

the initial decision of the hearing examiner shall on the 18th day of May 1961, 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.

IN THE MATTER OF
HAINES CITY CITRUS GROWERS ASSOCIATION ET AL.

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

Docket 7144. Complaint, May 7, 1958—Decision, May 19, 1961

Order requiring a Haines City, Fla., cooperative of approximately 140 citrus grove owners to cease violating Sec. 2(c) of the Clayton Act by paying unlawful commissions to buyers on purchases for their own accounts for resale, and requiring two brokers to cease accepting such commissions from suppliers of citrus fruit or other fruit products on direct purchases for resale; and

Consent order requiring a third broker respondent to desist from the same practice.

Mr. Cecil G. Miles for the Commission.

Mr. Counts Johnson, of Tampa, Fla., for respondent Haines City Citrus Growers Assn.; *Hoyle & Hoyle*, by *Mr. T. C. Hoyle, Jr.*, of Greensboro, N.C., for respondent E. B. Garrett Co, Inc.; and *Langer & Simpson*, by *Mr. J. C. Simpson*, of San Francisco, Calif., for respondent Sam J. Bushala.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT DALE G. SNYDER
BY ABNER E. LIPSCOMB, HEARING EXAMINER

1. THE COMPLAINT

The complaint herein was issued on May 7, 1958, charging the Respondents with having violated §2(c) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C. Title 15, §13). Specifically, the complaint charges Respondent Haines City Citrus Growers Association, a corporation, hereinafter referred to as Respondent Haines and as the selling Respondent, with paying brokerage or a commission, or granting or allowing a discount in lieu thereof, to certain buyers purchasing citrus fruit and citrus fruit products on their own account for resale. The other Respondents, who are described as broker Respondents, are charged with unlawfully receiving such brokerage or commission, or discount in lieu thereof, upon purchases made by them for their own account from Respondent Haines.

2. THE RELEVANT PROVISIONS OF THE CLAYTON ACT

The provisions of §2 of the Clayton Act which the Respondents are charged with having violated are as follows:

(c) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such 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 any party to such transaction other than the person by whom such compensation is so granted or paid.

3. THE ANSWERS

Respondents submitted separate answers admitting their identity and business operations, but denying having violated §2(c) of the Clayton Act. In an amended answer filed after counsel supporting the complaint had rested his case, Respondent Haines alleged that each transaction disclosed by the testimony herein, between Respondent Haines and each of the broker Respondents, involved a pool-car transaction, and if any of the fruit so sold by Respondent Haines was purchased by any of the brokers for their own account for resale, such broker did not disclose that fact to Respondent Haines as required by law, and that Respondent Haines was therefore wholly justified, under applicable provisions of law, to treat every

such transaction as a legitimate pool-car transaction for which brokerage was required to be paid by Respondent Haines.

4. RULINGS ON PROPOSED FINDINGS

Consideration has been given to the entire record herein, including particularly the proposed findings as to the facts and proposed conclusions submitted by counsel supporting the complaint and counsel for Respondent Haines. Each proposed finding as to the facts and each proposed conclusion which has been accepted has been, in substance, adopted and incorporated into this initial decision. All proposed findings as to the facts and proposed conclusions not so adopted and incorporated herein are hereby rejected.

5. IDENTITY AND ORGANIZATION OF RESPONDENTS

Respondent Haines is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Haines City, Florida. Respondent Haines is a cooperative association consisting of approximately 140 members who are citrus-grove owners located in the vicinity of Haines City, Florida, for whom Respondent Haines acts as a selling agent in the sale and distribution of their citrus fruit.

Respondent Sam J. Bushala, hereinafter referred to as Respondent Bushala, is an individual doing business as Sam Bushala, with his office and principal place of business located at 510 Battery Street, San Francisco, California. Respondent Bushala is engaged principally in the brokerage business, buying and selling for others on a commission basis, but has occasionally purchased citrus fruit for resale on his own account.

