

Complaint

IN THE MATTER OF

HARRY M. BITTERMAN, INC., 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

Docket 4229—Complaint, Aug. 8, 1940—Decision, July 8, 1942

Where a corporation, and two individuals—president and director and office manager thereof—engaged in the competitive interstate purchase from numerous manufacturers and other sellers of fur garments for a number of retail establishments—

- (a) Received compensation in the form of brokerage or commissions upon orders from aforesaid buyers for the purchase of commodities including, particularly, fur garments, which it transmitted to and executed with sellers, amounting, customarily, to 5 percent of the sales prices of the goods sold, and while acting as said buyers' agent, buying representative or other intermediary; and

Where aforesaid selling concerns, engaged as above set forth, in the sale of their fur garments in interstate commerce to buyers referred to and to numerous other customers—

- (b) Paid to said corporation and individuals, acting as agents, buying representatives, or other intermediaries of said buyer retailers in the transmittal and execution of their buying orders, compensation in the form of brokerage fees or commissions as above described upon the sales prices of the goods sold by them to aforesaid buyers:

Held, That such receipt and acceptance, and payment of brokerage fees and commissions, as above set forth, constituted a violation of the provisions of Subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Alfred McCormack and *Mr. Harmon Duncombe*, of the firm of Cravath, DeGersdorff, Swaine & Wood, of New York City, for respondents.

COMPLAINT¹

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful

¹ Complaint is published as amended by a stipulation agreed to by and between respondents named below and W. T. Kelley, chief counsel for the Commission, and approved by the Commission on November 4, 1940, which stipulation amended original complaint, *nunc pro tunc*, as follows:

By striking from the caption of said complaint the words "Arthur Petras, Peter Petras and George Alveras, co-partners doing business under the firm name and style of Petras, Petras & Co." and substituting in lieu thereof the words "Peter Petras and George Alveras, trading as Petras & Alveras, and Arthur Petras, trading as A. Petras & Company," and

By striking from paragraph 3, page 2, of said complaint the words:

"Respondents Arthur Petras, Peter Petras and George Alveras are co-partners doing business under the firm name and style of Petras, Petras & Co. and have their principal

restraints and monopolies, and for other purposes," commonly known as the Clayton Act (U. S. C. Title 15, Sec. 13), as amended by an act of Congress, approved June 19, 1936, commonly known as the Robinson-Patman Act, 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 been and are now violating the provisions of subsection (c) of Section 2 of said act as amended, issues its complaint against said respondents and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Harry M. Bitterman, Inc. (hereinafter referred to as "Bitterman, Inc.") is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 151 W. Fortieth Street, New York City, N. Y.

PAR. 2. Respondents, Harry M. Bitterman, Herman Bitterman, and Irving Dash, are the president, secretary-treasurer, and office manager, respectively, of the respondent, Bitterman, Inc. Harry M. Bitterman is a director of Bitterman, Inc.

PAR. 3. Respondent, I. and A. Berger, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business at 150 West Thirtieth Street, New York City, N. Y.

Respondent, B. Ordovery & Sons, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business at 150 West Thirtieth Street, New York, N. Y.

Respondents, Peter Petras and George Alebras, are individuals, trading as Petras & Alebras, having their principal office and place of business at 115 West Thirtieth Street, New York, N. Y.

Respondent, Arthur Petras, is an individual, trading as A. Petras & Company, having an office and place of business at 249 West Twenty-ninth Street, New York, N. Y.

office and place of business at 249 W. 29th Street, New York City, N. Y." and substituting in lieu thereof the words:

"Respondents Peter Petras and George Alebras are individuals trading as Petras & Alveras, having their principal office and place of business at 115 West 30th Street, New York, N. Y.

"Respondent Arthur Petras is an individual trading as A. Petras & Company, having an office and place of business at 249 W. 29th Street, New York, N. Y."

It is further agreed, By and between the parties aforesaid as follows, to wit:

Said complaint, as amended, shall be deemed and considered to have been lawfully served on the said Peter Petras, George Alebras, and Arthur Petras on the date on which said complaint was served on said individuals originally, to wit: on August 8, 1940.

Morris Minsk is an individual, doing business under his own name, with his principal office and place of business at 352 Seventh Avenue, New York, N. Y.

