

Complaint

IN THE MATTER OF

C. H. ROBINSON CO. AND NASH-FINCH CO.

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 APPROVED JUNE 19, 1936

Docket 4589. Complaint, Sept. 12, 1941—Decision, Jan. 6, 1947

Where a corporation engaged in the produce brokerage business, which acted as an intermediary in transactions for sale or purchase of fruits and vegetables by numerous buyers and sellers, maintaining about 27 branch offices throughout the United States, and the outstanding stock of which was substantially all owned by a corporation, which engaged in the wholesale grocery business in the western half of the United States, operated about 60 branches, and placed through said brokerage corporation orders for a substantial part of its fruit and vegetable requirements with sellers mostly located in other states—

- (a) Received from such sellers, on purchases for said wholesale grocery, brokerage, fees or commissions consisting of a percentage of the sales price or a specified sum allowed on each carload, crate, basket, lug, or bag, and distributed the substantial sum resulting in earnings and profits therefrom to stockholders through dividend payments; and

Where aforesaid wholesale grocer—

- (b) Received and accepted thereby brokerage upon its own purchases by means of aforesaid transactions in which said first named corporation acted under its control and in fact for and on its behalf, and by means of said corporation's dividend payments:

Held, That such receipt and acceptance from sellers of brokerage fees and commissions by said corporation upon the purchases of a buyer while it was under the control of or acting in fact for such buyer, and the receipt and acceptance of brokerage, including such dividend payments, by said wholesale grocer upon its own purchases, were in violation of the provisions of subsection (c) of section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale and Mr. Eldon P. Schrup for the Commission.

Stinchfield, Mackall, Crounse & Moore, of Minneapolis, Minn., 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 16, sec. 15) 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, C. H. Robinson Co., is a corporation, organized and existing under and by virtue of the laws of the State of North Dakota, with its executive offices and principal place of business located at 430 Oak Grove Avenue, Minneapolis, Minn. This respondent engages in the produce brokerage business, acting as an intermediary in transactions of sale and purchase of fruits and vegetables, between numerous sellers and buyers. In the course of its business which extends throughout the United States, respondent maintains approximately 27 branch offices.

PAR. 2. Respondent, Nash-Finch Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 430 Oak Grove Avenue, Minneapolis, Minn.

This respondent is engaged in the wholesale grocery business in the western half of the United States, operating through approximately 60 branch places of business.

PAR. 3. Respondent, Nash-Finch Co., places orders for a substantial portion of the fruits and vegetables required by it in the ordinary conduct of its business with sellers who are, in most cases, located in States of the United States other than the State of Minnesota, through the produce brokerage firm of C. H. Robinson Co. As a result of the transmission and execution of said orders, as aforesaid, goods, wares and merchandise, particularly fruits and vegetables, are in the case of each such order and in a continuous succession of such orders, sold, transported and delivered by one or more of such sellers across State lines to Nash-Finch Co.

PAR. 4. The authorized capital stock of respondent, C. H. Robinson Co. is 2,000 shares, of a par value of \$50 per share, of which 1,606 shares are issued and outstanding. The record owner of 1,601 shares of the outstanding capital stock is respondent Nash-Finch Co. The remaining 5 shares of outstanding capital stock are recorded 1 share each in the names of the 5 principal corporate officers of respondent, C. H. Robinson Co.

The earnings and profits realized by respondent C. H. Robinson Co. from the operation of its produce brokerage business amount to a substantial sum. These profits are distributed to stockholders from time to time by means of declared dividend payments. Respondent Nash-Finch Co. shares in such profits and earnings by receiving and accepting dividend payments declared upon its ownership of capital stock of respondent, C. H. Robinson Co.

PAR. 5. In the course and conduct of the buying and selling transactions hereinabove referred to, resulting in the delivery of goods, wares,

and merchandise, particularly fruits and vegetables, in interstate commerce from one or more sellers to respondent Nash-Finch Co., sellers have transmitted and paid, and do transmit and pay, to respondent, C. H. Robinson Co., brokerage fees or commissions, the same being a certain percentage of the sales price of such purchases, or a specified sum allowed on each carload, crate, basket, lug, or bag. Since June 19, 1936, sellers have paid brokerage fees and commissions to, and the same have been received by the C. H. Robinson Brokerage Co. upon the purchases of Nash-Finch Co. in the manner above described in substantial amounts.