Respondent E. B. Garrett Company, Inc., hereinafter referred to as Respondent Garrett, is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 1029 Westside Drive, Greensboro, North Carolina. Respondent Garrett, like Respondent Bushala, is engaged principally in the brokerage business, buying and selling for others on a commission basis, but has occasionally purchased citrus fruit for resale on its own account.

6. INTERSTATE COMMERCE

Respondent Haines is now and for the past several years has been engaged in the business of selling and distributing citrus fruit, prin-

cipally grapefruit, oranges and tangerines, produced and packed in the State of Florida by its member growers. Respondent Haines sells and distributes this fruit throughout the United States, directly without the intervention of brokers to buyers located in states other than Florida, and also to such buyers through brokers who represent Respondent Haines in effecting such sales. Many brokers thus serving Respondent Haines are likewise located in states other than the State of Florida. On sales made through brokers, Respondent Haines pays its brokers for their services a brokerage fee or commission on a basis ranging from 7¢ to 10¢ per box of 1½ bushels capacity. Respondent Haines is a substantial factor in the sale and distribution of citrus fruit and citrus fruit products in the State of Florida, with sales of fresh fruit ranging from 500,000 to 600,000 boxes annually. There has been, for the past several years, a continuous course of trade in commerce in said citrus fruit across state lines between Respondent Haines and its respective buyers and brokers.

Respondents Bushala and Garrett are now and for the past several years have been engaged principally in the brokerage business, representing various principals located in many states of the United States other than the state of their residence. Both Respondents Bushala and Garrett also occasionally purchase citrus fruit on their own account for resale. Thus there has been for the past several years a course of trade in commerce in the purchase and sale of citrus fruit across state lines between Respondents Bushala and Garrett on the one hand and their respective principals on the other, and between said Respondents and Respondent Haines.

7. TRANSACTIONS BETWEEN SELLER-RESPONDENT HAINES AND BROKER-RESPONDENT BUSHALA

The record shows that Respondent Haines made approximately twenty-five sales of Florida citrus fruit to Respondent Bushala during the period of time from January, 1955, through March, 1956, and paid brokerage on each of these transactions at the rate of 10¢ per box. Respondent Bushala testified that he represented ten to fifteen packers on a strictly brokerage basis, but that all his transactions with Respondent Haines were strictly on an f.o.b.-market-price basis, and that he resold the fruit, principally grapefruit or tangerines, purchased from Respondent Haines to jobbers and commission houses at prices determined by himself, which were based on his costs plus freight plus mark-up. He further testified that the citrus fruit which he purchased from Respondent Haines was shipped to him directly and that he remitted to Respondent Haines

in the amount called for by the invoice. He also testified that he paid the shipping charges and, when necessary, the storage charges. If the fruit arrived in a decaying condition, he reported that fact to Respondent Haines, and a satisfactory adjustment of the damage was usually made. He further testified that if the fruit was injured in transit, he filed a claim with the transportation company in his own name. In addition, he testified that if the fruit had to be repacked due to decay, he usually notified Respondent Haines of that circumstance and Respondent Haines was always willing to do what was right concerning that matter. The invoices covering Respondent Bushala's purchases showed on their faces that brokerage was usually deducted at the rate of 10¢ per box from the gross amount due Respondent Haines. In one instance in which Respondent Haines inadvertently failed to show such a deduction for brokerage, Respondent Bushala deducted the usual brokerage himself before remitting to Respondent Haines, and made a notation on the face of the invoice: "Less brokerage \$40.00".

The manner in which Respondent Bushala handled the purchase and resale in these various transactions with Respondent Haines is illustrated by the following typical example:

Cost of Merchandise		Sale of Merchandise	
Fruit Cost -----	\$1,656.25	Total Sales -----	\$2,901.15
Fumigation Cost -----	35.00	Less cost of Mdse. -----	2,446.76
Freight Cost -----	824.00		
Cost of Ice -----	41.57	Profit on Sale of Mdse. ----	\$454.39
H—H Cost -----	34.25	Plus Brokerage -----	38.50
Linale Cost -----	5.19		
	<u>\$2,596.26</u>	Total Profit -----	\$492.89
Less Adj. for decay -----	149.50		
	<u> </u>		
Total cost of Mdse. -----	\$2,446.76		

The foregoing facts compel the conclusion that Respondent Bushala knowingly received brokerage or a commission or discount in lieu thereof upon purchases made from Respondent Haines, in violation of §2(c) of the Clayton Act.

