

IN THE MATTER OF

**REED-HARLIN GROCER COMPANY AND JOHN R. REED
AND ORR M. REED, TRADING AS WEST PLAINS BROK-
ERAGE COMPANY, ET AL.**

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 4486. Complaint, Apr. 9, 1941—Decision, Aug. 21, 1941

Where some six corporate or partnership concerns, engaged in selling foodstuffs, groceries, and allied products to numerous buyers, including a corporate grocery business operating warehouses in Missouri and Arkansas, which placed orders for a substantial portion of its requirements through a brokerage firm owned by two individuals, one of whom was the president and active manager of said corporate grocery business, owning 86 percent of its outstanding stock, the other being director, secretary, salaried employee, and stockholder therein—

- (a) Transmitted and paid to said two individuals, engaged under a separate trade name in said brokerage business, so-called brokerage fees and commissions in substantial amounts, which were a certain percentage of the quoted sale prices agreed upon between each of said sellers and said individuals:

Held, That said concerns violated the provisions of subsection (c) of section 2 of the Clayton Act, as amended, by so granting and paying fees and commissions as brokerage to said corporate grocer and said two individuals; and Where said corporate grocery concern and said individuals, acting in fact on behalf of said corporate grocery business—

- (b) Accepted from sellers aforesaid so-called brokerage fees and commissions:

Held, That said corporate grocery business and individuals violated the provisions of subsection (c) of section 2 of said statute by receiving and accepting fees and commissions as brokerage upon purchases from sellers.

Mr. John T. Haslett for the Commission.

Mr. A. W. Landis, of West Plains, Mo., for Reed-Harlin Grocer Co., John R. Reed and Orr M. Reed.

Mr. W. D. Wright, Jr., of Denver, Colo., for Ady & Milburn, Inc., William D. Wright and Frank E. Hockensmith.

Rose, Loughborough, Dobyys & House, of Little Rock, Ark., for Arkansas State Rice Mill Co.

Farrar & Martin, of Denver, Colo., for Great Western Sugar Co.

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. Respondent, Reed-Harlin Grocer Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 200 Washington Avenue, West Plains, Mo. Respondent operates and maintains branch warehouses in various towns and cities in the States of Missouri and Arkansas.

PAR. 2. Respondent, John R. Reed, an individual residing in the city of West Plains, Mo., is now and has been since June 19, 1936, president, director, and majority stockholder in Reed-Harlin Grocer Co. Said respondent, John R. Reed, owns and controls approximately 56 percent of the outstanding capital stock and actively manages and conducts the business of Reed-Harlin Grocer Co.

Respondent, Orr M. Reed, an individual residing in the city of West Plains, Mo., is now and since June 19, 1936, has been director, secretary, a salaried employee of, and a stockholder in respondent Reed-Harlin Grocer Co.

Respondents, John R. Reed and Orr M. Reed, are in active charge of the management of the business of respondent West Plains Brokerage Co.

PAR. 3. Respondent, Ady and Milburn, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Colorado with its principal office and place of business located at 1900 15th Street, Denver, Colo.

Respondent, Arkansas State Rice Mill Co., is a corporation organized and existing under and by virtue of the laws of the State of Arkansas with its principal office and place of business at Abbeyville, La.

The individual respondents, William D. Wright and Frank E. Hockensmith, are engaged in the business of jobbing a variety of dried beans under the firm name and style of Midwest Bean Co., and have their principal office and place of business at 2030 Blake Street, Denver, Colo.

Respondent, The Great Western Sugar Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1530 Sixteenth Street, Denver, Colo.

Respondent, Inness Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Missouri

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with its principal office and place of business located at 106 East Fifth Street, Kansas City, Mo.

The individual respondents, Louis S. Taube, Theodore Taube, and Lloyd B. Holden, are engaged in the business of jobbing potatoes, watermelons, and allied products under the firm name and style of L. S. Taube & Co., and have their principal office and place of business located at 113-115 East Third Street, Kansas City, Mo.

