

799

Decision

mission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the aforesaid initial decision as modified.

IN THE MATTER OF
ALBERT PITLER TRADING AS CAVALIER RESERVE
FUND, ETC.

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

Docket 7538. Complaint, July 14, 1959—Decision, Jan. 30, 1960

Order requiring an individual in Norfolk, Va., to cease use of a printed collection form he sold to merchants and others which sought to obtain information by subterfuge, including use of misleading trade names and false representations that a sum of money was being held for alleged debtors pending receipt of their current addresses.

Mr. Michael J. Vitale for the Commission.
Respondent, *pro se*.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

THE PROCEEDINGS

The respondent herein is charged in the Commission's complaint issued on July 14, 1959 with violating the Federal Trade Commission Act by engaging in unfair and deceptive acts and practices in interstate commerce, through the sale and dissemination of a deceptive printed form designed to entice defaulting debtors to furnish certain information about themselves.

The form states in substance that there is "a small sum of money" for the recipient and that upon receipt of all the information requested in the form, the respondent will send such money registered in recipient's name to the address given. The form also sets forth questions which, if answered, provide information which is considered to be of value in the collection of accounts owed or alleged to be owed by the addressee.

The allegations of the complaint also aver that the object of respondent's printed form is to obtain information by subterfuge, all to the prejudice and injury of the public.

The respondent did not interpose a formal written answer. However, he did appear personally without counsel at the hearing on

October 13, 1959, before the undersigned hearing examiner heretofore designated to hear this proceeding. At said hearing, the respondent stated that he was "not in disagreement with the complaint" but that he questioned the illegality of the acts charged therein.

Pursuant to leave granted by the undersigned, proposed findings of fact, conclusions of law and an order were filed by counsel supporting the complaint. However, the respondent who appeared personally without counsel did not file proposed findings of fact or conclusions of law although granted leave to do so. No request for oral argument was made by any of the parties. Proposed findings which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as immaterial.

Upon consideration of the entire record herein, and from his observation of the witnesses, the undersigned concludes that this proceeding is in the public interest and makes the following:

FINDINGS OF FACT

I. The Business of Respondent and the Interstate Commerce

1. Respondent Albert Pitler, is an individual, trading and doing business under the names Cavalier Reserve Fund and Liberty Reserve Fund, with his office and principal place of business located at Bankers Trust Building, Norfolk, Virginia. Respondent formulates, controls and directs the policies, acts and practices of said Funds.

2. Respondent is now, and for more than one year last past has been, engaged in the business of selling a printed mailing form. Respondent causes the printed form, when sold, to be transported from his place of business in the State of Virginia to purchasers thereof at their respective points of location in various other States of the United States. Respondent maintains a substantial course of trade in said form in commerce as "commerce" is defined in the Federal Trade Commission Act.

II. The Unfair and Deceptive Practices

A. *The Printed Form Sold*

1. The printed form sold by the respondent was designed and intended to be used and has been used by collection agencies, merchants and others to whom sold for the purpose of obtaining information concerning alleged delinquent debtors with the aid and assistance of respondent.

2. The form consists of a printed sheet captioned "Cavalier Reserve Fund." The form is designed to be forwarded to addressees in envelopes provided by the respondent in which are enclosed envelopes addressed to "Cavalier Reserve Fund, Suite 800, Bankers Trust Building, Norfolk 10, Virginia."

The form states that: "We have a small sum of money for ----- Upon receipt of the information re-

(the above named person)

quested below, we will immediately send the money registered in their name to the address given." The form then sets out questions which, if answered, provide information which is considered to be of value in the collection of accounts owed or alleged to be owed by the addressee. The purchasers of respondent's printed form fill in the appropriate data in the spaces provided, including the name of the alleged debtors and their addresses and enclose said forms in open window envelopes and deliver them in bulk to respondent at his office in Norfolk, Virginia. The respondent then mails the individual envelopes from his office. If the addressees complete the forms and mail them to respondent at Norfolk, Virginia, a check for ten cents is sent from the "Liberty Reserve Fund" signed by "Al Pyle." Respondent then processes the forms and forwards them to the purchasers.

B. The Representations Made

Through the use on the form of the term "Cavalier Reserve Fund" and "Liberty Reserve Fund," and the printed format and phraseology of the form, respondent represented, and placed in the hands of purchasers of this form the means and instrumentalities whereby they represent and imply to those whom said form is mailed, that respondent has been named as a depository of a reasonably substantial sum of money to be delivered to the recipients of said form upon proper identification by furnishing all of the information requested.

6. The Falsity of the Representations

1. The representations and implications set forth and contained in the form sold by respondent were, and are, false, misleading and deceptive. The respondent is not engaged in any fiduciary or other capacity to receive money for the persons to whom the forms are sent, and the only money sent them is ten cents. Said form is used to obtain information concerning alleged delinquent debtors by subterfuge. This practice constitutes a scheme to mislead and conceal the purpose for which the information is sought.

Order

56 F.T.C.

2. The use of the form sold by the respondent has had, and now has, the tendency and capacity to mislead persons to whom said forms are sent into the erroneous and mistaken belief that the said representations and implications are true and to induce the recipients thereof to supply information which they otherwise would not have supplied.

CONTENTIONS AND CONCLUDING FINDINGS

1. It is the position of the respondent that the persons to whom such form is sent are not deserving of public protection by reason of their debt delinquency and that the practices used are justified means to the legitimate end to procure payment of debts by such persons. The argument which respondent makes here is one which, in the main, has been fully considered, both by the Commission and the courts, and has been found to be without merit. The legitimate objective of seeking to induce debtors to pay their debts does not justify the use of illegitimate and unlawful means. There is no lack of public interest in the protection of such persons merely by reason of their delinquency. *Silverman v. FTC*, 145 F. 2d 751; *Rothchild v. FTC*, 200 F. 2d 39; *National Service Bureau v. FTC*, 200 F. 2d 362; *Deejay Stores, Inc. v. FTC*, 200 F. 2d 865; and *National Research Company, etc.*, Docket No. 6236, June 1, 1956.

2. Nor can there be any merit to a contention by the respondent that it is not a matter of the Commission's concern because no pecuniary damage is suffered. *FTC v. Algoma Lumber Co.* 291 U.S. 67, 78 [18 F.T.C. 669; 2 S & D. 247]. Furthermore, the law is well settled that it is in the public interest to prevent the perversion of interstate commerce with such deception. *FTC v. Keppel & Brother* 291 U.S. 304, 308 [18 F.T.C. 684; 2 S & D. 259].

CONCLUSION OF LAW

It is concluded that the acts and practices of the respondent, as hereinabove found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered. That respondent, Albert Pitler, an individual, trading and doing business as Cavalier Reserve Fund and Liberty Reserve Fund, or trading and doing business under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the business of obtaining information concerning delinquent debtors,

or the offering for sale, sale or distribution of forms or other materials, for use in obtaining information concerning delinquent debtors, or in the collection of, or attempting to collect accounts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the names "Cavalier Reserve Fund" and "Liberty Reserve Fund," or any other name of similar import to designate, describe or refer to respondent's business; or otherwise representing, directly or by implication, that money has been deposited with them for persons from whom information is requested, unless or until the money has in fact been so deposited, and then only when the amount so deposited is clearly and expressly stated.

2. Using, or placing in the hands of others for use, any forms, questionnaires or other materials, printed or written, which do not clearly reveal that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors.

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 30th day of January, 1960, become the decision of the Commission; and, accordingly:

It is ordered. That the respondent herein shall, with sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.