

Complaint

42 F. T. C.

IN THE MATTER OF

SEBASTIAN-STUART FISH CO. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO ALLEGED VIOLATION OF
SUBSEC. (C) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1915, AS
AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5365. Complaint, Aug. 10, 1945—Decision, Mar. 25, 1946

Where a corporation engaged in the packing and in the interstate sale and distribution of canned fish and fresh fish, (1) through intermediaries or food brokers, who acted as its agents in negotiating the sale of its products at prices and terms dictated by it and received commissions or brokerage fees therefor, and, (2) direct to buyers purchasing in their own names and for their own accounts for resale—

Paid or granted, directly or indirectly, to certain partners and to others engaged in buying its products in their own names, and for their own account and in resale thereof for profit, commissions or brokerage fees, or compensation or allowances in lieu thereof, in substantial amounts; and

Where said partners and others—

Received and accepted from said corporate seller commissions or brokerage fees, or compensation or allowances in lieu thereof, on such purchases for their own account:

Held, That such paying or granting by aforesaid seller of commissions or brokerage fees to buyers upon purchases for their own account, and such receipt and acceptance by said buyers of commissions or brokerage fees upon purchases for their own account, 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., 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 (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. Sebastian-Stuart Fish Co. is a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal office and place of business located at Spokane Street Dock, Seattle, Wash.

The respondent Sebastian-Stuart Fish Co. has been and is now engaged in the business of packing, selling, and distributing canned

fish and fresh fish (all of which are hereinafter designated as food products) in its own name and for its own account.

This respondent is hereafter designated as the respondent seller.

PAR. 2. The respondent seller distributes and sells its food products by two separate and distinct methods. The first and principal method is by utilizing intermediaries or food brokers, who act as respondent seller's agents in negotiating the sale of respondent seller's food products at respondent seller's prices, and on respondent seller's terms, and for which services to the respondent seller such intermediaries or food brokers are paid commissions or brokerage fees.

The second method utilized by the respondent seller in distributing food products, is by the direct sale of substantial quantities of its food products directly to buyers; representative of whom is Charles R. Allen, to whom respondent seller pays, directly or indirectly, commissions or brokerage fees on such buyer's purchases of respondent seller's food products which are purchased by Charles R. Allen and other buyers in their own name and for their own account.

PAR. 3. Respondents Charles R. Allen, Sr., Gene M. Allen, Charles R. Allen, Jr., Mary E. Lankford, Gene M. Allen II and, Harris M. Allen, individuals engaged in business as partners and trading as Charles R. Allen, have their principal office and place of business located at 16 Vendue Range, Charleston, S. C., and also maintain branch offices and warehouses in Jacksonville, Fla., and Savannah, Ga.

These respondents are hereinafter referred to as respondent buyers.

The respondent buyers, since June 19, 1936, have been and are now principally engaged in the business of buying in their own name, and for their own account, various types, grades, and brands of food products for resale and reselling such food products for their own account.

The respondent buyer in some instances, but to a lesser degree, also acts as an intermediary or broker for certain sellers of food products for whom respondent buyer negotiates the sale of such seller's products, and at such seller's prices, and on such seller's terms.

PAR. 4. Respondent buyer, in the course and conduct of said business since June 19, 1936, has purchased a substantial portion of its food products from Sebastian-Stuart Fish Co., which firm is located in a State other than the State in which respondent buyer is located, and as a result of respondent buyer's orders and instructions, such food products have been shipped and transported across State lines by respondent seller to said respondent buyer.

The respondent buyer's purchases from respondent seller since June 19, 1936, are representative of respondent buyer's purchases of

various types, grades, and brands of food products from numerous other interstate sellers, upon which purchases respondent buyer has also received commissions or brokerage fees.

PAR. 5. Respondent seller Sebastian-Stuart Fish Co., since June 19, 1936, in connection with the sale of its food products in interstate commerce to respondent buyer Charles R. Allen, and to other interstate buyers for their own account for resale, as hereinbefore set forth, has transmitted, paid and delivered, and does transmit, pay and deliver, directly or indirectly, to said respondent buyer and to other said buyers for their own account, commissions, brokerage fees or other compensation or allowances in lieu thereof in substantial amounts; and the respondent buyer Charles R. Allen, since June 19, 1936, has received and accepted and is now receiving and accepting, commissions, brokerage fees, and other compensation or allowances in lieu thereof in connection with said respondent buyer's interstate purchases of food products from the respondent seller and from other interstate sellers from whom respondent buyer purchases and has purchased food products in its own name and for its own account for resale.