The respondents named in this paragraph will hereinafter be referred to as "seller respondents." Each of the seller respondents named in this paragraph is engaged in the business of selling commodities, particularly foodstuffs, groceries, and allied products, to numerous buyers, including the respondent Reed-Harlin Grocer Co. The sales made by such seller respondents to respondent Reed-Harlin Grocer Co. are effectuated through the brokerage firm conducted by respondents John R. Reed and Orr M. Reed under the firm name and style of West Plains Brokerage Co.

PAR. 4. Respondent, Reed-Harlin Grocer 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 located in States of the United States other than the State in which the said Reed-Harlin Grocer Co. is located, among whom are the seller respondents herein named, through the brokerage firm of John R. Reed and Orr M. Reed, trading as West Plains Brokerage Co. As a result of the transmission and execution of said orders as aforesaid, goods, wares, and merchandise particularly foodstuffs, are sold, transported, and delivered by such sellers to the various places of business of the respondent Reed-Harlin Grocer Co. from the sellers' places of business in other States.

PAR. 5. In the course and conduct of the buying and selling transactions in interstate commerce hereinabove referred to, since June 19, 1936, said seller respondents have transmitted, paid, and delivered and do transmit, pay, and deliver to said individual respondents John R. Reed and Orr M. Reed, trading as West Plains Brokerage Co., so-called brokerage fees and commissions in substantial amounts, the same being a certain percentage of the quoted sales prices agreed upon between each of said sellers and individual respondents John R. Reed and Orr M. Reed trading as West Plains Brokerage Co., and the same have been received by John R. Reed, Orr M. Reed, and Reed-Harlin Grocer Co. through the West Plains Brokerage Co.

PAR. 6. In all of the transactions of purchase and sales hereinabove referred to, since June 19, 1936, the respondents John R. Reed and Orr M. Reed have acted in fact for and on behalf of the Reed-Harlin Grocer Co.

PAR. 7. The transmission and payment of said brokerage fees or commissions by the seller respondents and the receipt and acceptance of said brokerage fees or commissions by said respondents John R. Reed and Orr M. Reed, trading as West Plains Brokerage Co., upon the purchases of the Reed-Harlin Grocer Co., and the receipt and acceptance of brokerage fees or commissions by said respondent Reed-Harlin Grocer Co. upon its own purchases 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 the 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 section 1 of an act entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission, on April 9, 1941, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violating the provisions of paragraph (c) of section 2 of the said act as amended.

After the issuance and service of said complaint, answers admitting all the material allegations of the complaint were filed on behalf of respondents Reed-Harlin Grocer Co.; John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co.; Inness Bros., Inc.; and Louis S. Taube, Theodore Taube, and Lloyd B. Holden, individuals trading under the firm name and style of L. S. Taube & Co. Answers admitting and denying various material facts alleged in the complaint were filed on behalf of all other respondents. Thereafter, the Commission, by order entered herein, granted respondents Ady & Milburn, Inc., a corporation; Arkansas State Rice Milling Co., a corporation; William D. Wright and Frank E. Hockensmith, individuals trading under the firm name and style of Midwest Bean Co., and The Great Western Sugar Co., a corporation, upon motion, permission to withdraw their said answers, and to substitute therefor answers admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearings as to said facts, and expressly waiving the filing of briefs and oral argu-

ments. Said substitute answers were duly filed in the office of the Commission. The respondents Arkansas State Rice Milling Co. and The Great Western Sugar Co., in their answers, stated they had no knowledge that the West Plains Brokerage Co. was not independent of the Reed-Harlin Grocer Co., or that the brokerage was used for the benefit of respondent Reed-Harlin Grocer Co.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, the answers of the respondents Reed-Harlin Grocer Co., a corporation, and John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co., and the substitute answers of all other respondents, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Reed-Harlin Grocer Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 200 Washington Avenue, West Plains, Mo. Respondent operates and maintains branch warehouses in various towns and cities in the States of Missouri and Arkansas.

PAR. 2. Respondent, John R. Reed, an individual residing in the city of West Plains, Mo., is now and has been since June 19, 1936, president and director of respondent Reed-Harlin Grocer Co., he owns and controls approximately 56 percent of the outstanding capital stock of said corporation and actively manages and conducts its business.

