

IN THE MATTER OF
GRATER-BODEY COMPANY, ET AL.¹

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

Docket 4804. Complaint, Aug. 6, 1942—Decision, Sept. 6, 1944

Where (1) a corporation engaged in the interstate purchase, milling and sale of "millwork and lumber," and two partners, and a second corporation, similarly engaged, in competition among themselves and with others except insofar as said competition had been lessened or forestalled as below set forth; (2) two individuals who were presidents of aforesaid corporations and instrumental in effecting their said purchases and sales; (3) a general contractor engaged directly and through his two agents in negotiating with and buying from said first corporation and its said president, such "millwork and lumber," including, among other products, paneling, panels, trim, doors, sash, screens, cabinets, steps and stairs and unmilled lumber; and (4) the two agents of the aforesaid contractor;

Following arrangements by the Navy with a ship-building company under which said company was to undertake construction of naval vessels, and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate its shipyards, to be expended under the general supervision of the Navy and subject to its approval, and (2) the company contracted with said general contractor for the reconstruction by him of certain office buildings and shipways on a cost-plus-fixed-fee-basis, with the understanding that in securing materials or services he would obtain competitive offers from as many as practicable, but not less than two—or three where specified—reputable firms and would award a contract to the concern quoting the minimum price; bids to be opened by or in the presence of the Supervisor of Shipbuilding of the Navy, or his representative, and to be subject to his approval before awarding of the subcontract—Cooperated, combined, agreed, and conspired, during a period of some fifteen months or more, to, and did, restrain and suppress competition in the purchase and sale of the aforesaid products; and pursuant to and as a part of the aforesaid understanding, etc.—

- (a) Promoted, established and carried out a practice of maintaining a false appearance of competition between said corporations and partnership and other sellers of millwork and lumber in their submission of price quotations and bids to buyers and prospective buyers;
- (b) Conveyed to such buyers, including official awarding authorities of the United States Government, and others involved in the purchase of said products, the representation that said corporations and firm were rival bidders and competitors, when in fact they were acting collusively in the preparing and submitting of bids; and
- (c) Avoided and prevented competition in the sale and distribution of said products, and prevented the quotation of genuine competitive bids thereon to purchasers; and

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and noncompetitive bids in connection with the Navy's arrangements for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

Where said contractor, on numerous occasions, acting directly or through his aforesaid two agents—

- (d) Cooperated with the president of said first corporation in the preparation and submission to said contractor and his agents and employees, of fictitious bids for the furnishing of said products for his use in rehabilitating said company's ship-yards, and directly or through his said two agents submitted such bids to purchasing officials of said ship-building company and representatives of the Navy Supervisor of Ships, for consideration and approval as genuine competitive price quotations; and

Where said president—

- (e) With the knowledge and cooperation of said contractor and his employees and agents, including the two aforesaid, secured from the offices of said partners and said second corporation, printed stationery bearing said concerns' respective letterheads, and made use thereof in the preparation and submission over the names of said concerns and over the purported but false signatures of officials thereof, of fictitious or sham bids specifying prices which were higher than, and noncompetitive with, those he submitted in each comparable instance as the quotations of his said corporation, concern he was then known to represent; and

Where said contractor, in each of the instances in which such sham bids were thus submitted to him,

- (f) In turn submitted as and for genuine competitive bids, such bids to officials of said shipbuilding company and to representatives of the Navy Supervisor of Ships, who were thereby misled and deceived into considering and approving them as genuine and competitive; and

Where said two partners and the president of said second corporation,—

- (g) Knowingly cooperated with aforesaid president of said first corporation in the submission of such fictitious bids, by furnishing him with stationery bearing letterheads of their respective firms for his use in the preparation of such bids;

With the result that aforesaid first corporation enjoyed awards of numerous contracts to it by said contractor, his employees and agents, with the approval of officials of said shipbuilding company and representatives of the Navy Supervisor of Ships, secured through deception, as aforesaid; and with the effect of depriving buyers and prospective buyers of "millwork and lumber," including contractors and subcontractors with the Government, and the public in general, of the benefit of price competition in commerce between and among said corporations and said firm, and others with whom they normally would be in competition, in the making of bids and price quotations:

Held, That said acts, practices and methods, under the circumstances set forth, were all to the prejudice of the public; had a dangerous tendency to and did actually restrain and eliminate competition in the purchase and sale of said products in commerce; restrained commerce unreasonably therein, and tended so to do; had a dangerous tendency to create a monopoly in the purchase, sale and distribution of products concerned; and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Everette MacIntyre and Mr. V. W. Summers for the Commission.

