

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.

The respondent's operation of his business consists in general of receiving from client buyers requests, orders, or requisitions to purchase fur garments. Such requests advise the general specifications as to the type of garment, size, style, quality, and price. Upon receipt of such requests, orders, or requisitions, he calls upon various fur garment manufacturers, and when satisfactory merchandise is located he places an order for the client buyer at the most advantageous price from the client buyer's standpoint. When such orders are filled the merchandise is shipped by the manufacturer direct to the client buyer, although in some instances delivery is arrested to permit inspection of the garments by respondent at the respondent's place of business. On such orders the respondent generally receives from the seller a commission of 5 percent.

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 expenditures in purchasing fur garments in the New York City markets. Many of such retail buyers maintain in New York City buying offices or secure the services of expert buyers of furs known to the trade as "fee" buyers, or they send their own representatives to New York City to purchase such fur garments. Such buying arrangements 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 Detroit, Mich., South Bend, Ind., Memphis, Tenn., and Atlanta, Ga., and elsewhere throughout the United States, pursuant to which fur garments are shipped and caused to be transported by said sellers from New York City, 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, 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

Findings

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 17, 1940, issued and subsequently served its complaint in this proceeding upon respondent, David M. Weiss, charging him with violation of the provisions of subsection (c) of Section 2 of said 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 hearings 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, David M. Weiss, an individual, is a commission resident buyer of fur garments, having his principal office and place of business at 370 Seventh Avenue, New York, N. Y.

PAR. 2. In the course and conduct of his business, respondent, acting in behalf of retailers located in various States of the United States other than the State of New York, places orders for fur garments with manufacturers and wholesalers 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. Retailers of fur garments located throughout the United States purchase supplies of fur garments in the New York

market. Respondent's business as a commission resident buyer consists of acting for and in behalf of retailers of fur garments and as agent for such retailers in the purchase of supplies of fur garments from manufacturers and wholesalers of such garments in New York City. Respondent has as clients some sixty retailers of fur garments, who have their places of business in Detroit, Mich., South Bend, Ind., Memphis, Tenn., Atlanta, Ga., and elsewhere in the United States. These retailers advise respondent of the types of fur garments they wish him to purchase for them, and generally as to the styles, sizes, and quality of garments desired 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 market, inspects the garments 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, the respondent generally receives from the seller a commission of 5 percent of the purchase price.

Retailers of fur garments who purchase supplies of such garments in the New York market utilize various means in making their purchases. Many such buyers maintain buying offices in New York City, or secure the services of expert buyers of furs known to the trade as "fee" buyers, or send their own representatives to New York City to purchase fur garments. Buying arrangements of the kind stated are maintained and the personnel compensated by the retail purchasers and not by the fur garment manufacturers. Retailers who bear the cost of purchasing fur garments by maintaining and compensating buying personnel are in competition with retailers who utilize the services of respondent, who is compensated by the sellers.

PAR. 4. In the course of the transactions of purchase negotiated by respondent or in which he assists, sellers have since June 19, 1936, transmitted, paid, and delivered, and do transmit, pay, and deliver commissions on such transactions to said respondent. These commissions are usually in the form of 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, and the said respondent has received and accepted, and is receiving and accepting, such commissions on purchases of merchandise by retail buyers in whose behalf respondent has been and is in fact acting.

Order

CONCLUSION

The Commission concludes that respondent, David M. Weiss, is engaged in business in commerce as agent, buying representative, or other intermediary, in or in connection with buying fur garments from competitive sellers for retailers of fur garments, and has acted in fact for or in behalf of, or under the direct or indirect control of, such buyers; and, in the course of such commerce, while acting in fact as agent, buying representative, or other intermediary for the buyer in the purchase of fur garments, has received compensation in the form of commissions or otherwise, from the sellers from whom purchases 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 David M. Weiss, which answer admits all of the material allegations of the complaint to be true, waives further hearing as to said facts and all other intervening procedure, and the Commission having made its findings as to the facts and conclusion herein that said respondent, David M. Weiss, has 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 respondent, David M. Weiss, 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

Order

35 F. T. C.

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

JACK HERZOG, MICHAEL HERZOG, GEORGE HERZOG
AND LOUIS HERZOG, TRADING AS JACK HERZOG
AND COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED

Docket 4257. Complaint, Aug. 22, 1940—Decision, July 8, 1942

Where four individuals, engaged in New York City as commission resident buyers of fur garments for some 80 retailers and department stores in the several States, who placed their orders to the amount of \$600,000 to \$800,000 annually with said individuals, together with general specifications as to size, style, quality, and price, and who, in thus making such purchases through said individuals in said fur garment center of the United States, of representative competitive sellers, manufacturers and wholesalers, were themselves in competition with other fur garment retailers and department stores who maintained buying offices, retained the services of fur garment buyers or "fee" buyers, or sent representatives to said city to make fur garment purchases—

Received and accepted from sellers, compensation amounting to a certain percentage, which was usually five, of the agreed sales price on said purchases by said fur garment retailers and department stores whose buying representatives or other intermediaries said individuals in fact were:

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.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, 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. Respondents, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, are individuals, trading under the name Jack Herzog & Co., with their principal office and place of business located at 337 Seventh Avenue, New York, N. Y. Said respondents