PAR. 6. In all of the transactions of purchase and sale hereinabove referred to, the respondent C. H. Robinson Co. has acted under the control and in fact for and on behalf of respondent Nash-Finch Co.

PAR. 7. The receipt and acceptance from sellers of brokerage fees and commissions by said respondent C. H. Robinson Co., upon the purchases of a buyer, such as respondent Nash-Finch Co., while respondent is under the control of, or acting in fact for such purchaser, and the receipt and acceptance of brokerage, including the C. H. Robinson Co. dividend payments, by respondent Nash-Finch Co., upon its 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 (Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act the Federal Trade Commission on September 12, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, C. H. Robinson Co., a corporation, and Nash-Finch Co., a corporation, charging them with the violation of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of respondents' answer thereto, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, substitute answer filed by the re-

spondents, and proposed findings as to the facts and order to cease and desist submitted by counsel for 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. Respondent, C. H. Robinson Co., is a corporation organized and existing under and by virtue of the laws of the State of North Dakota, with its executive offices and principal place of business located at 430 Oak Grove Avenue, Minneapolis, Minn. This respondent engages in the produce brokerage business, acting as an intermediary in transactions of sale and purchase of fruits and vegetables, between numerous sellers and buyers. In the course of its business, which extends throughout the United States, respondent maintains approximately 27 branch offices.

PAR. 2. Respondent, Nash-Finch Co. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 430 Oak Grove Avenue, Minneapolis, Minn.

This respondent is engaged in the wholesale grocery business in the western half of the United States, operating through approximately 60 branch places of business.

PAR. 3. Respondent, Nash-Finch Co., places orders for a substantial portion of the fruits and vegetables required by it in the ordinary conduct of its business with sellers who are, in most cases, located in States of the United States other than the State of Minnesota, through the produce brokerage firm of C. H. Robinson Co. As a result of the transmission and execution of said orders as aforesaid, goods, wares, and merchandise, particularly fruits and vegetables, are, in the case of each such order and in a continuous succession of such orders, sold, transported, and delivered by one or more of such sellers across State lines to Nash-Finch Co.

PAR. 4. The authorized capital stock of respondent C. H. Robinson Co. is 2,000 shares of a par value of \$50 per share, of which 1,606 shares are issued and outstanding. The record owner of 1,601 shares of the outstanding capital stock is respondent Nash-Finch Co. The remaining five shares of outstanding capital stock are recorded one share each in the names of the five principal corporate officers of respondent C. H. Robinson Co.

The earnings and profits realized by respondent C. H. Robinson Co. from the operation of its produce brokerage business amount to a substantial sum. These profits are distributed to stockholders from time to time by means of declared dividend payments. Respondent Nash-Finch Co. shares in such profits and earnings by receiving and accepting dividend payments declared upon its ownership of capital stock of respondent C. H. Robinson Co.

PAR. 5. In the course and conduct of the buying and selling transactions hereinabove referred to, resulting in the delivery of goods, wares, and merchandise, particularly fruits and vegetables, in interstate commerce from one or more sellers to respondent Nash-Finch Co., sellers have transmitted and paid, and do transmit and pay, to respondent C. H. Robinson Co., brokerage fees or commissions, the same being a certain percentage of the sales price of such purchases or a specified sum allowed on each carload, crate, basket, lug, or bag. Since June 19, 1936, sellers have paid brokerage fees and commissions to, and the same have been received by, the C. H. Robinson Brokerage Co. upon the purchases of Nash-Finch Co. in the manner above described in substantial amounts.

PAR. 6. By reason of the foregoing, in all of the transactions of purchase and sale hereinabove referred to, the respondent C. H. Robinson Co. has acted under the control and in fact for and on behalf of respondent Nash-Finch Co.