Mr. Russell J. Brownback, of Norristown, Pa., and *Mr. Myron Jacoby*, of Philadelphia, Pa., for Grater-Bodey Co. and S. W. Roberts.

Byron, Longbottom, Kirby & Pape, of Philadelphia, Pa., for Russell Keely and F. Oliver Keely.

Complaint

39 F. T. C.

Mr. Henry Wessel, Jr., of Philadelphia, Pa., for A. Wilt & Sons Co. and Frank R. Bowers.

Mr. James F. Masterson, of Philadelphia, Pa., for Charles F. Rohleder, Allen McLaine Ward and J. R. Baldrige, Jr.

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 the persons, partnerships and corporations named or included by reference in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint in that respect as follows:

PARAGRAPH 1. Respondent, Grater-Bodey Co., is a Pennsylvania Corporation with its office and principal place of business located at Main and Astor Streets, Norristown, Pa.

Respondent, S. W. Roberts, is an individual, who during the period covered by the activities involved in the charges in this complaint served as president of said respondent, Grater-Bodey Co.

Respondents, Russell Keely and F. Oliver Keely, are individuals, who during the period covered by the activities involved in the charges in this complaint, constituted a partnership, trading under the name and style of S. S. Keely & Sons, with office and principal place of business located at Main Street and Leverington Avenue, Manayunk, Philadelphia, Pa. Said respondents, Russell Keely and F. Oliver Keely, are sometimes hereinafter referred to as respondents, S. S. Keely & Sons.

Respondent, A. Wilt & Sons Company, is a Pennsylvania corporation, with its office and principal place of business located at 711 North Front Street, Philadelphia, Pa.

Respondent, Frank R. Bowers, is an individual, who during the period covered by the activities involved in the charges in this complaint, served as president of said respondent, A. Wilt & Sons Co.

Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint, served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint, served as an employee and agent of respondent, Charles F. Rohleder.

PAR. 2. At all times hereinafter mentioned, respondent, Charles F. Rohleder, directly and through his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., has been engaged in negotiating with and buying from respondents, Grater-Bodey Co., and S. W. Roberts "mill-work and lumber" which was, as a result of such negotiations and pur-

chases, shipped and caused to be shipped from many points located in States other than the State of Pennsylvania across State lines to Norristown, Pa., and subsequently to Philadelphia, Pa.

At all times hereinafter mentioned, respondent, Grater-Bodey Co., has been engaged in Norristown, Pa., in the business of purchasing, milling, and selling "millwork and lumber" and in doing so caused such "millwork and lumber" to be shipped from locations in Florida, Ohio, New York, and various other States to Norristown, Pa., from which it subsequently was shipped to Philadelphia, Pa., Wilmington, Del., Bridgeport, Conn., Front Royal, Va., and numerous other points, in some instances without further milling, and in other instances after milling to varying specifications.

At all times hereinafter mentioned, respondent, S. W. Roberts, as president and agent of respondent, Grater-Bodey Co., has been instrumental in effecting the purchase and sale of "millwork and lumber" by respondent, Grater-Bodey Co., and in doing so caused the same to be shipped from points located in various States other than the State of Pennsylvania to Norristown, Pa., and subsequently from there to Philadelphia, Pa., other locations in Pennsylvania, and to points in other States.

At all times hereinafter mentioned, said respondents, Russell Keely and F. Oliver Keely, partners, trading as S. S. Keeley & Sons, have been engaged at their said place of business in the purchasing, milling, and sale of "millwork and lumber" and in doing so caused such "millwork and lumber" to be shipped from locations in States other than the State of Pennsylvania to themselves in Philadelphia, Pa., and in turn subsequently shipped from that point to other locations in Pennsylvania and other States.

