

IN THE MATTER OF  
FRAERING BROKERAGE COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUB-SEC. (C) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

*Docket 4823. Complaint, Aug. 26, 1942—Decision, Dec. 5, 1944*

Where a corporation engaged principally as a jobber in buying and reselling in its own name and for its own account various canned foods, dried fruit, canned fish and other miscellaneous merchandise, and, to a minor extent, in acting as a broker of such products—

Received and accepted, in connection with the interstate purchase of said various products, in its own behalf and for its own account for resale, brokerage fees or allowances and discounts in lieu thereof in substantial amounts from numerous sellers, in many ways, including (1) purchases at prices lower than those at which commodities of like grade and quality were sold by the sellers to other purchasers, (2) the obtaining of the commodities at prices lower than those at which they were sold to other purchasers, by an amount which reflected all, or a part, of the brokerage fees currently being paid by such sellers to brokers for the sale of such commodities in behalf of such sellers, (3) the making of deductions in lieu of brokerage from the invoices of certain sellers, on payment of such invoices, and (4) the receiving from certain sellers of monthly rebate checks representing their customary brokerage fees:

*Held*, That said receipt and acceptance by it of brokerage fees, or allowances and discounts in lieu thereof, under the circumstances above set forth, was in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

*Mr. Edward S. Ragsdale* for the Commission.

*Mr. Robert A. Ainsworth, Jr.*, of New Orleans, La., and *Mr. William P. Smith*, of Washington, D. C., 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 (U.S.C. Title 15, Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Fraering Brokerage Co., Inc., is a corporation, organized and existing under the laws of the State of Louisiana, with its principal office and place of business located at 423 South Front Street, New Orleans, La. Respondent was organized, as stated in its corporate charter, for the purpose of buying and selling merchandise for its own account, as well as to buy and sell merchandise on a brokerage or commission basis for the accounts of others. Respondent operates two branch

offices and warehouses, one of which is located at Alexandria, La., and the other at Jackson, Miss.

PAR. 2. Respondent is now, and for many years last past, has been engaged in business, principally as a jobber, buying in its own name for resale various canned foods, dried fruit, canned fish and other miscellaneous merchandise, and reselling such products. To a minor extent respondent acts as a broker of canned foods, dried fruits, canned fish and other miscellaneous merchandise.

PAR. 3. Respondent in the course and conduct of its said business as a jobber purchases a substantial portion of its requirements of canned foods, dried fruits, canned fish and other miscellaneous merchandise from sellers located in States other than the States in which respondent is located. Pursuant to respondent's purchase orders and instructions such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent or to respondent's customers.

PAR. 4. Respondent since June 19, 1936, in connection with the purchase of its requirements of canned foods, dried fruits, canned fish and other miscellaneous merchandise in interstate commerce in its own behalf and for its own account for resale from numerous sellers located in States other than the State where respondent is located, has been and is now receiving and accepting from numerous sellers of said canned foods, dried fruits, canned fish and other miscellaneous merchandise, brokerage fees or allowances and discounts, in lieu of brokerage in substantial amounts.

The respondent receives such brokerage fees, discounts and allowances in lieu thereof in many ways, including the following four specified ways, and others:

1. By purchasing canned foods, dried fruits, canned fish and other miscellaneous merchandise from sellers at prices lower than the same sellers sell such commodities and commodities of like grade and quality to other purchasers.

2. By various methods obtaining such commodities at prices that are lower than the prices at which such commodities and commodities of like grade and quality are sold by such sellers to other purchasers, by an amount which reflects all, or a part, of the brokerage fees currently being paid by such sellers to brokers for the selling of such commodities in behalf of such sellers.

3. By making deductions in lieu of brokerage from the invoices of certain sellers when paying such invoices.

4. By receiving from certain sellers monthly rebate checks representing the customary brokerage fees of such sellers.

PAR. 5. A representative but incomplete list of sellers who since June 19, 1936, have sold and delivered canned foods, dried fruits, canned fish and other miscellaneous merchandise to respondent for its own account, and who have allowed, granted, and paid, directly or indirectly, as hereinabove set out, or otherwise, brokerage fees or allowances or discounts in lieu thereof on respondent's purchases for its own account from said sellers is as follows:

C. C. Lang & Son, Inc., Baltimore, Md.  
Richmond-Chase Co., San Jose, Calif.  
The Hills Bros. Co. New York City.

Taormina Corporation, Donna, Tex.  
Bonner Packing Co., Fresno, Calif.  
C. H. Musselman Co., Biglerville, Pa.  
Dillon Candy Co., Inc., Jacksonville, Fla.

