

IN THE MATTER OF

NOMIS CORPORATION, ALSO TRADING AS LINGLE ADVERTISING AGENCY; SIMON LEVY; STOKER CORPORATION OF AMERICA, ALSO TRADING AS APROCS ADVERTISING AGENCY; AND CHARLES B. LEVY

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

Docket 4580. Complaint, Aug. 29, 1941—Decision, Dec. 9, 1941

Where two corporations and the principal stockholder in each, formulating, controlling and directing its acts, practices and policies, engaged in the interstate offer and sale of their prefabricated "Nomis Ready-Cut Homes" to purchasers or so-called "distributors"; in pursuance of a scheme to induce individuals to purchase and execute written contracts for the purchase of their said houses and territorial rights for the sale thereof; and incident to which aforesaid individuals respectively made use of names of two pretended advertising agencies as mediums through which to carry out the deceptive acts and practices below set forth; through blind advertisements which they made a practice of running in the classified sections of newspapers in various States—

- (a) Represented and implied that persons replying thereto would have an opportunity to make an advantageous connection with a well-established and reliable factory engaged in manufacturing and distributing a complete line of prefabricated and ready-cut houses, and that they had a large volume of business, facts being they did not make such houses or own or operate a factory making them, and did not have the large volume of business represented, but had contracts with factories equipped to make such houses, which fact they failed to disclose to prospective distributors and customers, in some instances changing price lists prepared for their distributors, after contracts had been signed and following discontinuance of filling orders by factories with which they had agreements;
- (b) Represented and implied that the sum of \$500, mentioned in their ads as capital required to handle a distributorship, was to establish the business and defray necessary expenses during the beginning period, when in fact it was a partial payment on their houses;
- (c) Represented that their houses were shipped complete and met specifications required for financing by lending agencies operating under the Federal Housing Administration Act, when they did not contain heating equipment and wiring and did not meet such specifications;
- (d) Represented that men in their organization were earning large sums of money and, in one instance, as much as \$10,000 in one month, when in fact such persons did not make the large sums represented; their primary purpose in obtaining the execution of contracts was the sale of houses and so-called distributorship contracts were in reality contracts for the sale of houses to so-called distributors; and they failed, in some instances, to comply with contracts' provision regarding refund of down payment on houses; and

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- (e) Made such typical representations in form letters replying to inquiries received in response to aforesaid advertisements, in the name of one or the other of said purported advertising agencies, as "This ad was placed by us for one of our most valued clients, whose houses and buildings are manufactured in a factory covering over 20 acres of ground, and which for over 32 years has enjoyed successful building of quality products," "The distributorship to be opened is expected by our clients to do not less than \$75,000.00 worth of business per year and to earn for the distributor selected not less than \$20,000.00 a year," and "This distributor, through the Federal Housing Plan, will have the benefits of unlimited capital to properly handle all of the business which can be done by the distributor and the many dealers he will control. * * *," and requested that certain questions be answered in confidence with a view to deciding whether or not applicant's past experience would justify supposed advertiser's clients giving him "a ten year contract to control this important distribution," in which event he would "be invited to Indianapolis" with all expenses paid;

When in fact said form letters were written by or under the direction of aforesaid individuals and not by a bona fide advertising agency, as indicated, and supposed signing "president" and "assistant manager" thereof, respectively, were their employees; any advertising done by the supposed agencies was incidental to sale of the houses in question, and persons connected therewith were not advertising specialists but directed their sole efforts to aforesaid deceptive and misleading sales plan; expenses of prospective distributors who were induced to visit their home offices through such statements were paid or refunded only to those who executed contracts and made partial payments on houses; prospective distributors were not given test to determine their particular qualifications nor invited to visit the home offices unless their answers to questionnaires indicated that they had the \$500 mentioned in the blind advertisement, and the chief qualification required was possession of \$250 to \$500 which prospect was willing to pay as a deposit;

With the result that a substantial portion of the public was misled into the mistaken belief that such representations and implications were true, and many prospective distributors throughout many States were induced to visit their offices and execute contracts requiring the purchase of a stated number of houses and make partial payments thereon under the mistaken belief that the contract was an exclusive distributorship and the payment a deposit to secure it:

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.