At all times hereinafter mentioned, respondent, A. Wilt & Sons Co., has been engaged in Philadelphia, Pa., in purchasing, milling, and selling "millwork and lumber" and in doing so caused such "millwork and lumber" to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and subsequently shipped to its customers located in Philadelphia, Pa., and at other locations in Pennsylvania and other States.

At all times hereinafter mentioned, respondent, Frank R. Bowers, as president and agent of respondent, A. Wilt & Sons Co., has been instrumental in effecting the purchasing, milling and sale of "millwork and lumber" by respondent, A. Wilt & Sons Co., in Philadelphia, Pa., and causing the same to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and subsequently to customers of A. Wilt & Sons Co. in Philadelphia, Pa., and to other locations in Pennsylvania and other States.

PAR. 3. Respondents, Grater-Bodey Co., S. S. Keely & Sons, and A. Wilt & Sons Co., and others not named herein as respondents, engaged in the purchase, milling, and sale of "millwork and lumber" in the States of Pennsylvania, Delaware, and New Jersey, have been and are in competition between and among themselves and with one or more other purchasers, millers, and sellers of "millwork and lumber" in making or seeking to make sales in "commerce" (as "commerce" is defined in the Federal Trade Commission Act) between and among the various States of the United States, of "millwork and lumber," except in so far as said competition has been hindered, lessened, restricted, or forestalled by the coopera-

tion, concert or common course of action, understanding, confederation, combination, agreement, or conspiracy, or the acts, things, practices, policies, or methods done in pursuance thereto or in furtherance thereof as hereinafter set forth.

PAR. 4. The term "millwork and lumber" as used herein includes lumber in the unmilled state, as well as milled into various products, including, but not limited to, paneling, panels, trim, doors, sash, screens (doors and windows), cabinets, steps, and stairs, including treads, risers, balusters, balustrades and rails.

PAR. 5. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon the said Cramp Shipbuilding Co. contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost plus a fixed fee basis with the understanding that the said Rohleder in securing materials or services would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the material, equipment, or services as required at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the subcontract for materials or services.

In connection with his aforesaid contract with the Cramp Shipbuilding Co., respondent, Charles F. Rohleder, negotiated with and made awards of contracts directly and through agents to respondent Grater-Bodey Co. for the purchase of "millwork and lumber."

PAR. 6. Throughout a period of time beginning on or about the first day of October, 1940, and continuing thereafter until subsequent to January 1, 1942, the respondents as named in the caption hereof have, through understandings together and with each other, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain and suppress competition in the purchase and sale of "millwork and lumber" in "commerce" (as "commerce" is defined in the Federal Trade Commission Act), and have in fact through such cooperation, confederation, combination, agreement, and conspiracy, frustrated, hindered, restrained, and suppressed competition in the purchase and sale of "millwork and lumber" in commerce.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other acts, things, practices, policies and methods, the following:

1. Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among re-

spondents, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and other sellers of "millwork and lumber" in their submission of price quotations and bids to buyers and prospective buyers;

2. Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others involved in the purchase of "millwork and lumber" the representation that said respondents, Grater-Bodey Co., S. S. Keely & Sons, and A. Wilt & Sons Co., were rival bidders and competitors when they in reality were acting collusively between and among themselves in preparing and submitting bids;

3. Avoided and prevented competition in the sale and distribution of "millwork and lumber";

4. Prevented quotation of genuine competitive bids or price quotations on said commodities to purchasers thereof;

5. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondent, Charles F. Rohleder, acting directly or through his agents, respondents, Allen McLaine Ward, and J. R. Baldrige, Jr., cooperated with respondent, S. W. Roberts, in the preparation and submission to said respondent, Charles F. Rohleder, his agents and employees, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., of sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations for the furnishing of "millwork and lumber" for the said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co.'s shipyards, Norris and Richmond Streets, Philadelphia, Pa.; and in turn said respondent, Rohleder, directly or through said respondent's agents, Ward and Baldrige, submitted such sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations to purchasing officials of the Cramp Shipbuilding Co., and representatives of the Supervisor of Ships, United States Navy Department, for consideration and approval as genuine competitive bids and price quotations.

6. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondent, S. W. Roberts, acting in his capacity as president and agent of respondent, Grater-Bodey Co., with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees and agents, including respondents, Allen McLaine Ward and J. R. Baldrige, Jr., secured from the respective offices of respondents, S. S. Keely & Sons and A. Wilt & Sons Co., printed stationery of said respondents bearing their respective letterheads, and used the same in the preparation and submission of sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations over the names of S. S. Keely & Sons and A. Wilt & Sons Co. and over the purported but false signatures of officials of those firms to said respondent, Charles F. Rohleder, and his agents and employees in furtherance of the aforesaid deception, the prices specified therein being different from, higher than, and noncompetitive with, the bid and price quotation submitted in each comparable instance by the said S. W. Roberts as the bid or price quotation of the firm he was then known to be representing, namely, respondent, Grater-Bodey Co. Thereupon in each of the number of instances where said S. W. Roberts thus submitted to Charles F. Rohleder, his agents and employees, different bids on stationery bearing the letterheads of respondents, S. S. Keely & Sons and A. Wilt & Sons Co., such bids were in turn submitted by Charles F. Roh-

leder, his agents and employees, as and for genuine and competitive bids to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, United States Navy, who were, through the appearance of such bids, misled and deceived in considering and approving them as genuine and competitive.

7. Respondents, Russell Keely and F. Oliver Keely, acting in their capacity as partners in the firm of S. S. Keely & Sons, and respondent, Frank R. Bowers, acting in his capacity as president of respondent, A. Wilt & Sons Co., knowingly cooperated with respondent, S. W. Roberts in his submission of sham, false, fictitious, fraudulent, and noncompetitive bids as aforesaid in furnishing him with stationery bearing letterheads of their respective firms for his use in preparation of said bids.

8. Respondent, Grater-Bodey Co., as a result of the submission of aforesaid sham, false, fictitious, fraudulent, and noncompetitive bids by its president and agent, respondent, S. W. Roberts, as aforesaid, enjoyed awards of numerous contracts to it by said Charles F. Rohleder, his employees and agents, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy, secured through deception as aforesaid.

PAR. 7. The aforesaid understandings, agreements, combination, and conspiracy, and the doing and performing of the acts and things and the use of the methods set forth in the preceding paragraphs hereof tend to have and had the effect of depriving buyers and prospective buyers of "millwork and lumber," including contractors and subcontractors, of the United States Government, and the public in general, of the benefit of competition in commerce between and among respondents, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and others with whom they normally would be in competition in making bids and price quotations.

PAR. 8. The acts, practices, methods, understandings, agreements, combination and conspiracy of the respondents as hereinbefore alleged are all to the prejudice of the public, have a dangerous tendency to, and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of "millwork and lumber" in commerce within the intent and meaning of the Federal Trade Commission Act, and have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products, have a dangerous tendency to create a monopoly in the purchase, sale, and distribution of such products, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 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 6, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After the issuance of the said complaint, certain of the respondents filed answers and the

other respondents filed substitute answers, in which answers and substitute answers the several respondents admitted all of the material allegations of fact set forth in the said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the said answers and substitute answers of the respondents; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, Grater-Bodey Co., is a corporation, organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at Main and Astor Streets, Norristown, Pa.

(b) Respondent, S. W. Roberts, is an individual, who during the period covered by the activities hereinafter specified, served as president of said Grater-Bodey Co.

(c) Respondents, Russell Keely and F. Oliver Keely, are individuals, who during the period covered by the activities hereinafter specified, constituted a partnership trading under the name and style of S. S. Keely & Sons, with their office and principal place of business located at Main Street and Leverington Avenue, Manayunk, Philadelphia, Pa. Said Russell Keely and F. Oliver Keely are sometimes hereinafter referred to as S. S. Keely & Sons.

(d) Respondent, A. Wilt & Sons Co., is a corporation, organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at 711 North Front Street, Philadelphia, Pa.

(e) Respondent, Frank R. Bowers, is an individual, who during the period covered by the activities hereinafter specified, served as president of said A. Wilt & Sons Co.

