

Complaint

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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

various States of the United States, causing said commodities to be shipped and transported from sellers located in States of the United States other than the State of Virginia to his place of business in the State of Virginia.

PAR. 2. Respondent the American Agricultural Chemical Co. is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 50 Church Street, New York, N. Y. This respondent has been and is engaged in the business of selling and distributing crystal phosphate in commerce between and among the various States of the United States, causing said commodity to be shipped and transported from places of business in the States of New York and North Carolina to purchasers thereof located in the various States of the United States.

PAR. 3. In the course and conduct of his business as aforesaid since June 19, 1936, respondent Gus B. Shelton, trading as G. B. Shelton Brokerage Co., has been and is making purchases of crystal phosphate in commerce from respondent the American Agricultural Chemical Co., for his own account, and in the course of said purchases, respondent Gus B. Shelton, trading as G. B. Shelton Brokerage Co., has been and is now receiving and accepting from respondent the American Agricultural Chemical Co., and the American Agricultural Chemical Co. has been and now is making and granting to respondent Gus B. Shelton, trading as G. B. Shelton Brokerage Co., a 5-percent cash deduction, and price allowances of 50 to 75 cents per hundredweight of crystal phosphate, in lieu of brokerage upon said purchases in commerce.

PAR. 4. The payment and granting of cash deductions of 5 percent and price allowances of 50 to 75 cents per hundredweight of crystal phosphate in lieu of brokerage by respondent the American Agricultural Chemical Co. upon sales of chemical phosphate by it to respondent Gus B. Shelton, trading as G. B. Shelton Brokerage Co., and the receipt and acceptance by respondent Gus B. Shelton, trading as G. B. Shelton Brokerage Co., of a 5-percent cash deduction and price allowances of 50 to 75 cents per hundredweight of crystal phosphate, upon his own purchases in the manner and form hereinabove set forth, is in violation of the provisions of subsection (c) of section 2 of the act described in the preamble hereof.

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),

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as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13), the Federal Trade Commission on September 8, 1941, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violations of the provisions of subsection (c) of section 2 of said act, as amended. After the issuance of said complaint and the filing of respondents' answers, the Commission, by orders entered herein, granted respondents' requests for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving 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 substitute answers, 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 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 acts as broker in the sale of sugar and crystal phosphate. Respondent buys said commodities in the various States of the United States, causing said commodities to be shipped and transported from sellers located in States of the United States other than the State of Virginia to his place of business in the State of Virginia.

PAR. 2. Respondent the American Agricultural Chemical Co. is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 50 Church Street, New York, N. Y. This respondent has been and is engaged in the business of selling and distributing crystal phosphate in commerce between and among the various States of the United States, causing said commodity to be shipped and transported from places of business in the States of New York and North Carolina to purchasers thereof located in the various States of the United States.

PAR. 3. In the course and conduct of his business as aforesaid, since June 19, 1936, respondent Gus B. Shelton has been and is making

purchases of crystal phosphate in commerce from respondent the American Agricultural Chemical Co., for his own account, and in the course of said purchases, respondent Shelton has been and is receiving and accepting from respondent Chemical Company, and respondent Chemical Company has been and is making and granting to respondent Shelton, in lieu of brokerage upon said purchases, a 5 percent cash deduction, and price allowances of 50 to 75 cents per hundredweight of crystal phosphate.

CONCLUSION

The making and granting of the aforesaid deduction and price allowances by respondent the American Agricultural Chemical Co., and the receipt and acceptance by respondent Gus B. Shelton of such deduction and price allowances, as herein set forth, constitute violations of the provisions 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 answers of the respondents, in which answers respondents admit all the material allegations of fact in the complaint and waive all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and conclusion that the respondents have violated the provisions of subsection (c) of section 2 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).

It is ordered, That respondent Gus B. Shelton, individually and trading as G. B. Shelton Brokerage Co., or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the purchase of crystal phosphate in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from respondent the American Agricultural Chemical Co., or any other seller, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu of brokerage, upon purchases made for his own account.

It is further ordered, That respondent the American Agricultural Chemical Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in

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connection with the sale and distribution of crystal phosphate in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu of brokerage, to respondent Gus B. Shelton, or any other purchaser, upon purchases made for the purchaser's own account.

It is further ordered, That the respondents shall, within 60 days after 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.

Complaint

IN THE MATTER OF

WASHINGTON FISH & OYSTER COMPANY, INC.

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 5228. Complaint, Oct. 3, 1944—Decision, Mar. 25, 1946

Where a corporation engaged in the packing and in the interstate sale and distribution of fresh and frozen fish, salt and smoked fish, canned salmon, and other sea food products, (1) through intermediaries who acted as its agents and to whom it paid commissions or brokerage fees for such services, and (2) by selling directly to a single large buyer which purchased in its own name and for its own account, and which, contrary to a broker, shopped the market, took title, warehoused the product, etc., and invoiced products sold at prices and terms fixed by it, masking such buying operations under the fictionalized designation of "broker," "merchandise broker," or "primary distributor" for the sole purpose of coloring the name and method of its operations in order to collect commissions or brokerage fees from said corporation and others—

Paid or granted, directly or indirectly, commissions or brokerage, or other compensation, allowances, or discounts in lieu thereof, to said direct buyer, on latter's said purchases in its own name and for its own account:

Held, That such paying and granting by said corporation directly or indirectly, of commissions or brokerage, or other compensation, allowances, or discounts in lieu thereof, to such buyers of its food products who purchased in their own names and for their own accounts for resale, were in violation of subsection (c) of section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. William P. Smith, of Washington, D. C., and *Evans, McLaren & Lane*, of Seattle, Wash., 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 Washington Fish & Oyster Co., Inc., is a corporation, organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 4, Seattle, Wash.

PAR. 2. Respondent Washington Fish & Oyster Co., Inc., is now