

Complaint

54 F.T.C.

IN THE MATTER OF
COYNER-EVANS CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (c)
OF THE CLAYTON ACT

Docket 6969. Complaint, Dec. 4, 1957—Decision, Mar. 26, 1958

Consent order requiring a produce jobber in Miami, Fla., to cease violating section 2(c) of the Clayton Act by receiving illegal brokerage on purchases of celery and other fresh produce made for its own account through its controlled intermediary which accepted fees as an independent broker although it was acting for said jobber.

Mr. Fredric T. Suss supporting the complaint.

Respondents, pro se.

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, have been 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 Coyner-Evans Co., Inc., is a corporation organized and existing under the laws of the State of Florida with its principal office and place of business located at 2147 N.W. 12th Avenue, Miami, Fla. It is directed and controlled by the respondents Ed Coyner and Clyde B. Coyner, who are responsible for its acts and practices and who own and control 66 percent of its outstanding shares of stock. Respondent Coyner-Evans Co., Inc. is engaged in business as a broker in connection with the sale of celery and other fresh produce, and as a retailer of seeds, fertilizer, insecticides and crate materials. The respondent corporation is a substantial factor in the produce business in Miami. Respondent corporation had a volume of sales of approximately \$200,000 for the year 1956.

Respondent Ed Coyner is an individual residing at 349 N.E. 93d Street, Miami, Fla., and is president-treasurer of respondent Coyner-Evans Co., Inc., owning 54 percent of its shares of stock and is an equal partner in Brice & Johnson.

Respondent Clyde B. Coyner is an individual residing at 1481 N.E. 104th Street, Miami, Fla., and is vice president and assistant

general manager of respondent Coyner-Evans Co., Inc., and is an equal partner in Brice & Johnson.

Brice & Johnson, located at 1140 N.W. 21st Street Terrace, Miami, Fla., with its office at 2147 N.W. 12th Avenue, Miami, Fla., is owned and controlled by the respondents Ed Coyner and Clyde B. Coyner, who are responsible for its acts and practices. Said individual respondents trading as Brice & Johnson are engaged in the business of jobbing produce, principally celery, offering for sale, selling and distributing such products to produce dealers, wholesalers and to Food Fair Stores, Inc.

PAR. 2. In the course and conduct of their business as a produce jobber respondents Ed Coyner and Clyde B. Coyner, trading as Brice & Johnson, are and have been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act, purchasing products from vendors whose places of business are located in States other than Florida and causing them to be shipped to their place of business within the State of Florida.

PAR. 3. In the course and conduct of its business as a broker respondent Coyner-Evans Co., Inc., is and has been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act, arranging sales of products from vendors whose places of business are located in States other than Florida and causing them to be shipped to its place of business within the State of Florida.

PAR. 4. In the course and conduct of their said business in commerce respondents are receiving and accepting something of value as a commission, brokerage or other compensation paid by said vendors to the other party to the transaction, or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of a party to the transaction other than the person by whom such compensation is so granted or paid.

PAR. 5. For example, during the years 1956 and 1957 respondents Ed Coyner and Clyde B. Coyner, trading as Brice & Johnson, have made substantial purchases of celery and other food products from their suppliers through their controlled intermediary, respondent Coyner-Evans Co., Inc., on which purchases respondent Coyner-Evans Co., Inc., and through their ownership and control of said corporate respondent, respondents Ed Coyner and Clyde B. Coyner received something of value as a commission, brokerage or other compensation, or allowance or discount in lieu thereof. In these trans-

Decision

54 F.T.C.

actions respondent Coyner-Evans Co., Inc., received and accepted payments of brokerage from said suppliers as an independent broker, whereas said corporate respondent was acting, in fact, for or in behalf of, and was subject to the direct or indirect control of the buyer respondents Ed Coyner and Clyde B. Coyner trading as Brice & Johnson.

PAR. 6. The acts and practices of the respondents as above alleged are violative of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, sec. 13).