Mr. S. F. Rose for the Commission.

Nash & Donnelly, of Washington, D. C., 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 Nomis Corporation,

a corporation doing business under its corporate name and also under the name of Lingle Advertising Agency, Simon Levy, an individual, Stoker Corporation of America, a corporation doing business under its corporate name and also under the name of Aprocs Advertising Agency, and Charles B. Levy, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Nomis Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Indiana, and does business under its corporate name and also under the name of Lingle Advertising Agency, with its principal place of business formerly located at 410-420 Lingle Street, Lafayette, Ind., and now being operated from a so-called branch office at 224 Hildebrandt Building, Jacksonville, Fla.

Respondent, Simon Levy, an individual, is now, and since the date of its incorporation has been, the principal stockholder in and has formulated, controlled and directed the acts, practices and policies of respondent Nomis Corporation. He maintains his principal office and place of business at 224 Hildebrandt Building, Jacksonville, Fla.

Respondent, Stoker Corporation of America, is a corporation organized and existing under the laws of the State of Indiana and does business under its corporate name and also under the name of Aprocs Advertising Agency, with its principal place of business located at 2440 Meridian Street, Indianapolis, Ind.

Respondent, Charles B. Levy, an individual, is now, and has been, the principal stockholder in and has formulated, controlled and directed the acts, practices and policies of respondent Stoker Corporation of America.

All of said respondents are now, and have been for more than two years last past, engaged in the offering for sale and sale of prefabricated and ready-cut houses, advertised as "Nomis Ready-Cut Homes," to purchasers hereinafter referred to as "distributors," located at various points in the several States of the United States and in the District of Columbia. Respondents cause said houses, when sold, to be transported from the place where manufactured to purchasers thereof located in States other than the State where such houses are manufactured and in the District of Columbia.

Respondents, in the course and conduct of the business aforesaid, and in adopting and carrying out the sales plan or scheme hereinafter referred to, and in doing the acts and things hereinafter set forth, have acted together and in cooperation with each other.

PAR. 2. In the course and conduct of their business aforesaid, for the purpose of inducing individuals to purchase, and to execute written contracts for the purchase of, their said houses, and territorial rights for the sale of same, respondents have devised a fraudulent sales plan and scheme which has the tendency to and does induce the purchase of, and the execution of agreements to purchase, respondents' said houses.

As a part of such fraudulent sales plan or scheme respondents operate and carry on much of their business in the names of fictitious advertising agencies, which are used as mediums for the use of deceptive acts and practices in deceiving prospective distributors and ultimate purchasers into believing that respondent corporations are large, well-established and reliable business establishments engaged in the manufacture of prefabricated and ready-cut houses. In this respect a part of the business of the Nomis Corporation is carried on under the name of Lingle Advertising Agency while the name of Aprocs Advertising Agency is used by the Stoker Corporation of America.

PAR. 3. Respondent corporations, acting by and through the individual respondents and other authorized agents under their direction, in furtherance of said sales plan, adopted the practice of running what are known as "blind advertisements" in the classified advertisement section of various newspapers located in various States of the United States. Among and typical of these advertisements are the following, the one first set out being the advertisement of the respondent Nomis Corporation and the individual respondent Simon Levy, and the one last set out being the advertisement of the respondent Stoker Corporation of America and the individual respondent Charles B. Levy:

BUSINESS OPPORTUNITY

\$20,000 A YEAR OPPORTUNITY

Distributorship available for one of America's greatest opportunities! Hundreds of dealers under your supervision, working for you, making profits for you. Every community in aggressive, home loving America wants and is waiting for sound low cost housing plan—your dealers can offer working people the world's greatest prefabricated houses, unusually low prices on F. H. A. plan where cost is less than rent now paid and get nothing for. Here's opportunity for complete financial independence. Line is most complete, including tourist cabins, summer cottages, refreshment highway stands, good residential houses, any size. Shipped complete, ready for occupancy after few hours work on purchaser's part. Every unit gives you and dealers big profit—your cost only \$90 on good one room house. Factory has facilities, capital, ability to build sectional structure from small brooder houses, farm building to finest residential homes. Factory sold in four months over \$250,000.00 of C. C. C. buildings to U. S. government. \$500 cash capital required to handle distributorship. Get full facts. The most

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wonderful opportunity in business today! Men in our organization making more than they ever earned. One man earned over \$10,000 in one month. Write Dept. E, Box 187, Lafayette, Ind., for details.

