Ward and the husband of respondent Wilma Ward, and is now employed by said respondents T. A. Ward and Wilma Ward to render services of an executive nature to various enterprises owned and controlled by said respondents T. A. Ward and Wilma Ward, particularly the Poplar Bluff Wholesale Grocery Co. and Ward Stores, Inc.

PAR. 3. Poplar Bluff Wholesale Grocery Co. places orders for a substantial portion of the goods, wares, and merchandise, particularly foodstuffs by it required in the ordinary conduct of its business with sellers who are, in most cases, located in States of the United States other than the State in which said Poplar Bluff Wholesale Grocery Co. is located, through the brokerage firm of T. A. Ward, Wilma Ward, and Carr Ward trading as Minetree Brokerage Co. As a result of the transmission and execution of said orders, as aforesaid, goods, wares, and merchandise, particularly foodstuffs, are, in the case of each such order and in a continuous succession of such orders, sold, transported, and delivered by one or more of such sellers across State lines to Poplar Bluff Wholesale Grocery Co.

PAR. 4. In the course and conduct of the buying and selling transactions hereinabove referred to, resulting in the delivery of goods, wares, merchandise, particularly foodstuffs, in interstate commerce from one or more sellers to said Poplar Bluff Wholesale Grocery Co., sellers have transmitted and paid, and do transmit and pay, to the brokerage firm of T. A. Ward, Wilma Ward, and Carr Ward, trading as Minetree Brokerage Co., brokerage fees or commissions, the same being a certain percentage (usually from 2½ percent to 5 percent) of the sales price of such purchases.

Since June 19, 1936, sellers have paid brokerage fees and commissions to, and the same have been received by the brokerage firm of T. A. Ward, Wilma Ward, and Carr Ward, trading as Minetree Brokerage Co., upon the purchases of Poplar Bluff Wholesale Grocery Co. in the manner hereinabove described in substantial amounts.

PAR. 5. In all of the transactions of purchase and sale hereinabove referred to, the respondents T. A. Ward, Wilma Ward, and Carr Ward have acted in fact for and on behalf of the Poplar Bluff Wholesale Grocery Co.

PAR. 6. The transmission and payment of brokerage fees and commissions by sellers to said respondents T. A. Ward, Wilma Ward, and Carr Ward as members of the brokerage firm trading as Mine-tree Brokerage Co., and the receipt and acceptance of such brokerage fees and commissions by said respondents T. A. Ward, Wilma Ward, and Carr Ward upon the purchases of the Poplar Bluff Wholesale Grocery Co., in the manner and form hereinabove set forth is in violation of the provisions of subsection (c) of section 2 of the act described in the preamble hereof.

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 29th day of August 1940, issued and served its complaint in this proceeding upon respondents T. A. Ward, Carr Ward, and Wilma Ward, charging the respondents 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 and waiving all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, had been violated by the respondents, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents T. A. Ward and Wilma Ward are individuals residing in the city of Poplar Bluff, Mo., and they own and control 88 percent of the outstanding capital stock of the Poplar

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Bluff Wholesale Grocery Co., and 98 percent of the outstanding capital stock of Ward Stores, Inc., corporations doing business in southeastern Missouri. T. A. Ward and Wilma Ward are respectively president and secretary-treasurer of these companies.

PAR. 2. The respondent Carr Ward is an individual residing in the city of Poplar Bluff, Mo., and is employed by respondents T. A. Ward and Wilma Ward to render services of an executive nature to enterprises owned and controlled by them, particularly the Poplar Bluff Wholesale Grocery Co. and Ward Stores, Inc.

PAR. 3. The Minetree Brokerage Co. is a firm engaged in the brokerage business with an office and principal place of business in Poplar Bluff, Mo., and is owned by respondents T. A. Ward, Carr Ward, and Wilma Ward.

PAR. 4. Poplar Bluff Wholesale Grocery Co. places orders for a substantial portion of the goods, wares, and merchandise, particularly foodstuffs, required in the ordinary conduct of its business, with sellers, who are, in most cases, located in States of the United States other than the State in which said Poplar Bluff Grocery Co. is located, through the brokerage firm of T. A. Ward, Carr Ward, and Wilma Ward, trading as Minetree Brokerage Co. As a result of the transmission and execution of said orders as aforesaid, goods, wares, and merchandise, particularly foodstuffs, are, in the case of each order and in a continuous succession of such orders, sold, transported, and delivered by one or more of such sellers across State lines to the Poplar Bluff Wholesale Grocery Co.

PAR. 5. In the course and conduct of the buying and selling transactions hereinabove referred to, resulting in the delivery of goods, wares, and merchandise, particularly foodstuffs, in interstate commerce from one or more sellers to said Poplar Bluff Wholesale Grocery Co., sellers have transmitted and paid, and do transmit and pay, to the brokerage firm of T. A. Ward, Carr Ward, and Wilma Ward, trading as Minetree Brokerage Co., brokerage fees or commissions, the same being a certain percentage (usually from 2½ percent to 5 percent) of the sales prices of such purchases.

