

Decision

58 F.T.C.

IN THE MATTER OF
DIERKS FORESTS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 8 OF THE CLAYTON ACT

Docket 8113. Complaint, Sept. 14, 1960—Decision, Mar. 8, 1961

Order dismissing—after resignation of the two directors concerned from the Board of Directors of Pickering Lumber Corp.—charges that two competing lumber companies illegally permitted two individuals to serve as their common directors.

Mr. Lynn C. Paulson for the Commission.

Watson, Ess, Marshall & Enggas, by *Mr. Elton L. Marshall*, and *Mr. George T. Morton, Jr.*, of Kansas City, Mo., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on September 14, 1960, charging Respondents with violation of §8 of the Clayton Act (15 U.S.C., §19, 38 Stat. 732, as amended by 49 Stat. 718), by permitting the individual Respondents to serve as directors at the same time, of both corporate Respondents, which ship and sell in interstate commerce some of the same classes of products, and are in competition between themselves in the offering for sale, sale and distribution of some of such products.

Thereafter, on January 11, 1961, counsel for the Respondents submitted a Motion To Dismiss, accompanied by a Certificate of Robert I. Donnellan, Secretary of Respondent Pickering Lumber Corporation, showing that, on December 2, 1960, Respondents Frederick H. Dierks and Henry N. Ess submitted their resignations as members of the Board of Directors of Pickering Lumber Corporation to be effective December 31, 1960; that their resignations were accepted; and that they ceased to be directors of Pickering Lumber Corporation on December 31, 1960. Also on January 11, 1961, counsel supporting the complaint submitted his Answer To Motion To Dismiss, stating that he does not oppose said motion, since the interlock of Directors alleged in the complaint has been removed as evidenced by the Certificate filed with Respondents' Motion To Dismiss, and there is no reason to believe a repetition of the condition alleged will occur.

In *Docket No. 7333, Booth-Kelly Lumber Company, et al.*, which presented a similar problem, the Commission held that upon the filing of a motion to dismiss supported by affidavit showing that the Respondents upon whose employment as directors the charge of

an interlocking directorate was based had resigned, no further proceedings in the matter were warranted, and the complaint should be dismissed without prejudice to the right of the Commission to reopen the proceeding should future circumstances so warrant.

In view of this precedent, we are of the opinion that similar action is warranted in the instant proceeding. Accordingly,

It is ordered, That the complaint herein, be, and the same hereby is, dismissed without prejudice to the right of the Commission to reopen the proceeding should future circumstances so warrant.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of March, 1961, become the decision of the Commission.
