

Order

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IN THE MATTER OF
RESERVE LIFE INSURANCE COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6250. Complaint, Oct. 14, 1954—Order, Dec. 10, 1958

Order vacating and setting aside initial decision filed prior to the *per curiam* opinion of the Supreme Court in the combined cases of *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560, in proceeding charging a Dallas, Tex., insurance company with misrepresenting the benefits provided by its accident and health insurance policies.

FINAL ORDER

This matter having come on to be heard by the Commission upon the cross-appeals of respondent and counsel in support of the complaint from the hearing examiner's initial decision filed prior to the *per curiam* opinion of the United States Supreme Court in the combined cases of *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560 (decided June 30, 1958); and

Counsel for respondent additionally having filed a motion to dismiss the complaint, based upon the aforesaid decision of the Supreme Court, which motion is not opposed by counsel in support of the complaint; and

The Commission having considered respondent's motion to dismiss and the record, and having concluded that this proceeding should be dismissed on jurisdictional grounds upon the authority of the said ruling of the Supreme Court:

It is ordered, That the initial decision herein be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

Complaint

IN THE MATTER OF
BARBEY PACKING CORPORATION ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(c) OF THE CLAYTON ACT*Docket 7203. Complaint, July 22, 1958—Decision, Dec. 11, 1958*

Consent order requiring packers of salmon and other sea foods in Astoria, Oreg., to cease violating the brokerage section of the Clayton Act by reducing their selling prices to direct buyers in the approximate amount of commissions which would have been paid to brokers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly 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 Barbey Packing Corporation, hereinafter sometimes referred to as corporate respondent, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Oregon. Its principal office and place of business is located in Astoria, Oreg.

Respondents Graham J. Barbey and Henry J. Barbey are individuals and are president and vice president, respectively, of corporate respondent and, with other members of their immediate family, are owners of all of the capital stock of corporate respondent. Respondents Graham J. Barbey and Henry J. Barbey, acting in cooperation and in conjunction with each other as officers and as individuals, formulate, direct and control the affairs and policies of corporate respondent, including its sales and distribution policies. The business address of the said individual respondents is the same as that of corporate respondent.

Respondents, both corporate and individual, are engaged in the business of packing, distributing and selling canned salmon and other seafood products.

PAR. 2. Respondents now sell and distribute, and for many years last past have sold and distributed, their canned salmon and other seafood products in commerce to customers located in

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the several states of the United States. They sell and distribute their products through primary brokers, generally located in Seattle, Washington, and also through field brokers located in various marketing areas, to the buyers thereof located throughout the various states of the United States. Respondents also sell directly to some buyers from time to time, without utilizing the services of any broker.

When selling through primary brokers, respondents pay a commission or brokerage fee, generally in the amount of 5% of the net selling price of the merchandise sold, to such broker for such service. When selling through field brokers, respondents pay a commission or brokerage fee, generally in the amount of $2\frac{1}{2}\%$ of the net selling price of the merchandise sold, to such broker for such service.

PAR. 3. In the course and conduct of their business over the past several years, but more particularly from January 1, 1956, up to the present, respondents, and each of them, have sold and distributed and now sell and distribute, their canned salmon and other seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several States of the United States other than the State of Oregon in which respondents are located. Respondents, and each of them, transport or cause such canned salmon and other seafood products, when sold, to be transported from their place of business in the State of Oregon to customers located in various other States of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said canned salmon and other seafood products across state lines between said respondents and the respective buyers of such canned salmon and other seafood products.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have made substantial sales of canned salmon and other seafood products to direct buyers without utilizing the services of either primary brokers or field brokers, and in many such instances have reduced their selling prices to such direct buyers in the approximate amount of the brokerage fees or commissions which would otherwise have been paid to such brokers had they negotiated such sales.

Respondents have also, upon occasion, made sales through field brokers, without utilizing the services of a primary broker, at prices which have been reduced from those charged when

sales are made through primary brokers, and such reductions are in the approximate amount of the net brokerage fees or commissions which would have been earned by such primary brokers.

PAR. 5. In making payments of commissions, brokerage fees, or discounts or allowances in lieu thereof, as alleged and described above, respondents, and each of them, in the course and conduct of their business in commerce, as hereinabove described, have paid, granted or allowed, and are now paying, granting or allowing, something of value as a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, in connection with the sale and distribution of their canned salmon and other seafood products to buyers who were and are purchasing for their own account for resale, or to agents or intermediaries who were, and are, in fact, acting for or in behalf of, or were and are subject to the direct or indirect control of such buyers.

PAR. 6. The acts and practices of respondents, and each of them, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13).

Mr. Cecil G. Miles, for the Commission.

Respondents, for themselves.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on July 22, 1958, charging respondents with paying, granting or allowing something of value as a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, in connection with the sale and distribution of their canned salmon and other seafood products, to direct buyers purchasing for their own account for resale, or to agents or intermediaries acting for or in behalf of, or subject to the direct or indirect control of, said buyers, in violation of §2(c) of the Clayton Act as amended (U.S.C Title 15, §13).

Thereafter, on September 19, 1958, respondents and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies Respondent Barbey Packing Corpora-

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tion as an Oregon corporation, with its office and principal place of business located in Astoria, Oreg., and respondents Graham J. Barbey and Henry J. Barbey as individuals and officers of said respondent corporation, with their office and principal place of business also located in Astoria, Oreg.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by the Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Barbey Packing Corporation, a corporation, and its officers, and Graham J. Barbey and Henry J. Barbey, individually and as officers of said respondent corporation, and respondents' agents, representatives or employees, directly or through any corporate or other device, in connection with the sale of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

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Paying, granting, or allowing directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of seafood products to such buyer for his own account.

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 11th day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Barbey Packing Corporation, a corporation, and Graham J. Barbey and Henry J. Barbey, as individuals and as officers of said corporation, 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.

IN THE MATTER OF
B & C DISTRIBUTORS CO. ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7077. Complaint, Feb. 28, 1958—Decision, Dec. 13, 1958

Order requiring a Paterson, N.J., distributor of radio and television tubes, principally to jobbers, to disclose clearly on cartons, in advertising, invoicing, and shipping memoranda, when the tubes sold were used, pull-outs, factory rejects, or JAN surplus.

All other respondents in the proceeding signed a consent agreement with the same provisions on Nov. 18, 1958, p. 741, preceding.

Mr. Kent P. Kratz for the Commission.

Brenman and Susser, by *Mr. Herbert Susser*, of Paterson, N.J., for all respondents except Edward Chernela.

INITIAL DECISION AS TO RESPONDENT EDWARD CHERNELA
BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with failure to disclose the true nature of the used, pull-out, factory reject and JAN surplus radio and television tubes which they sell and distribute in commerce, thereby misleading and deceiving the public into the erroneous belief that such tubes are unused, new, and first quality tubes, in violation of the provisions of the Federal Trade Commission Act.

In this proceeding, all respondents except Edward Chernela entered into an agreement containing consent order to cease and desist, and an initial decision based thereon has heretofore been issued.

Respondent Edward Chernela was duly served with a copy of the complaint, but filed no answer thereto. On August 2, 1958, said respondent was served with a copy of a notice that a hearing for the reception of evidence upon the issues as they relate to him would be held, beginning at 10:00 a.m. on September 26, 1958, in Room 332, Federal Trade Commission Building, Washington, D.C. No appearance was made at this hearing by Edward Chernela or by anyone else in his behalf. Said respondent is therefore, in default for answer and appearance in this proceeding, and, under the Rules of Practice of the Federal Trade Commission the hearing examiner is authorized without further notice to