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that Coyner-Evans Company, Inc., Ed Coyner, individually and president-treasurer of said corporation and a partner trading as Brice & Johnson; and Clyde B. Coyner, individually and vice president and assistant general manager of said Coyner-Evans Co., Inc., and a partner trading as Brice & Johnson, hereinafter called respondents, have violated the provisions of section 2(c) of the Clayton Act (U.S.C. Title 15, sec. 13), as amended by the Robinson-Patman Act.

After issuance and service of the complaint, the respondents and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the director and assistant director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: "Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement; and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

1228

Order

The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The respondent Coyner-Evans Co., Inc., is a corporation organized and existing under the laws of the State of Florida, with its office and principal place of business located at 2147 N.W. 12th Avenue, Miami, Fla. The individual respondent Ed Coyner resides at 349 N.E. 93d Street, Miami, Fla., and is president-treasurer of said corporation and an equal partner with respondent Clyde B. Coyner in Brice & Johnson, a partnership, located at 1140 N.W. 21st Street Terrace, Miami, Fla., with its office at 2147 N.W. 12th Avenue, Miami, Fla. The respondent Clyde B. Coyner resides at 1481 N.E. 104th Street, Miami, Fla., and is vice president and assistant general manager of respondent Coyner-Evans Co., Inc., and an equal partner with the respondent Ed Coyner in Brice & Johnson.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That the respondents, Coyner-Evans Co., Inc., a corporation, Ed Coyner, individually and as president-treasurer of Coyner-Evans Co., Inc., and as a partner trading as Brice & Johnson, and Clyde B. Coyner, individually and as vice president and assistant general manager of Coyner-Evans Co., Inc., and as a partner trading as Brice & Johnson, and each of them and their respective representatives, agents and employees, directly or through any corporate or other device in connection with the purchase by respondents, or any of them, of celery, produce, seeds, farm supplies and equipment, or other products, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(a) Receiving or accepting, directly or indirectly, from any sellers, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof, upon the purchase of any of said products made by respondents for their own account.

(b) Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon the purchase of any of said products where said respondent is the agent, representative or

Decision

54 F.T.C.

intermediary acting for or in behalf of or is subject to the direct or indirect control of the buyer, or of any of the officers of said buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 26th day of March 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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 the order to cease and desist.

Decision

IN THE MATTER OF
FIDELITY STORM SASH CO. OF D.C., INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6804. Complaint, May 17, 1957¹—Decision, Mar. 27, 1958

Consent order requiring three associated companies located in Baltimore and Philadelphia to cease using bait advertising to sell storm windows; and to cease representing falsely that they manufactured the storm windows, that purchasers who allowed photographs of the windows installed by respondents to be taken and used for "model home" demonstration purposes would receive a price reduction, and that installation of the windows would result in savings of as much as 33 percent in fuel bills.

Mr. Michael J. Vitale and Mr. Thomas A. Ziebarth supporting the complaint.

Mr. Gilbert Hahn, Jr., and Mr. Bruce G. Sundlun, of the firm of *Amram, Hahn & Sundlun*, of Washington, D.C., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 17, 1957, charging them with violation of the Federal Trade Commission Act as alleged in said complaint. After service of the complaint it appeared that there was an error in the names of the corporate respondents. On motion of counsel supporting the complaint, said error was corrected by order of the hearing examiner amending the complaint to correctly state the names of the corporate respondents. Said order of the hearing examiner so amending the complaint was duly served on respondents.

Subsequently on January 15, 1958, respondents as correctly named in the order amending the complaint and their counsel entered into an agreement with counsel supporting the complaint. Said agreement contained a consent order to cease and desist from the practices complained of and purports to dispose of all issues in this proceeding. The agreement has been duly approved by the Assistant Director and the Director of the Bureau of Litigation and has been submitted to the undersigned as hearing examiner herein for his consideration in accordance with rule 3.25 of the rules of practice of the Commission.

Respondents Fidelity Storm Sash Co. of D.C., Inc., a corporation by its duly authorized officer, Fidelity Storm Sash Co., Inc., of

¹ Amended Nov. 14, 1957.