The respondents named in this paragraph will hereinafter be referred to as "seller respondents."

PAR. 4. On and for many years prior to June 19, 1936, and until on or about January 1, 1938, Harry Bitterman was engaged and from on or about January 1, 1938, Bitterman, Inc., has been and is now engaged in the business of purchasing fur garments for a number of corporations, partnerships, and individuals. These corporations, partnerships, and individuals (hereinafter collectively referred to as "buyers") operate retail establishments in which fur garments and other commodities are sold. Most of these buyers are located and do business in some State other than the State of New York.

Each of said buyers is and for several years last past has been engaged in the business of buying fur garments in interstate commerce from numerous manufacturers and other sellers of such merchandise, including the seller respondents named in paragraph 3 hereof.

PAR. 5. Each of the seller respondents named in paragraph 3 hereof is and for several years last past has been engaged in the business of selling fur garments in interstate commerce to the buyers referred to in paragraph 4 hereof, and to numerous other customers.

Said seller respondents are fairly typical and representative members of a large group or class of fur manufacturers and sellers engaged in selling their fur garments in interstate commerce to the buyers referred to in paragraph 4 hereof and to numerous other customers. The fur garment manufacturers and sellers comprising said group or class are too numerous to be specifically named as respondents herein or to be brought before the Commission in this proceeding without manifest inconvenience and delay. Each of such manufacturers and sellers, in selling to buyers who purchase through Harry Bitterman or Bitterman, Inc., has been and is engaged in practices similar to those hereinafter charged against the seller respondents.

PAR. 6. In the course and conduct of his business aforesaid from June 19, 1936, to on or about January 1, 1938, Harry Bitterman received and, in the course and conduct of its business aforesaid, from on or about January 1, 1938, to the present time, Bitterman, Inc. received and now receives orders from the buyers aforementioned to purchase commodities, particularly fur garments, and transmitted or transmits such orders to and executed or executes the same with the aforesaid seller respondents and other sellers. As a result of

the transmission of said orders by such buyers to Harry M. Bitterman or to Bitterman, Inc., the execution of same by said Harry M. Bitterman or by Bitterman, Inc., at the instance and request of said buyers and the acceptance of some of said orders by said respondent sellers or one or more of them, goods, wares, and merchandise, particularly fur garments, were or are, in the case of each such order, sold or delivered by one or more of said seller respondents to one or more of the said buyers. By such means and in the manner aforesaid, Harry M. Bitterman and Bitterman, Inc., acting for and in behalf of the said buyers, caused or now cause the above named seller respondents to ship the said commodities, particularly fur garments, from the State in which such merchandise was located at the time of sale into and through various other States of the United States directly to the said buyers in the States of their respective locations.

Respondent Bitterman, Inc. carried through and performed the operations and activities referred to through respondents Harry and Herman Bitterman and Irving Dash, its officers and employees.

The estimated annual volume of purchases negotiated by Harry M. Bitterman or by Bitterman, Inc., as aforesaid, for each of the years 1937, 1938, and 1939 from all seller respondents and other sellers has been approximately \$200,000. In all of said transactions Harry M. Bitterman and Bitterman, Inc. and the other respondents herein named as officers and employees of said Bitterman, Inc., and each of them, were acting in fact for or in behalf of the buyers hereinbefore mentioned and were generally rendering to such buyers all of the services that are customarily rendered by a buying agent to and for his principals.

PAR. 7. In the course and conduct of the commerce hereinabove described, the seller respondents paid to Harry M. Bitterman and paid and are now paying to Bitterman, Inc. brokerage fees and commissions, amounting to a certain percentage, customarily 5 percent of the sales prices of the goods sold by seller respondents to buyers and, while acting in fact as intermediary for and in behalf of the buyers in the transmittal and execution of the aforesaid buying orders and otherwise, Harry M. Bitterman received and accepted and, while so acting, Bitterman, Inc. received and accepted and now receives and accepts brokerage fees and commissions from the seller respondents and other sellers.

PAR. 8. The payment by seller respondents of brokerage fees and commissions to Harry M. Bitterman and to Bitterman, Inc., under the circumstances hereinabove set forth, were and are in violation of the provisions of Section 2, subsection (c) of the act described in the

Findings

preamble hereof. The receipt and acceptance from seller respondents and other sellers of said brokerage fees and commissions by Harry M. Bitterman and by Bitterman, Inc., under the circumstances hereinabove set forth, were and are likewise in violation of the terms of said statute.