Since June 19, 1936, sellers have paid brokerage fees and commissions to, and the same have been received by the brokerage firm of T. A. Ward, Carr Ward, and Wilma Ward, trading as Minetree Brokerage Co., upon the purchases of the Poplar Bluff Wholesale Grocery Co. in the manner hereinabove described in substantial amounts.

PAR. 6. In all of the transactions of purchase and sale hereinabove referred to, the respondents T. A. Ward, Carr Ward, and Wilma

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Ward are the agents, and have acted in fact for and on behalf of the Poplar Bluff Wholesale Grocery Co.

CONCLUSION

In accepting and receiving brokerage fees or commissions, the same being a certain percentage (usually from 2½ percent to 5 percent) of the sales prices upon the purchases of commodities of the Poplar Bluff Wholesale Grocery Co., in interstate commerce as set forth in the foregoing findings as to the facts, the respondents T. A. Ward, Carr Ward, and Wilma Ward, individually and while trading under the firm name and style of Minetree Brokerage Co., 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 substitute answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearings as to said facts, and the Commission being of the opinion 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), and having made its report, stating its findings as to the facts and its conclusion.

It is ordered, That the respondents, T. A. Ward, Carr Ward, and Wilma Ward, individually and trading under the firm name and style of Minetree Brokerage Co., or any other name, their agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. Accepting or receiving from sellers, directly or indirectly, in connection with the purchase of commodities in interstate commerce by the Poplar Bluff Wholesale Grocery Co. under the facts and circumstances as set forth in paragraph 6 of the findings of fact, any brokerage fees or commissions, or any allowance or discount in lieu of brokerage, in whatever manner or form said brokerage fees, allowances, and discounts may be offered, allowed, granted, paid, or transmitted; and

2. Accepting or receiving from sellers, directly or indirectly, in connection with the purchase of commodities in interstate commerce by any person, partnership, firm, or corporation, in connection with which purchases said individuals, acting as intermediaries or agents, are subject to the direct or indirect control, or act in fact for or in behalf,

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of any of said purchasers, any brokerage fees or commissions, or any allowance or discount in lieu of brokerage, in whatever manner or form said brokerage fees, allowances, and discounts may be offered, allowed, granted, paid, or transmitted.

It is further ordered, That the said respondents T. A. Ward, Carr Ward and Wilma Ward 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 they have complied with the order to cease and desist hereinabove set forth by the Commission.

Syllabus

IN THE MATTER OF
MILTON S. LONG, TRADING AS WALTON TRAINING
BUREAU

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

Docket 4346. Complaint, Oct. 11, 1940—Decision, Dec. 26, 1940

Where an individual engaged in interstate sale and distribution of correspondence courses of study and instruction, to prepare students for certain United States civil service examinations; in advertising his said courses through newspapers circulating among the general public in various States, and through printed advertising matter mailed to prospective students throughout the United States—

- (a) Represented that positions in the United States Government were immediately available, that he could secure positions for students of his courses, and that examinations would be held frequently, and that starting salaries were greater than was the case, through such statements, among others, as "MEN WANTED. Work for the Government. Salaries \$1,700-\$2,600 Per Year. No layoffs! Vacations with pay! Pensions! Railway Postal Clerk, City Mail Carrier, BE Post Office Clerk, Rural Mail Carrier. Do not wait for examination dates to be announced. Prepare Yourself Now! We are so certain that our simple course will eventually bring about your appointment that we are willing to wait for our tuition fee until you are appointed and working. * * *" and "Railway Postal Clerk, City Mail Carrier, Post Office Clerk and Rural Mail Carrier examinations are held frequently in different cities in the United States";

Facts being there were no positions immediately available in the Postal Service, he was not connected with the United States Government or its Civil Service Commission, had no control over appointments to positions under such Government, was not in a position to secure any appointments for anyone, and, as respects positions named in his advertisements and as to which his courses and instruction were offered, there had been extended periods during which no examinations were held, and only residents of districts in which examinations might at some future date be held were eligible to take same; and

- (b) Represented that he obtained information from the Civil Service Commission with respect to examinations to be held which was not available to students, and that qualified instructors graded and marked examination papers, through such statements as "When information comes to us that examinations are to take place in your immediate locality you can request lessons sent you air mail or special delivery as we know you are anxious to take an examination as soon as possible," and "The lessons of this course have been assembled after a thorough analysis of past examinations have been made by our competent experts";

Facts being he did not have in his employ, and was not himself, a qualified instructor nor did he employ competent experts who, after thorough analysis of past examinations, had assembled courses of instruction offered by him, and he had had, as matter of fact, no experience in preparing applicants