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\$20,000 A YEAR OPPORTUNITY

Distributorship available for one of America's greatest opportunities! Hundreds of dealers will be under your supervision, working for you, making profits for you. Every community in aggressive, home loving America wants and is waiting for a sound Low Cost Housing Plan—your dealers can offer the masses of working people the World's Greatest Prefabricated houses at unusually low prices on the F. H. A. plan where their cost is less than the rent they now pay and get nothing for. Here is your opportunity for complete financial independence. The line is most complete, including tourist cabins, summer cottages, refreshment highway stands, and good residential houses of any size. Pre-fabricated houses shipped complete and ready for occupancy, after few hours work on part of purchaser. Every unit gives you and your dealers big profit—your cost only \$90 on good one room house. The factory has been in business over 50 years, has the facilities, capital and ability to ship all orders promptly. \$500 cash capital required to handle distributor-ship. Get the full facts, it's the most wonderful opportunity in business today! Men in our organization have made more than they ever earned. One man earned over \$10,000 in one month. Write Box 5005, Station A, Indianapolis, Ind., for details.

In said advertisements the respondents imply and represent that persons responding to same will have an opportunity to make an advantageous connection with a well-established and reliable factory engaged in manufacturing and distributing a complete line of prefabricated and ready-cut houses; that the sum of \$500 is to establish the business and defray necessary expenses during the beginning period; that said houses are shipped complete; that respondents have a large volume of business; and that men in their organizations are earning large sums of money, in one instance as much as \$10,000 in one month.

In truth and in fact respondents are not and were not manufacturers of prefabricated and ready-cut houses. They do not own or operate a factory or plan in which such houses may be made. They do not have, nor have they had, the large volume of business represented, and persons in such organizations do not make or earn and have not made or earned the large sums of money represented. The sum of \$500 represented as the cash capital necessary for handling a distributorship is and was a sum demanded and received by the respondents from prospective distributors as partial payment on a specified number of houses. Said houses were not and are not complete as represented as they do not contain wiring for electricity or heating equipment. So-called distributorship contracts entered into

with purchasers of said houses are in reality contracts for the sale of houses to so-called distributors and contain provisions permitting a forfeiture of the down payments made on the houses for various and sundry reasons and are so drawn and of such a nature as to make it a practical impossibility for so-called distributors to comply with the terms and conditions thereof, thereby permitting the respondents to declare the contracts violated and the down payments on houses secured from so-called distributors forfeited. These contracts are used to sell houses, not for the purpose of securing distributors. The respondents fail and refuse, in many instances, to comply with the terms of the contracts which provide, under certain conditions, for a return to the so-called distributors of the down payments made to respondent.

PAR. 4. In furtherance of the deceptive acts and practices aforesaid and in carrying out said scheme or plan, respondents cause questionnaires as to the qualifications of distributors to be mailed to persons answering such advertisements under the name of one or the other of the so-called advertising agencies. Letters containing many false and deceptive statements and representations regarding the corporate respondents and their business are also mailed to persons answering such advertisements under the name of one or the other of the so-called advertising agencies.

Among and typical of the false statements and representations disseminated by the so-called advertising agencies are the following:

This ad was placed by us for one of our most valued clients, whose houses and building are manufactured in a factory covering twenty acres of ground, and which for over thirty-two years has enjoyed successful building of quality products.

The distributorship to be opened is expected by our client to do not less than \$75,000 worth of business per year and to earn for the distributor selected not less than \$20,000 a year.

We have handled the advertising of this client for over five years and we know the various types of men who can make a success of the distribution. Before going into the details with you, I will appreciate your answering the questions which I am enclosing you and then returning them to me. Your answers will be absolutely confidential and if, after receiving your answers, I feel that you are a man with past experience that would justify our client's giving you a ten years' contract to control this important distribution, then you will be invited to Indianapolis, all of your expenses paid. * * * If on the other hand your answers indicate that you couldn't do the job successfully, then you will not be asked to come.