PAR. 6. The receipt and acceptance by the respondent of brokerage fees or allowances and discounts in lieu of brokerage by respondent as set forth above is 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 the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on August 26, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Fraering Brokerage Company, Inc., a corporation, charging it with the violation of subsection (c) of Section 2 of said Clayton Act, as amended. After the filing by respondent of its answer to the complaint, the Commission by order entered herein granted respondent's request for permission to withdraw such original answer and to substitute therefor an amended answer admitting all of the material allegations of fact set forth in the complaint but denying that the acts of respondent set forth in the complaint constitute a violation of the statute in question. The amended answer also waived all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission upon the complaint and amended answer, and the Commission, having duly considered the matter 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. The respondent, Fraering Brokerage Co., Inc., is a corporation, organized and existing under the laws of the State of Louisiana, with its principal office and place of business located at 423 South Front Street, New Orleans, La. Respondent was organized, as stated in its corporate charter, for the purpose of buying and selling merchandise for its own account, as well as to buy and sell merchandise on a brokerage or commission basis for the accounts of others. Respondent operates two branch offices and warehouses, one of which is located at Alexandria, La., and the other at Jackson, Miss.

PAR. 2. Respondent is now and for many years last past has been engaged in business principally as a jobber, buying in its own name and for its own account various canned foods, dried fruit, canned fish and other miscellaneous merchandise, and reselling such products. To a minor ex-

tent respondent acts as a broker of canned foods, dried fruits, canned fish and other miscellaneous merchandise.

PAR. 3. Respondent in the course and conduct of its business as a jobber purchases a substantial portion of its requirements of canned foods, dried fruits, canned fish and other miscellaneous merchandise from sellers located in States of the United States other than those in which respondent is located. Pursuant to respondent's purchase orders and instructions, such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent or to respondent's customers.

PAR. 4. Respondent since June 19, 1936, in connection with the purchase, in interstate commerce, of canned foods, dried fruits, canned fish and other miscellaneous merchandise in its own behalf and for its own account, for resale, has been and is now receiving and accepting brokerage fees, or allowances and discounts in lieu thereof, in substantial amounts from numerous sellers of such commodities.

The respondent receives such brokerage fees, or discounts and allowances in lieu thereof, in many ways, including the following:

1. By purchasing canned foods, dried fruits, canned fish and other miscellaneous merchandise from sellers at prices lower than those at which such commodities and commodities of like grade and quality are sold by such sellers to other purchasers.

2. By various methods obtaining such commodities at prices lower than those at which such commodities and commodities of like grade and quality are sold by such sellers to other purchasers, by an amount which reflects all, or a part, of the brokerage fees currently being paid by such sellers to brokers for the sale of such commodities in behalf of such sellers.

3. By making deductions in lieu of brokerage from the invoices of certain sellers when paying such invoices.

4. By receiving from certain sellers monthly rebate checks representing the customary brokerage fees of such sellers.

#### CONCLUSION

The receipt and acceptance by the respondent of brokerage fees, or allowances and discounts in lieu thereof, as set forth above, is in violation of subsection (c) of Section 2 of the 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 amended answer of respondent admitting all of the material allegations of fact in the complaint and waiving all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of subsection (c) of Section 2 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved

Order

39 F. T. C.

October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13).

*It is ordered*, That the respondent, Fraering Brokerage Co., Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for respondent's own account.

*It is further ordered*, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

## Complaint

## IN THE MATTER OF

WM. ROY GLOVER AND RAY M. WILSON TRADING  
AS GLOVER & WILSON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUB-SEC. (C) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

*Docket 4835. Complaint, Sept. 16, 1942—Decision, Dec. 5, 1944*

Where two individuals engaged in Arkansas under their trade name as broker in the sale of food products, particularly canned fruits and vegetables, and also in buying and selling such commodities for their own account—

Received and accepted from numerous sellers in other states, brokerage-fees, or allowances or discounts in lieu thereof, on many purchases of food products for their own account, through such typical practices as receiving from a California seller of sardines a brokerage fee amounting to approximately 3% off the invoice price through deduction of said amount therefrom on making payment, receiving from a California seller of dried fruit a brokerage fee of about 5%, and brokerage of about 3½% upon purchases of canned fish from a Washington seller, and from a California seller of canned fish a 5% allowance in lieu of brokerage, which they deducted from the invoice price on making payment:

*Held*, That such acts and practices, under the circumstances set forth, were in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

*Mr. Edward S. Ragsdale* for the Commission.

*Mr. E. L. Haney, Jr.*, of Little Rock, Ark., and *Mr. William P. Smith*, of Washington, D. C., for respondents.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the respondents, 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 (U.S.C. Title 15, Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents, Roy Glover and Ray Wilson, are individuals, trading and doing business as Glover & Wilson with their principal office and place of business located at No. 1 Commercial Warehouse Building, Little Rock, Ark.

PAR. 2. Respondents are now engaged in the business of acting as a broker in the sale of food products, particularly canned fruits and vegetables.

Respondents have also been engaged in the business of buying and selling, for their own account, food products, particularly canned fruits and vegetables. The purchases which respondents have been making for their own account have been made ordinarily in the name of Glover & Wilson.