(f) Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with his office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

(g) Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the period covered by the activities hereinafter specified, served as an employee and agent of respondent, Charles F. Rohleder.

(h) Respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual who, during the period covered by the activities hereinafter specified, served as an employee and agent of respondent, Charles F. Rohleder.

PAR. 2. (a) At all times hereinafter mentioned, Charles F. Rohleder, directly and through his agents, Allen McLaine Ward and J. R. Baldrige, Jr., has been engaged in negotiating with and buying from the Grater-Bodey Co. and S. W. Roberts "millwork and lumber" which was, as a result of such negotiations and purchases, shipped and caused to be shipped from many points located in States other than the State of Pennsylvania

across State lines to Norristown, Pa., and subsequently to Philadelphia, Pa.

(b) At all times hereinafter mentioned, the Grater-Bodey Co., has been engaged in Norristown, Pa., in the purchase, milling, and sale of "millwork and lumber" and in so doing caused such "millwork and lumber" to be shipped from locations in Florida, Ohio, New York, and various other States to Norristown, Pa., from which it subsequently was shipped to Philadelphia, Pa.; Wilmington, Del.; Bridgeport, Conn.; Front Royal, Va.; and numerous other points, in some instances without further milling and in other instances after milling to varying specifications.

(c) At all times hereinafter mentioned, S. W. Roberts, as president and agent of the Grater-Bodey Co., has been instrumental in effecting the purchase and sale of "millwork and lumber" by said Grater-Bodey Co., and in so doing caused the same to be shipped from points located in various States other than the State of Pennsylvania to Norristown, Pa., and subsequently from there to Philadelphia, Pa., other locations in Pennsylvania, and to points in other States.

(d) At all times hereinafter mentioned said Russell Keely and F. Oliver Keely, partner, trading as S. S. Keely & Sons, have been engaged at their said place of business in the purchase, milling, and sale of "millwork and lumber" and in so doing caused such "millwork and lumber" to be shipped from locations in States other than the State of Pennsylvania to themselves in Philadelphia, Pa., and, in turn, subsequently shipped from that point to other locations in Pennsylvania and other States.

(e) At all times hereinafter mentioned, A. Wilt & Sons Co., has been engaged in Philadelphia, Pa., in the purchase, milling, and sale of "millwork and lumber" and in so doing caused such "millwork and lumber" to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and subsequently shipped to its customers located in Philadelphia, Pa., and at other locations in Pennsylvania and other States.

(f) At all times hereinafter mentioned, Frank R. Bowers, as president and agent of A. Wilt & Sons Co., has been instrumental in effecting the purchase, milling, and sale of "millwork and lumber" by A. Wilt & Sons Co. in Philadelphia, Pa., and causing the same to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and subsequently to customers of A. Wilt & Sons Co. in Philadelphia, Pa., and to other locations in Pennsylvania and other States.

PAR. 3. Respondents, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and others not named herein as respondents engaged in the purchase, milling, and sale of "millwork and lumber" in the States of Pennsylvania, Delaware, and New Jersey, have been, and are, in competition between and among themselves and with one or more other purchasers, millers, and sellers of "millwork and lumber" in making or seeking to make sales of "millwork and lumber" in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the cooperation, concert or common course of action, understanding, confederation, combination, agreement, or conspiracy, or the acts and things done and the practices, policies, and methods followed pursuant thereto or in furtherance thereof, as hereinafter set forth.

PAR. 4. The term "millwork and lumber" as used herein includes lumber in the unmilled state as well as lumber milled into various products, including but not limited to paneling, panels, trim, doors, sash, screens (door and window), cabinets, steps and stairs, including treads, risers, balusters, balustrades, and rails.

PAR. 5. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with the Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities of said shipyards, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co., contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder, in securing materials or services, would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the material, equipment, or services as required, at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by or in the presence of the Supervisor of Shipbuilding, U. S. Navy, or his representative, and were to be subject to his approval before award of the subcontract for materials or services. In connection with his contract with the Cramp Shipbuilding Co., respondent, Charles F. Rohleder, negotiated with and made awards of contracts, directly and through agents, to respondent, Grater-Bodey Co. for the purchase of "millwork and lumber."