This distributor, through the Federal Housing Plan is offered the benefit of unlimited capital to properly handle all of the business which can be done by the distributor and the many dealers he will control.

Furthermore, in pursuance of the sales plan and scheme of respondents, receipt of the questionnaire from prospective distributor is ac-

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knowledge by a form letter through one of the so-called advertising agencies. Each prospective distributor is advised that he will make an excellent distributor and will soon be enjoying a large monthly income if he accepts the distributorship. Many extravagant statements and false representations, such as, that the expenses of the trip to the home office of respondents will be paid applicants who secure distributorships or to those who, in the opinion of the sales manager, are not suitable, and that only a selected number of applicants will be chosen as distributors, are made to induce the prospects to visit the home office of the respondents for a personal conference with the sales manager.

By the means and in the manner aforesaid respondents represent and imply, and have represented and implied that such letters are and were written by bona fide advertising agencies in the usual course of business, that the respondent corporations own and successfully operate large factories which afford prospective distributors remunerative business opportunities for selling a product for which a great demand exists and which meets the requirements for Federal Housing Administration financing.

In truth and in fact, said plan or scheme was false, deceptive and misleading in all its phases and was designed only for the purpose of extracting money from prospects through down payments made on respondents' houses. The newspaper advertisements and all correspondence had with the prospective distributors are written by the individual respondents, Simon Levy and Charles Levy, or by employees under their direction. The expenses of all prospective distributors who visit the home office of respondents for personal conferences with the sales manager are not paid, but only those prospective distributors who execute contracts requiring the purchase of a stated number of houses and pay to the respondents a partial payment on each of such houses receives a refund of any portion of the expense incurred in journeying to and returning from respondents' office and place of business.

The respondents make no test of, or have any special qualifications for distributors, the only qualification being that the distributor has a sum of money ranging from \$250 to \$500 or more to pay the respondents as a deposit on a specified number of houses.

In truth and in fact, many houses advertised as being complete do not include wiring and a heating system. Such houses do not meet the specifications necessary to obtain loans through lending agencies lending money under the law administered by the Federal Housing Administration.

PAR. 5. Pursuant to said fraudulent sales plan, the individual respondents, acting in the names of the respective advertising agencies, through the false representations set out in the preceding para-

graph, have induced and persuaded many prospective distributors, located throughout many States of the United States, to visit the offices of respondents located in the State of Indiana, for the purpose and with the intent of inducing such prospective distributors to execute contracts requiring the purchase of a stated number of houses and to induce such prospective distributors to make partial payments on such houses.

PAR. 6. The use by the respondents of the aforesaid scheme and plan and said false, misleading and deceptive representations and implications has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that said false representations and implications are true and causes a substantial number of the public, because of such mistaken and erroneous belief, to purchase respondents' said houses and to make partial payments on said houses under contracts which permit the respondents to forfeit unfairly the partial payment made and not deliver to such members of the public, any of the houses purchased.

PAR. 7. The effect of the aforesaid plan and scheme of the respondents and the things done thereunder and pursuant thereto is to secure the execution by members of the public of a contract to purchase a definite number of houses and to pay to the respondents a sum of money as partial payment on each of such houses, under the mistaken belief that the contract is an exclusive distributorship contract and the payment made is not partial payment on a specified number of houses but a deposit made with the respondents in order to secure said exclusive distributorship.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 29, 1941, issued and subsequently served its complaint in this proceeding upon said respondents Nomis Corporation, a corporation, trading under its corporate name and also as Lingle Advertising Agency; Simon Levy, an individual; Stoker Corporation of America, trading under its corporate name and also as Aprocs Advertising Agency; and Charles B. Levy, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On Sep-

tember 17, 1941, the respondents filed their answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for the respondents and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, state its findings as to the facts and its conclusions based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of the trial examiner's report upon the evidence. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Nomis Corporation is a corporation organized and existing under and by virtue of the laws of the State of Indiana. It does business under its corporate name and also under the name of Lingle Advertising Agency. Its principal place of business was formerly located at 410-420 Lingle Street, La Fayette, Ind. It is now being operated from a so-called branch office at 224 Hildebrandt Building, Jacksonville, Fla.