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 August 8, 1940, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging said respondents with violation of the provisions of subsection (c) of Section 2 of said Clayton Act, as amended. After the issuance of said complaint each of said respondents except Herman Bitterman, individually, and as secretary-treasurer of Harry M. Bitterman, Inc., filed 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. Said respondents also waived oral argument and the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the admission answers, and the Commission, having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Harry M. Bitterman, Inc. (hereinafter referred to as "Bitterman, Inc."), is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 370 Seventh Avenue, New York, N. Y.

PAR. 2. Respondents, Harry M. Bitterman and Irving Dash, are the president and office manager, respectively, of the respondent, Bitterman, Inc., and Harry M. Bitterman is a director of Bitterman, Inc. Respondent, Herman Bitterman, named in the complaint herein individually and as secretary-treasurer of Harry M. Bitterman, Inc., has not actively participated at any time in the conduct of said business.

PAR. 3. Respondent, I. and A. Berger, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 150 West Thirtieth Street, New York, N. Y.

Respondent, B. Ordovery & Sons, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 150 West Thirtieth Street, New York, N. Y.

Respondents, Peter Petras and George Alevras, are individuals, trading as Petras & Alevras, and have their principal office and place of business at 115 West Thirtieth Street, New York, N. Y.

Respondent, Arthur Petras, is an individual, trading as A. Petras & Co., having an office and place of business at 249 West Twenty-ninth Street, New York, N. Y.

Morris Minsk is an individual doing business under his own name, with his principal office and place of business at 352 Seventh Avenue, New York, N. Y.

The respondents named in this paragraph will hereinafter be referred to as "seller respondents."

PAR. 4. On and for many years prior to June 19, 1936, and until on or about January 1, 1938, Harry Bitterman was engaged and from on or about January 1, 1938, Bitterman, Inc., has been and is now engaged in the business of purchasing fur garments for a number of corporations, partnership, and individuals. These corporations, partnerships, and individuals (hereinafter collectively referred to as "buyers") operate retail establishments in which fur garments and other commodities are sold. Most of these buyers are located and do business in some State other than the State of New York.

Each of said buyers is and for several years last past has been engaged in the business of buying fur garments in interstate commerce from numerous manufacturers and other sellers of such merchandise, including the seller respondents named in paragraph 3 hereof.

PAR. 5. Each of the seller respondents named in paragraph 3 hereof is and for several years last past has been engaged in the business of selling fur garments in interstate commerce to the buyers referred to in paragraph 4 hereof, and to numerous other customers.

Said seller respondents are fairly typical and representative members of a large group or class of fur manufacturers and sellers engaged in selling their fur garments in interstate commerce to the buyers referred to in paragraph 4 hereof, and to numerous other customers. The fur garment manufacturers and sellers comprising said group or class are too numerous to be specifically named as respondents

herein or to be brought before the Commission in this proceeding without manifest inconvenience and delay. Each of such manufacturers and sellers, in selling to buyers who purchase through Harry Bitterman or Bitterman, Inc., has been and is engaged in practices similar to those of the seller respondents specifically named herein.

PAR. 6. In the course and conduct of his business aforesaid, from June 19, 1936, to on or about January 1, 1938, Harry Bitterman received and, in the course and conduct of its business aforesaid, from on or about January 1, 1938, to the present time, Bitterman, Inc., received and now receives orders from the buyers aforementioned to purchase commodities, particularly fur garments, and transmitted or transmits such orders to and executed or executes the same with the aforesaid seller respondents and other sellers. As a result of the transmission of said orders by such buyers to Harry M. Bitterman or to Bitterman, Inc., the execution of same by said Harry M. Bitterman or by Bitterman, Inc., at the instance and request of said buyers and the acceptance of some of said orders by said respondent sellers or one or more of them, goods, wares, and merchandise, particularly fur garments, were or are, in the case of each such order, sold or delivered by one or more of said seller respondents to one or more of the said buyers. By such means and in the manner aforesaid, Harry M. Bitterman and Bitterman, Inc., acting for and in behalf of the said buyers, caused or now cause the above-named seller respondents to ship the said commodities, particularly fur garments, from the State in which such merchandise was located at the time of sale into and through various other States of the United States directly to the said buyers in the States of their respective locations.