8. TRANSACTIONS BETWEEN SELLER-RESPONDENT HAINES AND BROKER-RESPONDENT GARRETT

The record shows that Respondent Haines dealt with Respondent Garrett by two separate methods. When Respondent Garrett, acting as a broker, placed an order for a full car or truckload of citrus fruit on behalf of one or two buyers, Respondent Haines billed the customers direct and paid Respondent Garrett a brokerage fee at

the rate of 7¢ per box. This type of transaction, which conforms to our traditional practice of brokerage operations, is not challenged in the complaint. The other type of transaction, which is so challenged, consists of the purchase by Respondent Garrett of a full load or partial load of citrus fruit from Respondent Haines, with no purchaser other than Respondent Garrett appearing. Respondent Haines also paid Respondent Garrett brokerage on this type of shipment. On six such shipments in 1955, the record shows that Respondent Garrett purchased citrus fruit from Respondent Haines, paying therefor on an f.o.b. basis and taking delivery in his own trucks in Florida. The fruit was thereafter transported by Respondent Garrett from Florida to various locations in other states, including South Carolina and Virginia, and there resold to various purchasers at a price fixed by Respondent Garrett. It should be observed that Respondent Garrett did not have a license from the Interstate Commerce Commission to transport the products of others across state lines, which fact indicates that Respondent Garrett regarded the citrus fruit so transported as his own property. The evidence shows further that Respondent Garrett carried insurance in his own name on such fruit. In every respect, both Respondent Garrett and Respondent Haines behaved, in those transactions, as if Respondent Garrett were buying for his own account.

Whether Respondent Garrett resold his citrus fruit at a profit cannot be determined, because he transported it in his own trucks and himself defrayed all the expenses involved in repacking and handling. Although proof of profit or loss would be relevant as tending to show ownership of the commodity sold, it is not essential to the establishment of a violation of §2(c) of the Clayton Act. The point which is essential to be proved is the ownership of the fruit after Respondent Garrett loaded it on his trucks. The evidence indicates unmistakably that such fruit was treated by all concerned as though it belonged to Respondent Garrett. We must conclude, therefore, that Respondent Garrett purchased citrus fruit from Respondent Haines for his own account, and accepted brokerage thereon in violation of §2(c) of the Clayton Act.

9. RESPONDENT HAINES' DEFENSES

As heretofore stated, counsel for Respondent Haines, both in his amended answer and in his proposed findings as to the facts, raised several related contentions in defense of Respondent Haines' payments to the broker-Respondents on purchases for their own accounts. First, he points out correctly that each broker-Respondent with whom Respondent Haines has been engaged in business trans-

actions was a duly-licensed broker, and primarily so engaged. He also calls attention to the fact that the Secretary of Agriculture has proposed, in the Federal Register of November 10, 1959, Volume 24, No. 220, §46.25 (d), a regulation concerning the duties of a broker operating under the Perishable Agricultural Commodities Act, which would require a broker acting in a dual capacity, both as a broker and as a dealer buying for himself, to inform the seller when he was buying on his own account for resale.

Counsel for Respondent Haines points out specifically that neither of the broker-Respondents herein advised Respondent Haines that they were not buying as brokers for pool-car purchasers, but that they were in fact buying on their own account for resale. Counsel for Respondent Haines contends that in view of the foregoing facts, Respondent Haines was under a legal duty to pay a brokerage fee on each transaction herein proved, and that in so doing it did not violate the Clayton Act as alleged.