Respondent Simon Levy, an individual, is now, and since the date of its incorporation has been, the principal stockholder in and has formulated, controlled, and directed the acts, practices, and policies of respondent Nomis Corporation. He maintains his principal office and place of business at 224 Hildebrandt Building, Jacksonville, Fla.

Respondent Stoker Corporation of America is a corporation organized and existing under the laws of the State of Indiana and does business under its corporate name and also under the name of Aprocs Advertising Agency. Its principal place of business is located at 2440 Meridian Street, Indianapolis, Ind.

Respondent Charles B. Levy, an individual, is the principal stockholder in and has formulated, controlled, and directed the acts, practices, and policies of respondent Stoker Corporation of America.

All of said respondents are now, and have been for more than 2 years last past, engaged in the offering for sale and sale of prefabricated and ready-cut houses, advertised as "Nomis Ready-Cut Homes," to purchasers hereinafter referred to as "distributors" located at various points in the several States of the United States and in the District of Columbia. Respondents cause said houses, when sold, to be transported from the place where manufactured to purchasers thereof located in States of the United States other than the State where such houses are manufactured and in the District of Columbia.

Respondents, in the course and conduct of the business aforesaid, and in adopting and carrying out the sales plan or scheme hereinafter referred to, and in doing the acts and things hereinafter set forth, have acted together and in cooperation with each other.

PAR. 2. In the course and conduct of their business aforesaid, for the purpose of inducing individuals to purchase and to execute written contracts for the purchase of their said houses and the territorial rights for the sale of same, respondents, acting by and through the two individual respondents, devised a deceptive and misleading sales plan which has the tendency to, and does, induce the purchase of and the execution of agreements to purchase respondents' said houses.

The plan to deceive prospective distributors and ultimate purchasers consists in part of deception in advertising. The advertising done by the respondents in carrying out such plan, and a part of the business done in connection with same, is in the name of one or the other of the advertising agencies. Respondent Simon Levy uses the name of Lingle Advertising Agency to promote and carry out the sales plan operated in the name of Nomis Corporation, while respondent Charles B. Levy uses the name of Aprocs Advertising Agency to promote and carry out the sales plan operated in the name of Stoker Corporation of America. These advertising agencies are unincorporated and are used as mediums through which to carry out many of the deceptive acts and practices used by the respondents. The result of the use of such advertising agencies in each instance was to deceive prospective distributors into believing that the respondent corporations were large, well-established, and reliable business establishments which were engaged in the manufacture of prefabricated and ready-cut houses. These advertising agencies are not engaged in the general advertising business and any advertising business that might have been done by either of them was incidental only to the sale of respondents' said houses. Persons connected with such agencies were not advertising specialists and their sole efforts were directed to the

advertising conducted by the individual respondents in connection with such deceptive and misleading sales plan.

PAR. 3. Respondent corporations, acting by and through the individual respondents and other authorized agents under their direction, in furtherance of said sales plan adopted the practice of running what are known as "blind advertisements" in the classified advertisement section of various newspapers located in various States of the United States. Among and typical of these advertisements are the following, the one first set out being the advertisement of the respondent Nomis Corporation and the individual respondent Simon Levy and the one last set out being the advertisement of the respondent Stoker Corporation of America and the individual respondent Charles B. Levy:

BUSINESS OPPORTUNITY

\$20,000 A YEAR OPPORTUNITY

Distributorship available for one of America's greatest opportunities! Hundreds of dealers under your supervision, working for you, making profits for you. Every community in aggressive, home loving America wants and is waiting for sound low cost housing plan—your dealers can offer working people the world's greatest prefabricated houses, unusually low prices on F. H. A. plan where cost is less than rent now paid and get nothing for. Here's opportunity for complete financial independence. Line is most complete, including tourist cabins, summer cottages, refreshment highway stands, good residential houses, any size. Shipped complete, ready for occupancy after few hours work on purchaser's part. Every unit gives you and dealers big profit—your cost only \$90 on good one room house. Factory has facilities, capital, ability to build sectional structure from small brooder houses, farm building to finest residential homes. Factory sold in 4 months over \$250,000.00 of C. C. C. buildings to U. S. government. \$500 cash capital required to handle distributorship. Get full facts. The most wonderful opportunity in business today! Men in our organization making more than they ever earned. One man earned over \$10,000.00 in one month. Write Dept. E., Box 187, Lafayette, Ind., for details.