Respondent, Bitterman, Inc., carried through and performed the operations and activities referred to through its president and director, Harry Bitterman, and through its office manager, Irving Dash.

The estimated annual volume of purchases negotiated by Harry M. Bitterman or by Bitterman, Inc., as aforesaid, for each of the years 1937, 1938, and 1939, from all seller respondents and other sellers has been approximately \$200,000. In all of said transactions Harry M. Bitterman and Bitterman, Inc., and the respondents herein named, individually, and as officers and employees of said Bitterman, Inc., and each of them, were acting in fact for or in behalf of the buyers hereinbefore mentioned and were generally rendering to such buyers all of the services that are customarily rendered by a buying agent to and for his principals.

PAR. 7. In the course and conduct of the commerce hereinabove described, the seller respondents paid to Harry M. Bitterman and paid and are now paying to Bitterman, Inc., brokerage fees and commis-

Conclusion

35 F. T. C.

sions, amounting to a certain percentage, customarily 5 percent, of the sales prices of the goods sold by seller respondents to buyers and, while acting in fact as intermediary for and in behalf of the buyers in the transmittal and execution of the aforesaid buying orders and otherwise, Harry M. Bitterman received and accepted and, while so acting, Bitterman, Inc., received and accepted and now receives and accepts brokerage fees and commissions from the seller respondents and other sellers.

CONCLUSION

From the aforesaid facts and circumstances the Commission concludes that respondents, Harry M. Bitterman, Inc., a corporation, Harry M. Bitterman, individually and as a president and one of the directors of Harry M. Bitterman, Inc., and Irving Dash, individually and as office manager of Harry M. Bitterman, Inc., are engaged in business in commerce as agents, buying representatives or other intermediaries in the purchase of fur garments and other commodities for operators of retail stores and said respondents purchase such fur garments and other commodities from a large number of competitive sellers. In so placing orders and buying fur garments and other commodities said respondents have acted in fact for, or in behalf or are subject to the direct or indirect control of, the retail dealers for whom the purchases were made and while acting in fact as agent, buying representative, or other intermediary in the aforesaid manner said respondents received compensation in the form of brokerage or commissions from the sellers in violation of the provisions of subsection (c) of Section 2 of "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 Commission further concludes that respondents, I. and A. Berger, Inc., a corporation; B. Ordovery & Sons, Inc., a corporation; Peter Petras and George Alevras, individuals, trading as Petras and Alevras; Arthur Petras, an individual, trading as A. Petras & Company; and Morris Minsk, an individual, engaged in the manufacture and sale in commerce of fur garments and other commodities, have paid and granted compensation in the form of brokerage or commissions to Harry M. Bitterman, Inc., a corporation; Harry M. Bitterman, individually and as president and one of the directors of Harry M. Bitterman, Inc.; and Irving Dash, individually and as office manager of Harry M. Bitterman, Inc., while the said respond-

ents were engaged in business in commerce as agents, buying representatives, or other intermediaries and were acting in fact for or in behalf of or were subject to the direct or indirect control of retail dealers for whom the purchase of fur garments and other commodities were made, in violation of the provisions of subsection (c) of Section 2 of the aforesaid Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed by each of the respondents named in the caption hereof except Herman Bitterman, individually, and as secretary-treasurer of Harry M. Bitterman, Inc., and the respective answers of said respondents having admitted all material allegations of fact set out in the complaint to be true and having waived all intervening procedure and further hearing as to said facts and the Commission having made its findings as to the facts and conclusion herein that said respondents, Harry M. Bitterman, Inc., a corporation, Harry M. Bitterman, individually and as president and as one of the directors of Harry M. Bitterman, Inc., Irving Dash, individually and as office manager of Harry M. Bitterman, Inc., and I. and A. Berger, Inc., a corporation, B. Ordovery & Sons., Inc., a corporation, Peter Petras and George Alevras, individuals trading as Petras & Alevras, Arthur Petras, an individual trading as A. Petras & Co., and Morris Minsk, an individual, have violated the provisions of subsection (c) of Section 2 of "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).

