

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.

tion 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Isaac S. Dickler, is a commission resident buyer with offices located at 370 Seventh Avenue, New York, N. Y. Said respondent, in the course of his business as a commission resident buyer, acts as buying agent in the purchase of fur garments for and in behalf of approximately seventeen fur garment retailers located in the several States of the United States and in the District of Columbia. The manner of operation of respondent's business is that of receiving from various retail fur stores for whom he acts as agent, requests, orders, or requisitions to purchase fur garments upon general specifications as to size, style, quality and price. When such orders are received by respondent he contacts various fur garment manufacturers and places the order at the most advantageous price from the standpoint of the buyer. Generally the manufacturer ships the fur garments so purchased direct to the retailer-purchaser, although in some instances delivery is arrested to permit inspection of the garments by respondent at respondent's place of business.

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.

New York City is the center of the fur garment industry in the United States, and fur garment retailers located in States of the United States other than the State of New York undergo expenditure in purchasing fur garments in the New York market. Many of such retail buyers maintain in New York City buying offices. Such buying offices are maintained and the personnel compensated by such retail purchasers and not by the fur garment manufacturers. Retailers purchasing through commission buyers are generally competitively engaged with retailers who purchase through buyers who are compensated by the retailers employing them.

PAR. 2. In the course and conduct of his business, respondent places orders for fur garments with manufacturers located in New York City on behalf of retailers located in Washington, D. C., Baltimore, Md., San Francisco, Calif., and elsewhere throughout the United States, pursuant to which fur garments are shipped and caused to be transported by said sellers from New York, N. Y., into and through various States of the United States to their respective customers.

PAR. 3. In the course of the purchasing transactions by the respondent, as set forth herein, sellers have, since June 19, 1936, transmitted,

Findings

paid, and delivered and do transmit, pay and deliver, to said respondent commissions, the same being a certain percentage of the sales price agreed upon between each of such sellers and the respondent on the orders for merchandise placed by the respondent for his principals; and said respondent since June 19, 1936, has received and accepted, and is receiving and accepting, such commissions on purchases of merchandise by retail buyers in whose behalf said respondent has been and is, in fact, acting.

PAR. 4. The foregoing acts and practices are in violation of subsection (c) of Section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C. Title 15, Sec. 13), the Federal Trade Commission on August 10, 1940, issued and subsequently served its complaint in this proceeding upon respondent Isaac S. Dickler, charging him with violation of the provisions of subsection (c) of Section 2 of said Clayton Act, as amended. After the issuance of said complaint and the filing of respondent's answer, the Commission entered its order granting respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. The respondent 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 substitute answer, 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, Isaac S. Dickler, an individual, is a commission resident buyer of fur garments having his office and place of business at 370 Seventh Avenue, New York, N. Y.

PAR. 2. In the course and conduct of his aforesaid business, respondent, acting in behalf of retailers of fur garments located in various States of the United States other than the State of New York, places orders for fur garments with manufacturers of such merchandise located in New York, N. Y. Pursuant to such orders, fur garments

are caused to be transported by said sellers from New York City through and into various States of the United States to the locations of the respective purchasers.

PAR. 3. The center of the fur garment industry in the United States is in New York City and retailers of fur garments located throughout the United States purchase supplies of such merchandise in the New York City market. Respondent's business as a commission resident buyer consists of acting for and in behalf of and as agent for retailers in the purchase of supplies of fur garments from manufacturers thereof in New York City. Respondent has as clients some 17 retailers of fur garments who have their places of business in Washington, D. C., Baltimore, Md., San Francisco, Calif., and elsewhere in the United States. These retailers advise respondent as to the style, quality, and size of fur garments they desire him to purchase for them, and the price they wish to pay. Upon receipt of such requests or orders, respondent calls upon various manufacturers of fur garments in the New York City market, inspects the merchandise they have for sale, and selects for his clients those garments which he considers the most advantageous purchase for them. When orders so placed are filled, the merchandise is shipped by the manufacturer direct to the retail buyer, although in some instances delivery is arrested to permit inspection of the garments by respondent at his place of business. On purchases made as aforesaid, respondent generally receives from the seller a commission of 5 percent. When retailers whom respondent has represented subsequently place orders directly with fur garment manufacturers, the respondent seeks to and on occasion does secure commissions from the sellers.

Many retail dealers maintain buying offices in New York City for the selection and purchase of supplies of merchandise, including fur garments, in the New York City market, and such dealers bear the expense of maintaining and operating buying offices. Retail dealers who purchase through respondent or other commission resident buyers who secure their compensation from the sellers are generally competitively engaged with retail dealers who bear the expense of maintaining and compensating their own buying representatives.

PAR. 4. In the course of the transactions of purchase in commerce as above set forth, respondent since June 19, 1936, while acting as purchasing agent for and in behalf of buyers of such merchandise in the manner described, has received and accepted from the sellers thereof as a brokerage or commission a certain percentage of the sales price agreed upon between each of such sellers and the respondent on orders placed by the respondent for his principals.

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CONCLUSION

From the aforesaid facts and circumstances the Commission concludes that respondent, Isaac S. Dickler, is engaged as agent, buying representative, or other intermediary in the purchase in commerce of fur garments from representative competitive sellers, and has acted in fact for or in behalf of or under the direct or indirect control of the retail dealers for whom such purchases were made. While acting as agent, buying representative, or other intermediary in making purchases as aforesaid, respondent received compensation in the form of commissions or otherwise from competitive sellers from whom purchases of fur garments were made, 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).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, Isaac S. Dickler, which answer admits all of the material allegations of fact set forth in said complaint to be true and waives all other 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 respondent has violated the provisions 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 respondent, Isaac S. Dickler, an individual, his agents, employees, and representatives, directly or through any corporate or other device in or in connection with the purchase of furs, 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 brokerage, commission, 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 respondent's own account, or (b) when such purchases are made as agent or buying representative of the purchaser, or (c) when in making such

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purchases respondent 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 the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Complaint

IN THE MATTER OF
DAVID M. WEISS

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 4240. Complaint, Aug. 17, 1940—Decision, July 8, 1942

Where an individual, engaged in New York City as commission resident buyer of fur garments for some 60 retailers located in Detroit, Mich.; South Bend, Ind.; Memphis, Tenn.; Atlanta, Ga.; and elsewhere in the United States, who advised him generally as to the styles, sizes, and quality of garments desired and the price they wished to pay, and who, in making such purchases through him of sellers competitively engaged in said fur garment center of the United States, were in competition with many retailers who maintained buying offices in said city, or secured the services of expert buyers of furs or "fee" buyers, or sent their own representatives to New York to purchase such garments—

Received and accepted from sellers compensation, amounting to a certain percentage usually of the agreed sales price, on orders placed by him for them, while acting as such retailer buyers' agent, buying representative, or other intermediary:

Held, That such receipt of such compensation 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.

COMPLAINT

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 Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, David M. Weiss, is engaged in business as a commission resident buyer of fur garments, having his principal office and place of business located at 370 Seventh Avenue, New York City, N. Y. The respondent acts as agent for the purchase of garments for and in behalf of approximately sixty retail fur outlets hereinafter called client buyers, located in the several States of the United States.