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\$20,000 A YEAR OPPORTUNITY

Distributorship available for one of America's greatest opportunities! Hundreds of dealers will be under your supervision, working for you, making profits for you. Every community in aggressive, home loving America wants and is waiting for a sound Low Cost Housing Plan—your dealers can offer the masses of working people the World's Greatest Prefabricated houses at unusually low prices on the F. H. A. plan where their cost is less than the rent they now pay and get nothing for. Here is your opportunity for complete financial independence. The line is most complete, including tourist cabins, summer cottages, refreshment highway stands, and good residential houses of any size. Prefabricated houses shipped complete and ready for occupancy, after a few

hours work on part of purchaser. Every unit gives you and your dealers big profit—your cost only \$90.00 on good one room house. The factory has been in business over 50 years, has the facilities, capital, and ability to ship all orders promptly. \$500 cash capital required to handle distributorship. Get the full facts, it's the most wonderful opportunity in business today! Men in our organization have made more than they ever earned. One man earned over \$10,000.00 in one month.

Write Box 5005, Station A, Indianapolis, Ind., for details.

In said advertisements the respondents imply and represent that persons responding to same will have an opportunity to make an advantageous connection with a well-established and reliable factory engaged in manufacturing and distributing a complete line of prefabricated and ready-cut houses; that the sum of \$500 is to establish the business and defray necessary expenses during the beginning period; that said houses are shipped complete; that respondents have a large volume of business; and that men in their organizations are earning large sums of money, in one instance as much as \$10,000 in 1 month.

PAR. 4. Respondents did not, and do not, manufacture prefabricated and ready-cut houses. They did not, and do not, own or operate a factory or plant in which such houses may be made. They do not have, nor have they had, the large volume of business represented. Persons connected with their organizations do not make or earn, and have not made or earned, the large sums of money represented. The sum of \$500 represented as the capital necessary for handling a distributorship is, in fact, the sum of money demanded by the respondents from prospective distributors as partial payment on respondents' houses. Respondents did have contracts with factories which were equipped to manufacture prefabricated and ready-cut houses. This fact was not disclosed to prospective distributors and persons dealing with the respondents. In some instances factories with which respondents had agreements discontinued filling orders for respondents and price lists prepared by respondents for their distributors were changed after contracts had been signed by distributors who had agreed to sell respondents' houses. Such houses as were sold by the respondents were not, as represented, complete in that they did not contain heating equipment and wiring. As a rule these houses do not, as represented by said respondents, meet specifications required for financing by lending agencies operating under the Federal Housing Administration Act. The respondents' primary purpose in obtaining the execution of the contracts was to sell houses. The respondents have in some instances failed to comply with the provisions of the contract regarding the refund of money which had been paid respondent-

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ents as down payments on houses purchased. A refund was made in one instance, after the matter was placed in the hands of attorneys. These so-called distributorship contracts entered into with purchasers of said houses are in reality contracts for the sale of houses to so-called distributors.

PAR. 5. When a reply to respondents' advertisements is received by one or the other of the advertising agencies, the respondents then mail to the person answering such advertisements a form letter written on the stationery of one or the other of the advertising agencies. The persons whose names are signed to these letters, in one instance as president and in the other instance as assistant manager, are employees of the respondents and do not hold the official positions indicated.