In considering the above contentions, we must remember that the record shows that in every proven transaction between Respondent Haines and the two broker-Respondents, the citrus fruit involved was purchased from Respondent Haines in the name of the broker-Respondents; that the fruit was thereafter delivered to the broker-Respondents and paid for by them; and that in each transaction brokerage was deducted from the total amount due Respondent Haines, either by Respondent Haines or by the brokers themselves. The record further shows that Respondent Haines did not know or make any effort to determine who the actual purchasers in these transactions might be. In fact, each transaction herein proved has all the elements of a simple buyer-seller relationship between Respondent Haines and the broker-Respondent. We believe that under such circumstances, if Respondent Haines did not know to whom it was really selling its citrus fruit, it should have known.

It appears from the record that a pool-car shipment, as here involved, consists of a quantity of citrus fruit purchased by a broker on behalf of and to be distributed in relatively small portions among a number of buyers. It appears further that in such transactions the broker collects the purchase price from the buyers and remits it to the seller less his brokerage. We believe that when a seller sells a so-called "pool-car" shipment, ostensibly through a broker to a number of persons unknown to the seller, and in every respect concerning that shipment, deals with the broker as though the broker were himself the true purchaser, the transaction is ambiguous, and therefore imposes upon the seller the duty of determining the true facts as to who is his real customer. The ambiguity of such a trans-

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action arises from the comparatively recent practice among sellers in the citrus-fruit industry, when making pool-car sales, of billing the broker and receiving payment from the broker, instead of the old, immemorial practice of billing the actual purchasers direct, receiving payment from them for the merchandise, and thereafter paying the broker his fee. In this recent practice, as employed by Respondents herein, a pool-car transaction has all the appearance, from the seller's standpoint, of a sale to a broker for his own account, on which the payment of brokerage is prohibited by law. If the broker fails to inform the seller that he is in a specific instance buying for his own account, as he should do, the transaction presents no distinguishing feature whereby the true facts may be known to the seller. Therefore, when entering into such an ambiguous transaction, the seller is clearly obligated to ascertain who is the true purchaser, in order to avoid the possibility of paying brokerage in violation of law. Nor can the seller justify his failure so to inform himself of the true purchaser, by the previous failure of that purchaser to declare that he is buying for his own account. The mere designation "pool-car" does not render lawful that which is unlawful. The seller may not, simply by using such a designation, evade his responsibility of complying with the provisions of §2(c) of the Clayton Act.

CONCLUSION

The acts and practices of Respondent Haines in paying brokerage to Respondents Bushala and Garrett on purchases for their own accounts for resale, and the acts and practices of Respondents Bushala and Garrett in receiving and accepting brokerage from Respondent Haines on their own purchases, as alleged in the complaint and hereinabove found, constitute violations of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13). Accordingly,

It is ordered, That Respondent Haines City Citrus Growers Association, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit or fruit products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

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 citrus fruit or fruit products, to such buyer for his own account.

It is further ordered. That Respondents E. B. Garrett Company, Inc., a corporation, and its officers; and Sam J. Bushala, an individual doing business as Sam Bushala, and Respondents' agents, representatives and employees, directly or through any corporate, partnership, or other device, in connection with the purchase of citrus fruit or fruit products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

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 or in connection with any purchase of citrus fruit or fruit products, for their own account, or when Respondents are the agents, representatives, or other intermediaries acting for or in behalf of, or are subject to the direct or indirect control of the buyer.

Mr. Cecil G. Miles for the Commission.

Martin, Tate & Morrow, by *Mr. George E. Morrow*, of Memphis, Tenn., for respondent Dale G. Snyder.

INITIAL DECISION AS TO RESPONDENT DALE G. SNYDER BY
ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on May 7, 1958, charging Respondent Haines City Citrus Growers Association, a corporation, with paying, granting or allowing something of value as commission, brokerage or other compensation, or allowance or discount in lieu thereof, in connection with the sale of their citrus fruits to brokers buying on their own account, in violation of §2(c) of the Clayton Act as amended. The complaint further charges Respondent Dale G. Snyder, an individual doing business as D. G. Snyder Brokerage Co., with receiving and accepting such commission or brokerage, or allowance or discount in lieu thereof, from Respondent Haines City Citrus Growers Association, in violation of §2(c) of the Clayton Act as amended. This initial decision is concerned with the issues herein only insofar as they relate to Respondent Dale G. Snyder. Another initial decision relating to the remaining Respondents herein will be issued hereafter.