PAR. 6. Throughout a period of time beginning on or about the first day of October 1940 and continuing thereafter until subsequent to January 1, 1942, the respondents herein have, through understandings together and with each other, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain, and suppress competition in the purchase and sale of "millwork and lumber" in commerce, as "commerce" is defined in the Federal Trade Commission Act, and have in fact, through such cooperation, confederation, combination, agreement, and conspiracy, frustrated, hindered, restrained, and suppressed competition in the purchase and sale of "millwork and lumber" in commerce. Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other acts, things, practices, policies, and methods, the following:

(a) Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among respondents, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and other sellers of "millwork and lumber" in their submission of price quotations and bids to buyers and prospective buyers;

(b) Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others in-

volved in the purchase of "millwork and lumber," the representation that said respondents, Grater-Bodey Co., S. S. Keely & Sons, and A. Wilt & Sons Co., were rival bidders and competitors, when in reality they were acting collusively between and among themselves in preparing and submitting bids;

(c) Avoided and prevented competition in the sale and distribution of "millwork and lumber";

(d) Prevented the quotation of genuine competitive bids or price quotations on said commodities to purchasers thereof;

(e) On numerous occasions respondent, Charles F. Rohleder, acting directly or through his agents, respondents, Allen McLaine Ward and J. R. Baldridge, Jr., cooperated with respondent, S. W. Roberts, in the preparation and submission to the said Charles F. Rohleder, his agents and employees, Allen McLaine Ward and J. R. Baldridge, Jr., of sham, false, fictitious, fraudulent, and non-competitive bids and price quotations for the furnishing of "millwork and lumber" for the said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co.'s shipyards in Philadelphia; and, in turn, the said Rohleder, directly or through his agents, Ward and Baldridge, submitted such sham, false, fictitious, fraudulent, and non-competitive bids and price quotations to purchasing officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy Department, for consideration and approval as genuine competitive bids and price quotations.

(f) On numerous occasions, S. W. Roberts, acting in his capacity as president and agent of Grater-Bodey Co., with the knowledge and cooperation of Charles F. Rohleder, his employees and agents, including Allen McLaine Ward and J. R. Baldridge, Jr., secured from the respective offices of S. S. Keely & Sons and A. Wilt & Sons Co. printed stationery bearing their respective letterheads, and used the same in the preparation of sham, false, fictitious, fraudulent, and non-competitive bids and price quotations over the names of S. S. Keely & Sons and A. Wilt & Sons Co. and over the purported but false signatures of officials of those firms, which he submitted to the said Charles F. Rohleder and his agents and employees in furtherance of the aforesaid deception. The prices specified in such bids and price quotations were different from, higher than, and non-competitive with, the bid and price quotation submitted in each comparable instance by the said S. W. Roberts as the bid or price quotation of the firm he was then known to be representing; namely, the Grater-Bodey Co. Thereupon, in each of the number of instances where said S. W. Roberts thus submitted to Charles F. Rohleder, his agents and employees, different bids on stationery bearing the letterheads of respondents, S. S. Keely & Sons and A. Wilt & Sons Co., such bids were in turn submitted, as and for genuine competitive bids, by Charles F. Rohleder, his agents and employees, to officials of the Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, United States Navy, who were, through the appearance of such bids, misled and deceived into considering and approving them as genuine and competitive.

(g) Respondents, Russell Keely and F. Oliver Keely, acting in their capacity as partners in the firm of S. S. Keely & Sons, and respondent, Frank R. Bowers, acting in his capacity as president of respondent, A. Wilt & Sons Co., knowingly cooperated with respondent, S. W. Roberts, in his

submission of sham, false, fictitious, fraudulent, and non-competitive bids, as aforesaid, by furnishing him with stationery bearing letterheads of their respective firms for his use in the preparation of said bids.

(h) Respondent, Grater-Bodey Co., as a result of the submission of the aforesaid sham, false, fictitious, fraudulent, and non-competitive bids by its president and agent, respondent, S. W. Roberts, as aforesaid, enjoyed awards of numerous contracts to it by said Charles F. Rohleder, his employees and agents, with the approval of officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy, secured through deception as aforesaid.