Among and typical of statements made in such letters are the following:

This ad was placed by us for one of our most valued clients, whose Houses and Buildings are manufactured in a factory covering over 20 acres of ground, and which for over 32 years has enjoyed successful building of quality products. * * *

The distributorship to be opened is expected by our clients to do not less than \$75,000.00 worth of business per year and to earn for the distributor selected not less than \$20,000.00 a year. This distributor, through the Federal Housing Plan, will have the benefit of unlimited capital to properly handle all of the business which can be done by the distributor and the many dealers he will control. * * *

We have handled the advertising of this client for over five years and we know the various types of men who can make a success of the distribution. Before going into further details with you, I will appreciate your answering the questions which I am enclosing you and then returning them to me. Your answers will be absolutely confidential and if, after receiving your answers, I feel you are a man with past experience that would justify our clients giving you a ten year contract to control this important distribution, then you will be invited to Indianapolis, all of your expenses paid, * * *.

If, on the other hand, your answers indicate that you couldn't do the job successfully, then you will not be asked to come. * * *

The form letters used by respondents mislead and deceive persons receiving them. These letters and the advertisements referred to are written by or under the direction of the individual respondents and not by a bona fide advertising agency, as indicated. The expenses of all prospective distributors who are induced to visit the home offices of the respondents through the statements set out in said letters, as well as in other letters mailed to persons who have filled out and returned questionnaires mailed them by the respondents, are not paid by the respondents. Expenses incurred in visiting the home offices of respondents at their invitation are paid or refunded only to those persons who have executed respondents' contracts and have made par-

tial payments on houses agreed to be bought by them. Persons are not invited to visit the home offices of the respondents unless their answers to the questionnaires indicate they have the \$500 mentioned in the blind advertisement. The representations concerning refunds of such expenses are misleading and deceptive to many individuals who become interested in respondents' business.

The prospective distributors are not given a test for their particular qualifications. The chief qualification required of a prospective distributor is the possession of a sum of money ranging from \$250 to \$500 which he is willing to pay as a deposit to defray the expenditures incident to securing the distributorship for respondents' said houses.

PAR. 6. Pursuant to said sales plan the individual respondents, acting in the names of the respective advertising agencies, through the false representations set out in the preceding paragraphs have induced and persuaded many prospective distributors located throughout many States of the United States to visit the offices of the respondents located in the State of Indiana and to execute contracts requiring the purchase of a stated number of houses and to make partial payments on such houses.

PAR 7. Prior to the early part of the year 1940 the respondent Simon Levy had promoted and been responsible for the conduct of the business in the manner set out in the preceding paragraphs. About such time arrangements were made between Simon Levy and Charles B. Levy whereby the Stoker Corporation of America would take over the selling of Nomis houses through distributors to be under contract with Stoker Corporation of America. Thereafter Simon Levy agreed to limit his activities in the business to the filling of such orders as might be received from the Nomis distributors. Under this arrangement any houses sold by distributors under contract with the Nomis Corporation were to be furnished by the Stoker Corporation of America at the same prices paid by distributors under the Stoker Corporation of America. No definite agreement was made by the individual respondents with respect to a division of the profits from the undertaking, each relying upon the other to agree to an equitable division of the profits made considering their respective interests. Subsequent to such time, Simon Levy became inactive in the actual management of the business and was succeeded by Charles B. Levy, who continued the same in the manner described in the preceding paragraphs until later in the year 1940. The business of respondents during the last year has been confined mainly to furnishing such houses as their distributors might sell under contracts already existing.

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PAR. 8. The acts, practices, and methods set out above have misled and deceived a substantial portion of the public into the mistaken and erroneous belief that the representations and implications above referred to were, and are, true and by reason thereof caused such persons to make partial payments on houses under the contracts which are hereinbefore referred to.

PAR. 9. The effect of the aforesaid plan and scheme of the respondents, and the things done thereunder and pursuant thereto, is to secure the execution by members of the public of a contract to purchase a definite number of houses and to pay to the respondents a sum of money as partial payments on each of such houses, under the mistaken belief that the contract is an exclusive distributorship contract and the payment made is not partial payment on a specified number of houses but a deposit made with the respondents in order to secure said exclusive distributorship.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and a stipulation as to the facts entered into between the respondents herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Nomis Corporation, a corporation, trading under its own or any other name; Stoker Corporation of America, a corporation, trading under its own or any other name; Simon Levy, an individual; Charles B. Levy, an individual; and their respective officers and/or representatives, agents, and employees; either jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution

of prefabricated or ready-cut houses or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or by implication:

1. Representing that respondents are the manufacturers of prefabricated houses or other commodities which are not in fact manufactured in a plant owned and operated or directly and absolutely controlled by them.

