

Complaint

42 F. T. C.

IN THE MATTER OF

JIM S. PORTER, TRADING AS J. T. JARRELL 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 BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4547. Complaint, Sept. 16, 1942¹—Decision, Mar. 25, 1946

Where an individual engaged, (1) as a broker in the sale of food products, particularly canned fish, fruits, and vegetables, and, (2) in the interstate purchase and sale of such products for his own account—

Received and accepted from sellers, brokerage fees or allowances, or discounts in lieu thereof, on many of said purchases for his own account by purchases from sellers at prices lower than those accorded by the sellers to others; by obtaining such commodities at lower prices which reflected all or part of the brokerage fees currently paid by the sellers to brokers for the sale of such commodities in sellers' behalf; by making deductions in lieu of brokerage from the invoices of certain sellers; and by receiving from certain sellers rebate checks representing the customary brokerage fees of the latter:

Held, That such receipt and acceptance by said individual of brokerage fees or commissions, or allowances and discounts in lieu thereof, upon purchases of food products for his own account, under the circumstances set forth, was violative of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Owens, Ehrman & McHaney, of Little Rock, Ark., and *Mr. William F. Smith*, of Washington, D. C., for respondent.

SUPPLEMENTAL COMPLAINT

The Federal Trade Commission, having reason to believe that the 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 a supplemental complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Jim S. Porter is an individual trading and doing business as the J. T. Jarrell Co. with his principal office and place of business located at No. 7 Commercial Warehouse Building, Little Rock, Ark.

J. T. Jarrell Co., subsequent to the issuance of the original complaint herein, was a corporation organized and existing under and

¹ Supplemental.

by virtue of the laws of the State of Arkansas with its principal office and place of business located at No. 7 Commercial Warehouse Building, Little Rock, Ark.

On July 31, 1941, J. T. Jarrell, as a corporation, was dissolved and its vice president and principal stockholder, Jim S. Porter, continued to operate the business of J. T. Jarrell Co. in the same manner and form as when J. T. Jarrell Co. was a corporation.

PAR. 2. Respondent, Jim S. Porter, trading as the J. T. Jarrell Co., is now engaged in the business of acting as a broker in the sale of food products, particularly canned fish, fruits, and vegetables.

Respondent is also engaged in the business of buying and selling, for his own account, food products, particularly canned fish, fruits, and vegetables. The purchases which respondent has been making for his own account have been made in his own name, trading as the J. T. Jarrell Co.

Respondent causes the products which he purchases for his own account to be shipped and transported to him from the various places of business of those sellers from whom respondent purchases said products, many of such sellers being located and doing business in States other than the State of Arkansas.

PAR. 3. In the course and conduct of his business of buying food products for his own account in commerce, as aforesaid, the respondent has been and is now receiving and accepting from various sellers brokerage fees or allowances or discounts in lieu thereof on many of said purchases for his own account. In so doing, respondent, Jim S. Porter, trading as J. T. Jarrell Co., has continued practices which were formerly employed by the J. T. Jarrell Co., a corporation, as alleged in the original complaint herein, and subsequently dissolved.

The respondent receives such brokerage fees, discounts and allowances in lieu thereof in various ways, among which are the following four specified ways:

1. By purchasing canned foodstuffs, dried fruits, canned fish, and other miscellaneous merchandise from sellers at prices lower than the same sellers sell such 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 of like grade and quality are sold by such sellers to other purchasers by an amount which reflects all or part of the brokerage fees currently paid by said 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 rebate checks representing the customary brokerage fees of such sellers.

As illustrative of the practices pursued by the respondent in receiving and accepting allowances and discounts in lieu of brokerage upon his own purchases of foodstuffs are the following:

1. Respondent purchases salmon for his own account from Griffith-Durney Co. of Seattle, Wash. On such purchases he receives and accepts an allowance of 3 percent off the invoice price. The 3 percent allowance granted to the respondent by Griffith-Durney Co. is paid in the form of a check within a 30-day period after the shipment of the commodity.

2. The respondent purchases dried fruits from Guggenheime & Co. of San Francisco, Calif., for his own account and receives from this seller an allowance or discount in lieu of brokerage in the amount of 2½ percent which amount is deducted by the respondent from the invoice price when remitting for dried fruits purchased from Guggenheimer & Co. for his own account.

3. The respondent purchases canned fish from Fred B. Neuhoﬀ Co. of Los Angeles, Calif., on a net price basis, which price basis reflects an allowance or discount in lieu of brokerage.

4. The respondent purchases its requirements of beans from the Midwest Bean Co. of Denver, Colo., on a net price basis, which price basis reflects an allowance or discount in lieu of brokerage.

PAR. 4. The foregoing acts of the respondent constitute a violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936.