PAR. 6. The foregoing acts of respondent seller Sebastian-Stuart Fish Co., in granting or paying commissions or brokerage fees on its sales of food products to respondent buyer Charles R. Allen and to other interstate buyers, and the foregoing acts of respondent buyer Charles R. Allen in receiving or accepting, directly or indirectly, commissions or brokerage fees on its purchases of food products from respondent seller Sebastian-Stuart Fish Co. and from other interstate sellers, 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 the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), the Federal Trade Commission, on August 10, 1945, issued, and thereafter served, its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the violation of subsection (c) of section 2 of said Clayton Act, as amended. Subsequently, the respondents filed answers admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further

hearings as to the facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and answers, 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. Respondent Sebastian-Stuart Fish Co. (hereinafter referred to as respondent seller) is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at Spokane Street Dock, Seattle, Wash. This respondent is now and has been engaged in the business of packing, selling, and distributing canned fish and fresh fish (all of which are hereinafter designated as food products).

PAR. 2. Respondent seller distributes and sells its food products by two separate and distinct methods. The first and principal method is by utilizing intermediaries or food brokers, who act as respondent seller's agents in negotiating the sale of its products at such prices and on such terms as are dictated by respondent seller. For such services such intermediaries or brokers are paid commissions or brokerage fees by respondent seller. The second method utilized by respondent seller in distributing its products is the sale of such products directly to buyers, who purchase such products in their own name and for their own account for resale.

PAR. 3. Respondents Charles R. Allen, Sr., Gene M. Allen, Charles R. Allen, Jr., Mary E. Lankford, Gene M. Allen, II, and Harris M. Allen are individuals engaged in business as partners under the name of Charles R. Allen, with their principal office and place of business located at 16 Vendue Range, Charleston, S. C. They also maintain branch offices and warehouses in Jacksonville, Fla., and Savannah, Ga. These respondents are hereinafter referred to as respondent buyers. Respondent buyers are now and have been engaged principally in the business of buying in their own name, and for their own account, various food products and reselling such products for profit. In some instances respondent buyers also act as an intermediary or broker for certain sellers of food products.

PAR. 4. Respondent buyers, in the course and conduct of their business, since June 19, 1936, have purchased a substantial portion of their food products from respondent seller. As a result of such purchases such products have been shipped and transported from respondent seller's place of business in the State of Washington across

State lines to the places of business of respondent buyers in the States of South Carolina, Florida, and Georgia.

PAR. 5. Respondent seller, since June 19, 1936, in connection with the sale of its food products in interstate commerce to respondent buyers, for their own account for resale, has paid or granted, directly or indirectly, to respondent buyers, commissions or brokerage fees, or compensation or allowances in lieu thereof, in substantial amounts. Since said date, respondent buyers, in connection with their interstate purchases of food products for their own account from respondent seller, have received and accepted from respondent seller commissions or brokerage fees, or compensation or allowances in lieu thereof.

In addition to the paying or granting of commissions or brokerage fees to respondent buyers upon their own purchases as set forth above, respondent seller has paid or granted to other buyers commissions or brokerage fees on interstate purchases made by such buyers for their own account. Likewise, respondent buyers have received and accepted from other sellers commissions or brokerage fees upon interstate purchases of food products made by respondent buyers for their own account.

CONCLUSION

The paying or granting by respondent seller of commissions or brokerage fees to buyers upon purchases made by such buyers for their own account, and the receipt and acceptance by respondent buyers of commissions or brokerage fees upon purchases made for their own account, as herein found, are 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 answers of the respondents, in which answers respondents admit all of the material allegations of fact set forth 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 its 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 the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13).

It is ordered, That respondent Sebastian-Stuart Fish Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale and distribution of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to any buyer anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, upon purchases made for such buyer's own account.

It is further ordered, That respondents Charles R. Allen, Sr., Gene M. Allen, Charles R. Allen, Jr., Mary E. Lankford, Gene M. Allen, II, and Harris M. Allen, individually and as partners trading under the name Charles R. Allen, or trading under any other name, and their 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 respondents' 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.

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FEDERAL TRADE COMMISSION DECISIONS

Complaint

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