2. Representing that the size, scope, or volume of respondents' business is greater than is the fact.

3. Representing that respondents will refund to any prospective purchaser or distributor, or prospective purchasers or distributors, the expenses of such prospects in visiting the offices of respondents, when such is not the fact.

4. Representing that the earnings or profits of distributors or other sales representatives of respondents from the sale or resale of respondents' products are, or have been, greater than the average earnings or profits of such persons in the ordinary course of business under normal conditions and circumstances, or that such earnings or profits of any one distributor or sales representative for any given period of time are, or have been, greater than the amount consistently earned or received by such person in the ordinary course of business under normal conditions and circumstances.

5. Representing that the sum of \$500, or any other sum of money, is required as capital to finance a distributorship, or other sales or distribution agreement with respondents, without disclosing the portion of such sum required by respondents as payment for or toward the purchase of respondents' products in connection with such agreement.

6. Representing that houses offered for sale or sold by respondents which do not contain all the essential features usually found in houses of the same type and character are complete.

7. Representing that houses offered for sale or sold by respondents meet the specifications required by lending agencies operated under the Federal Housing Administration Act, when such is not the fact.

8. Representing that prospective purchasers or so-called distributors are given any test to determine their qualifications for a distributorship, or that any particular qualifications are required other than possession of a sum of money sufficient to make a down payment upon the purchase of respondents' houses, when such is not the fact.

9. Using or employing a sales plan or method of selling their products, or territorial or franchise rights for the distribution of same, which includes representations by advertising agencies or other

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instrumentalities which are apparently independent of respondents but which are in fact owned or controlled by respondents, without disclosing the true connection of such advertising agency or other instrumentality with respondents.

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 they have complied with this order.

Syllabus

IN THE MATTER OF

JAMES R. MIDDLEBROOK, M. D., DOING BUSINESS AS
MIDDLEBROOK HOSPITAL AND CLINICCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4539. Complaint, July 16, 1941—Decision, Dec. 11, 1941*

Where a doctor of medicine, with offices, hospital, and clinic in a certain Texas city, engaged in the surgical and medical treatment of diseases and disorders of the prostate gland, and in distributing through the mails, advertising and other literature, which had the capacity and tendency to induce prospective patients to travel to his place of business for treatment; and engaged, further, in the interstate offer, sale, and distribution of certain medicinal preparations in a "Special Prostate Package for Home Treatment," containing (1) "Calomel, Rhubarb, and Colocynth Compound," (2) "Special Formula No. 17831," and (3) "Methenamine (7½ Grains)";

By means of letters, circulars, booklets, and other advertising literature (along with requests, on the reverse side of many of his advertisements, for names and addresses of men believed to have prostate or rectal troubles, together with an offer to award the forwarder a \$10 credit on medical services rendered in aforesaid city following the furnishing of such names); directly or by implication—

- (a) Falsely represented that preparations contained in said "Special Package" would relieve pain and soothe and heal the affected parts involved in kidney, bladder, and rectal diseases and diseases of the prostate gland;
- (b) Falsely represented that said "Methenamine (7½ Grains)" was one of the best urinary antiseptic treatments for cleansing infections and inflammation from the kidneys, bladder, and prostate and urethral canal; facts being said product would be effective only when urine was sufficiently acid to liberate formaldehyde, and contained no ingredient insuring constant acidity of the urine;
- (c) Falsely represented that said "Special Formula No. 17831," when applied through the rectum, "was absorbed through and into" the prostate gland in sufficient quantities to be effective;
- (d) Falsely represented that the price of his said package of preparations was normally \$7.50, but that it was offered at a special introductory price of \$5.00, facts being \$5.00 was the price for which it was generally sold; and
- (e) Failed to reveal that prescribed use of his cathartic "Calomel, Rhubarb, and Colocynth Compound" by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, was dangerous;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that such false representations were true, and further effect of causing it because of said mistaken belief, to purchase his said "Special Package":

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.