Respondent Orr M. Reed, an individual residing in the city of West Plains, Mo., is now and since June 19, 1936, has been director, secretary, a salaried employee of, and a stockholder in respondent Reed-Harlin Grocer Co.

Respondents, John R. Reed and Orr M. Reed, are in active charge of the management of the business of respondent West Plains Brokerage Co.

PAR. 3. Respondent, Ady and Milburn, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Colorado with its principal office and place of business located at 1900 Fifteenth Street, Denver, Colo.

Respondent, Arkansas State Rice Milling Co. (named in the complaint as Arkansas State Rice Mill Co.), is a corporation organized

and existing under and by virtue of the laws of the State of Arkansas with its principal office and place of business at Abbeyville, La.

Respondents, William D. Wright and Frank E. Hockensmith, under the firm name and style of Midwest Bean Co. are engaged in the business of jobbing a variety of dried beans. Their principal office and place of business is located at 2030 Blake Street in Denver, Colo.

Respondent, The Great Western Sugar Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1530 Sixteenth Street, Denver, Colo.

Respondent, Inness Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 106 East Fifth Street, Kansas City, Mo.

Respondents, Louis S. Taube, Theodore Taube, and Lloyd B. Holden, under the firm name and style of L. S. Taube & Co. are engaged in the business of jobbing potatoes, watermelons, and allied products. Their principal office and place of business is located at 113-115 East Third Street, Kansas City, Mo.

The respondents named in this paragraph will hereinafter be referred to as "seller respondents." Each of the seller respondents named in this paragraph is engaged in the business of selling commodities, particularly foodstuffs, groceries, and allied products, to numerous buyers, including the respondent Reed-Harlin Grocer Co. The sales made by such seller respondents to respondent Reed-Harlin Grocer Co. are effectuated through the brokerage firm conducted by respondents John R. Reed and Orr M. Reed under the firm name and style of West Plains Brokerage Co.

PAR. 4. Respondent, Reed-Harlin Grocer Co., places orders for a substantial portion of the goods, wares, and merchandise, particularly foodstuffs, required in the ordinary conduct of its business, through the brokerage firm of respondents John R. Reed and Orr M. Reed trading as West Plains Brokerage Co., with sellers who are located in States of the United States other than the State in which the said Reed-Harlin Grocer Co. is located, among whom are the seller respondents herein named. As a result of the transmission and execution of said orders as aforesaid, goods, wares, and merchandise, particularly foodstuffs, are sold, transported, and delivered by such sellers to the various places of business of the respondent Reed-Harlin Grocer Co. from the sellers' places of business in other States.

PAR. 5. In the course and conduct of the buying and selling transactions in interstate commerce hereinabove referred to, since June 19,

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1936, said seller respondents have transmitted, paid, and delivered and do transmit, pay, and deliver to respondents John R. Reed and Orr M. Reed, trading as West Plains Brokerage Co., so-called brokerage fees and commissions in substantial amounts, the same being a certain percentage of the quoted sales prices agreed upon between each of said sellers and respondents John R. Reed and Orr M. Reed trading as West Plains Brokerage Co., and the same have been received by John R. Reed, Orr M. Reed, and Reed-Harlin Grocer Co. through the West Plains Brokerage Co.

PAR. 6. In all of the transactions of purchase and sales hereinabove referred to, since June 19, 1936, the respondents John R. Reed and Orr M. Reed have acted in fact for and on behalf of the Reed-Harlin Grocer Co.

CONCLUSIONS

Under the facts and circumstances set forth in the foregoing findings of fact, the Commission concludes that Ady and Milburn, Inc., a corporation; Arkansas State Rice Milling Co., a corporation; William D. Wright and Frank E. Hockensmith, individuals trading under the firm name and style of Midwest Bean Co.; The Great Western Sugar Co., a corporation; Inness Bros., Inc., a corporation; and Louis S. Taube, Theodore Taube, and Lloyd B. Holden, individuals trading under the firm name and style of L. S. Taube & Co., have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act as amended, by granting and paying fees and commissions as brokerage to the respondents Reed-Harlin Grocer Co., a corporation, and John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co., upon the purchases of the Reed-Harlin Grocer Co.