PAR. 7. The aforesaid understandings, agreements, combination, and conspiracy, and the doing and performing of the acts and things and the use of the methods set forth in the preceding paragraphs hereof tend to have, and have had, the effect of depriving buyers and prospective buyers of "millwork and lumber," including contractors and subcontractors with the United States Government, and the public in general, of the benefit of competition in commerce between and among respondents, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and others with whom they normally would be in competition in making bids and price quotations.

CONCLUSION

The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents as hereinbefore found are all to the prejudice of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of "millwork and lumber" in commerce within the intent and meaning of the Federal Trade Commission Act; and have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create a monopoly in the purchase, sale, and distribution of such products; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 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 and the answers of certain of the respondents and the substitute answers of other respondents, in which answers and substitute answers the several respondents admit all of the material allegations set forth in said complaint and waive all intervening procedure and further hearings as to the facts, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That respondents, Grater-Bodey Co., a corporation; S. W. Roberts, individually, and as president of Grater-Bodey Co.; Russell

Keely and F. Oliver Keely, individually, and as partners, trading as S. S. Keely & Sons; A. Wilt & Sons Co., a corporation; Frank R. Bowers, individually, and as president of A. Wilt & Sons Co.; Charles F. Rohleder; Allen McLaine Ward; and J. R. Baldridge, Jr., their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of "millwork and lumber" in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between and among any two or more of the said respondents or between any one or more of the said respondents and any other person, partnership, or corporation not a party hereto, to do or perform any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers, or to any official or awarding authority of any Federal agency, or to any one contracting with such agency, or to any one acting for or on behalf of such agency or for or on behalf of any contractor with such agency, any representation that any two or more apparent sellers are rival bidders or competitors, when in reality they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or non-competitive bids or price quotations to any buyer or prospective buyer, or to any Federal agency or any one acting for or on its behalf, or for or on behalf of any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or by any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among any of the respondents or other sellers in the submission of price quotations or bids to buyers or prospective buyers.

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder, or when in fact the bid is not a bona fide bid.

It is further ordered, That the respondents shall, within 60 days after the 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
GLADYS GOLDBERG, TRADING AS WAKITA HERB
COMPANY

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

Docket 5091. Complaint, Dec. 1, 1943—Decision, Sept. 7, 1944

Where an individual engaged in interstate sale and distribution of her "Indian Herbal Roots" medicinal preparations; through advertisements in newspapers, circulars and other advertising media, directly and by implication—

- (a) Represented that nervousness, poor appetite, insomnia, back pains, dizziness, headaches, and gassy, sick and burning stomach are usually caused by or are symptomatic of faulty elimination, and that her said preparation as a competent and effective treatment for such conditions; that it would restore pep, energy and vitality, would purge the body of accumulated poisons, and was not habit forming;

The facts being that, while poor appetite, back pains, headaches and a gassy stomach may accompany faulty elimination or constipation, in which event the therapeutic value of said preparation would be limited to such temporary relief as might be provided by an evacuation of the bowels, in those more frequent cases in which the symptoms referred to are brought about by other conditions, use of said preparation would be of no therapeutic value whatever; frequent or continued use of the preparation might result in dependence on laxatives; and the other claims made by her, as above set forth, were false and misleading;

- (b) Falsely represented through the use of the trade name "Indian Herb Roots," together with the depiction of the head of an American Indian in her advertising, that her said product was composed entirely of roots and was used by the American Indians;

The facts being, it was not entirely thus composed and its several ingredients were not used by the American Indians; and

- (c) Failed to reveal facts material in the light of her said representations or with respect to the consequences which might result from the use of said preparation under usual and prescribed conditions, in that it was an irritant laxative and potentially dangerous when taken by one suffering from abdominal pains, stomach ache, or other symptoms of appendicitis;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and that her said preparation might be taken under all conditions without harmful effects, and into the purchase of substantial quantities thereof:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. William L. Taggart for the Commission.

Sobell & Landesman, of New York City, for respondent.