It is ordered, That the respondents, Harry M. Bitterman, Inc., a corporation, its officers, agents, and employees; Harry M. Bitterman, individually, and as president, and as one of the directors of Harry M. Bitterman, Inc., his representatives, agents, and employees; and Irving Dash, individually, and as office manager of Harry M. Bitterman, Inc., his representatives, agents, and employees; jointly or severally, directly or indirectly, through any corporate or other device, on or in connection with the purchase of fur garments or other commodities in commerce as commerce is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

Receiving or accepting directly or indirectly anything of value as a commission, brokerage, or other compensation, or any allowance or

discount in lieu thereof, from any seller on or in connection with purchases made from such seller (a) when such purchases are made for respondents' own account, or (b) when such purchases are made by respondents as agents or buying representatives of the purchaser, or (c) when in making such purchases respondents are acting in fact for, or in behalf, or are subject to the direct or indirect control, of the purchaser.

It is further ordered, That respondents, I. and A. Berger, Inc., a corporation, and B. Ordovery & Sons, Inc., a corporation, their officers, agents and employees; Peter Petras and George Alevras, individuals, trading as Petras & Alevras, or under any other name; Arthur Petras, an individual, trading as A. Petras & Co., or under any other name; and Morris Minsk, an individual; their representatives, agents and employees; directly or indirectly, through any corporate or other device, on or in connection with the sale of fur garments or other commodities in commerce as commerce is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

Paying or granting directly or indirectly anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, to Harry M. Bitterman, Inc., a corporation, Harry M. Bitterman, individually or as an officer of Harry M. Bitterman, Inc., Irving Dash, individually or as office manager of Harry M. Bitterman, Inc., or to any corporation, partnership, firm, or individual, on or in connection with the sale of fur garments or other commodities (a) when such sales are made to such corporation, partnership, firm, or individual, or (b) when such sales are made through such corporation, partnership, firm, or individual acting as agent or buying representative of the purchaser, or (c) when such corporation, partnership, firm, or individual in making such purchases is acting in fact for or in behalf, or is subject to the direct or indirect control, of the purchaser.

It is further ordered, That 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.

It is further ordered, That for the reasons set out in the findings as to the facts herein that the case growing out of the complaint issued herein be, and the same hereby is, closed as to Herman Bitterman, individually and as secretary-treasurer of Harry M. Bitterman, Inc., without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Complaint

IN THE MATTER OF
ISAAC S. DICKLER

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

Docket 4231. Complaint, Aug. 10, 1940—Decision, July 8, 1942

Where an individual, engaged in New York City as commission resident buyer of fur garments for some 17 retailers located in Washington, Baltimore, San Francisco, and elsewhere in the United States, and who advised him as to style, quality and size and the price they wished to pay for garments which they desired him to purchase, for shipment by sellers to them direct, and who, in making such purchases through him from competing sellers in said city, fur garment center of the United States, were in competition with many retailers who maintained buying offices therein—

Received and accepted from the sellers on such purchases a percentage, which was usually five, of the agreed sales price on orders placed by said agent for them, and while he acted as their agent, buying representative or other intermediary:

Held, That such receipt of compensation in the form of commission or otherwise by said individual while acting as aforesaid constituted a violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Alfred McCormack and *Mr. Harmon Duncombe*, of the firm of Cravath, DeGersdorff, Swaine & Wood, of New York City, for respondent.

COMPLAINT¹

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of Sec-

¹ Complaint is published as amended, nunc pro tunc, by Commission order approving stipulated amendment of complaint dated June 24, 1942, as follows:

Whereas, In connection with respondent's petition to file substitute answer in which he admitted all the material allegations of fact in the complaint, counsel for respondent entered into a stipulation with counsel for the Commission under date of May 27, 1942, providing that the second paragraph of paragraph 1 of the complaint might be considered to be amended as of the date of issuance of said complaint to read:

"On such orders respondent generally receives from the sellers a commission of 5 percent. When retailers whom this respondent has represented subsequently place orders directly with fur garment manufacturers, the respondent seeks to, and on occasion does, secure commissions from the sellers on such orders."

and the Commission being fully advised in the premises,

Now, therefore, it is ordered, That the amendment stipulated and agreed to between counsel be accepted and approved and the complaint herein be considered as amended accordingly.