The Commission further concludes that the respondents John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co., and the Reed-Harlin Grocer Co., a corporation, have violated, and are now violating the provisions of subsection (c) of section 2 of said statute by receiving and accepting fees and commissions as brokerage upon purchases from the seller respondents and other sellers.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers filed herein by respondents Reed-Harlin Grocer Co., a corporation; John R. Reed and Orr M. Reed, individuals trading under the firm name and style

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of West Plains Brokerage Company; Inness Bros., Inc.; and Louis S. Taube, Theodore Taube, and Lloyd B. Holden, individuals trading under the firm name and style of L. S. Taube & Co.; and the substitute answers of all the other respondents, admitting all the allegations of the complaint to be true: And the Commission having made its findings as to the facts and its conclusion that respondents have violated 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, as amended by the Robinson-Patman Act approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That respondents Ady and Milburn, Inc., a corporation; Arkansas State Rice Milling Co., a corporation; William D. Wright and Frank E. Hockensmith, individuals trading under the firm name and style of Midwest Bean Co.; The Great Western Sugar Co., a corporation; Inness Bros., Inc., a corporation; and Louis S. Taube, Theodore Taube, and Lloyd B. Holden, individuals trading under the firm name and style of L. S. Taube & Co., their officers, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the sale and distribution of commodities in commerce, as "commerce" is defined in said act, do forthwith cease and desist from:

(a) Paying or granting, directly or indirectly, to respondents Reed-Harlin Grocer Co., a corporation, and John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co., or under any other name, any brokerage and any allowances and discounts in lieu of commissions, brokerage or other compensation, upon the purchases made by respondents Reed-Harlin Grocer Co. and John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co.

(b) Paying or granting to any buyer or to any agent, representative, or other intermediary therein, wherein such intermediary is in fact acting for or in behalf of, or is subject to the direct or indirect control of such buyer 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, upon purchase of commodities made for such buyer's own account.

It is further ordered, That in purchasing commodities in commerce, as "commerce" is defined in said act, for their own account, the respondents Reed-Harlin Grocer Co., a corporation, and John R. Reed and Orr M. Reed, individuals trading under the firm name and style

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of West Plains Brokerage Co., their representatives, agents, and employees, do forthwith cease and desist from:

(a) Accepting from sellers, directly or indirectly, any brokerage, and any allowances and discounts in lieu of brokerage, in whatever manner or form such allowances and discounts may be offered, allowed, granted, paid, or transmitted.

(b) 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 or discount in lieu thereof, upon purchases of commodities made for respondents' own account.

It is further ordered, That the parties respondent 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 this order.

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IN THE MATTER OF

JAMES J. COLLINS, CHARLES J. HEPP AND CATHERINE
HEPP, TRADING AS ROCKDALE MONUMENT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4404. Complaint, Dec. 6, 1940—Decision, Aug. 22, 1941*

Where a firm engaged in the interstate sale and distribution of imitation granite monuments and markers; by means of advertisements in periodicals of general circulation and in circulars, catalogs and other advertising media, directly and by implication—

(a) Represented that the prices at which they offered their products were wholesale and special or reduced, and substantially lower than those at which they sold said products in the usual course of business, and that they were the only dealers offering a plan by which monuments and markers could be purchased at low prices on the installment plan; facts being the prices in question were the regular and customary prices, and many other dealers sold such products at low prices and on installments;

(b) Represented that their said products were of natural granite, of a permanent nature, and of certain specified weights; when they were not natural granite, monuments and markers of which have an established reputation for beauty, durability, and other preeminent qualities and are consequently decidedly preferred over those of cast or artificial stone, but were made of a mixture of cement and granite chips molded into the desired form and ground and polished to resemble natural granite, would deteriorate much more rapidly than natural granite, and in many instances were substantially less in weight than represented; and

(c) Made use in their advertising literature of drawings and cuts purporting to show the size, color, nature, and quality of their monuments, when in fact said products were not of the size, color, nature, and quality illustrated; With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of causing it, because of such belief, to purchase substantial quantities of their said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Frank E. & Arthur Gettleman, of Chicago, Ill., for respondents

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that James J. Collins, Charles J. Hepp, and Catherine Hepp, individually and trading as