CONCLUSION

The receipt and acceptance from sellers of brokerage fees and commissions by said respondent, C. H. Robinson Co., upon the purchases of a buyer, such as respondent Nash-Finch Co., while respondent is under the control of or acting in fact for such purchaser, and the receipt and acceptance of brokerage, including the C. H. Robinson Co. dividend payments, by respondent, Nash-Finch Co., upon its own purchases in the manner and form hereinabove set forth are in violation 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 substitute answer of the respondents, which substitute answer admits all the material allegations of fact set forth in said complaint and waives 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 said respondents have 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 an act of Congress approved June 19, 1936 (Robinson-Patman Act):

I. *It is ordered*, That the respondent C. H. Robinson Co. and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of fruits, vegetables, and other commodities in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from—

1. Receiving or accepting from any seller, directly or indirectly, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, on or in connection with purchases made by respondent Nash-Finch Co. while acting under the control of and in fact for and on behalf of said respondent Nash-Finch Co.

2. Receiving or accepting from any seller, directly or indirectly, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, on or in connection with purchases made for respondent's own account or while acting for or in behalf of a purchaser as an intermediary agent or subject to the direct or indirect control of such purchaser.

3. Paying, transmitting, or delivering to or for the benefit of any purchaser, either directly or in the form of money or credits or indirectly in the form of dividends, or otherwise, any commission or brokerage, or any compensation, allowance, or discount in lieu thereof, received from any seller while acting as an intermediary or agent for such purchaser or while subject to the direct or indirect control of such purchaser.

II. *It is further ordered*, That the respondent, Nash-Finch Co., and its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the purchase of fruits, vegetables, and other commodities in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from—

1. Receiving or accepting from any seller, directly or indirectly, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, on or in connection with purchases made for respondent's own account, either directly or by or through respondent C. H. Robinson Co.

2. Receiving or accepting from respondent, C. H. Robinson Co., either directly in the form of money or credits or indirectly in the form of dividends, or otherwise, any commission or brokerage, or any compensation, allowance, or discount in lieu thereof, received by said C. H. Robinson Co. from any seller while acting for or in behalf of said respondent, Nash-Finch Co., as an intermediary or agent for said respondent or while subject to the direct or indirect control of said respondent.

III. *It is further ordered*, That the respondents shall, within sixty (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.

IN THE MATTER OF

CALIFORNIA MARINE CURING AND PACKING CO., MAX
JOSEPH GORBY, JACK GORBY, AND ANNA GORBY

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 5462. Complaint, Sept. 25, 1946—Decision, Feb. 13, 1947

Where a corporation and the three individuals who were its officers, directors and substantial stockholders, engaged in packing, selling and distributing sea-food products consisting, principally, of sardines, tonno, mackerel and tuna (1) to and through its corporate exclusive agent, to which it paid brokerage fees of 3 percent on all sales where no other broker was employed, and 5 percent when the agent utilized the services of a subbroker, and which agent was also free to, and did, purchase said sea-food products for its own account at a trade discount equal to such brokerage; and (2) directly to intra-state packers and distributors, and also, through them, as agents, to interstate buyers;

Granted and allowed, directly or through said agent and other packers and distributors, or otherwise, commissions or brokerage fees to interstate buyers who purchased sea-food products for their own accounts for resale, under a course of conduct by which said buyers transmitted their own purchase orders directly to said corporation and individuals, or to them through their agent, and said sellers prepared delivery orders, contracts for transportation and bills of lading, and shipped the products concerned directly to such buyers, and, through their agent collected payment from them, who, though designating themselves as brokers or subbrokers and known to the trade generally as "buying brokers", did not in said transactions function as such, but purchased for resale on their own accounts, as above stated:

Held, That such paying and granting by said corporation and individuals, directly or indirectly, of commissions, brokerage or other compensation, and of allowances or discounts in lieu thereof, to buyers 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.

Lovell & Richardson, of San Francisco, Calif., 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 violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C., title 15, sec. 13) as amended by the