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 September 16, 1942, issued, and thereafter served, its complaint in this proceeding upon the respondent, Jim S. Porter, an individual trading as J. T. Jarrell Co., charging him with the violation of subsection (c) of section 2 of said Clayton Act as amended. Subsequently, the respondent filed an answer admitting all of the material allegations of fact set forth in the complaint but denying that the acts and prac-

tices described in the complaint constitute a violation of said act, as amended. In his answer respondent waived all intervening procedure, including hearings as to the facts, the trial examiner's report, the filing of briefs, and oral argument. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and 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, Jim S. Porter, is an individual trading and doing business as J. T. Jarrell Co., with his principal office and place of business located at 7 Commercial Warehouse Building, Little Rock, Ark. Respondent is engaged in the business of acting as a broker in the sale of food products, particularly canned fish, fruits, and vegetables. Respondent is also engaged in the business of buying and selling such food products for his own account.

PAR. 2. Respondent causes the products which he purchases for his own account to be shipped and transported to him from the various places of business of sellers of such products, many of which sellers have their places of business in States of the United States other than the State of Arkansas.

PAR. 3. In the course and conduct of his business of buying food products for his own account in commerce, as aforesaid, the respondent has been and is now receiving and accepting from various sellers brokerage fees or allowances or discounts in lieu thereof on many of said purchases. The respondent receives such brokerage fees or discounts and allowances in lieu thereof in various ways, among which are the following:

1. By purchasing canned foodstuffs, dried fruits, canned fish, and other miscellaneous merchandise from sellers at prices lower than the same sellers sell such 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 of like grade and quality are sold by such sellers to other purchasers by an amount which reflects all or part of the brokerage fees currently paid by said 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 rebate checks representing the customary brokerage fees of such sellers.

As illustrative of the practices pursued by the respondent in receiving and accepting allowances and discounts in lieu of brokerage upon his own purchases of foodstuffs are the following:

1. Respondent purchases salmon for his own account from a seller in Seattle, Wash. On such purchases he receives and accepts an allowance of 3 percent off the invoice price. The 3 percent allowance granted to the respondent by such seller is paid in the form of a check within a 30-day period after the shipment of the commodity.

2. Respondent purchases dried fruits from a seller in San Francisco, Calif., for his own account and receives from this seller an allowance or discount in lieu of brokerage in the amount of 2½ percent, which amount is deducted by the respondent from the invoice price when remitting for such purchases.

3. The respondent purchases canned fish from a seller in Los Angeles, Calif., on a net price basis, which price basis reflects an allowance or discount in lieu of brokerage.

4. The respondent purchases beans from a seller in Denver, Colo., on a net price basis, which price basis reflects an allowance or discount in lieu of brokerage.

CONCLUSION

The receipt and acceptance by respondent of brokerage fees or commissions, or allowances and discounts in lieu thereof, upon purchases of food products for his own account, as herein found, is violative of subsection (c) of section 2 of the aforesaid Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all of the material allegations of fact set forth in the complaint and waives all intervening procedure, 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 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 respondent, Jim S. Porter, individually and trading as J. T. Jarrell Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller anything of value as a commission or brokerage, or any 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 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

42 F. T. C.

IN THE MATTER OF

GUS B. SHELTON, TRADING AS G. B. SHELTON BROKER-
AGE COMPANY, AND THE AMERICAN AGRICULTURAL
CHEMICAL 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 BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4585. Complaint, Sept. 8, 1941—Decision, Mar. 25, 1946

Where an individual engaged in the wholesale grocery business, buying and selling for his own account groceries, sugar, flour, feeds, and crystal phosphate, and also engaged in acting as broker in the sale of sugar and crystal phosphate—
Received and accepted from a corporation, engaged in the interstate sale and distribution of latter, a 5-percent cash deduction and price allowances of 50 to 75 cents per hundredweight of crystal phosphate in lieu of brokerage, upon such purchases for his own account; and

Where said corporation, engaged as aforesaid—

Made and granted to said individual said deductions and allowances in lieu of brokerage upon such purchases:

Held, That the receiving and accepting of such deductions and price allowances by said individual, and the paying and granting thereof by said corporation, constituted violations of the provisions of subsection (c) of section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Fowler & Berry, of Danville, Va., for Gus B. Shelton.

Sullivan & Cromwell, of New York City, for American Agricultural Chemical Co.

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 (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 Gus B. Shelton is an individual doing business under the name and style of G. B. Shelton Brokerage Co., a sole proprietorship, with his principal office and place of business located at 220 Lynn Street, Danville, Va. This respondent is engaged in the wholesale grocery business, buying and selling for his own account groceries, sugar, flour, feeds, and crystal phosphate, and he is also engaged in the business of, and acting as, broker in the sale of sugar and crystal phosphate. Respondent buys said commodities in the