On April 25, 1960, Respondent Snyder, his counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and the Associate Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Dale G. Snyder as an individual doing business as D. G. Snyder Brokerage Co., under and by virtue of the laws of the State of Tennessee, with his office and principal place of business located at 198 S. Main Street, Memphis, Tennessee.

Respondent Snyder admits all the jurisdictional facts alleged in the complaint as to him, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement disposes of all of this proceeding only as to Respondent Dale G. Snyder.

Respondent Snyder waives 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 he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties signatory to the agreement agree that the record on which the initial decision and the decision of the Commission, relating to Respondent Snyder, 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 Respondent Snyder that he has violated the law as alleged in the complaint.

This agreement is entered into subject to the condition that the effective date of the initial decision based thereon shall be stayed by the Commission and shall not become the decision of the Commission herein unless and until the Commission issues orders to cease and desist against the other Respondents named in this proceeding.

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 with respect to Respondent Dale G. Snyder. 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 Respondent Snyder and over his acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent Dale G. Snyder, an individual, doing business as D. G. Snyder Brokerage Co., and respondent's agents, representatives and employees, directly or through any corporate, partnership, or other device, in connection with the purchase of citrus fruit, or other fruit products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

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 or in connection with any purchase of citrus fruit or other fruit products for Respondent's own account, or where Respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

STIPULATION

It is hereby stipulated and agreed by and between Haines City Citrus Growers Association, one of the respondents herein, by its duly authorized officer and attorney and counsel supporting the complaint, as follows:

PARAGRAPH 1. Said respondent has expressed its willingness to withdraw its appeal by filing an appropriate motion of even date herewith directed toward the entry by the Commission of an order herein (1) allowing withdrawal of such appeal and (2) adopting the findings, conclusions and cease and desist order contained in said initial decision, with or without, as determined by the Commission, a statement of the reasons or bases for its action, provided: (a) that the present stipulation is by reference made a part of the findings and conclusions of the Decision of the Commission; and (b) that it is agreed that the intent of the parties hereto is that said cease and desist order contained in said initial decision of the hearing examiner shall be limited in its application to the specific acts and practices set forth in PAR. 2 below and construed to cover only said acts and practices.

PAR. 2. The specific acts and practices complained of by the Commission in its complaint issued herein on the 7th day of May, 1958 and prohibited by said cease and desist order contained in said initial decision, are as follows:

First: Sales of fresh citrus fruit by said respondent to direct buyers, other than brokers, and the allowance or payment of a brokerage or commission, or a discount in lieu thereof, on said sales.

Second: Sales of fresh citrus fruit by said respondent to brokers and the allowance or payment of a brokerage or commission, or a discount in lieu thereof, on such sales. These practices include:

(a) Instances where such allowances or payments are separately made by check, or otherwise;

(b) Instances where the broker deducts said brokerage, commission, or allowance from the invoiced price before remitting payment therefor; or

(c) Instances where such allowances or payments are deducted from the sale price and the broker is given a net billing reflecting such brokerage or commission.

PAR. 3. Nothing herein contained shall be construed as prohibiting the industry trade practice custom and usage of said respondent giving or allowing other bona fide Florida fresh citrus fruit packers and shippers inter-packing house discounts or making interchanges for fruit with such packers and shippers. This paragraph is intended to be applicable only to those packers and shippers who are regularly engaged in the packing of fresh citrus fruit.

PAR. 4. The present stipulation shall (a) become a part of said respondent's said motion for leave to withdraw appeal and the Commission's order thereon, and shall be and remain a part thereof, and (b) be conclusive and binding upon the parties hereto for all purposes.

Dated this 16th day of January, 1961.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon motion of respondent Haines City Citrus Growers Association, filed February 7, 1961, requesting leave to withdraw its appeal from the hearing examiner's initial decision, filed June 30, 1960, in disposition of this proceeding as to that respondent and respondents, E. B. Garrett Company, Inc., and Sam J. Bushala, provided a stipulation attached to and made a part of said motion is approved and adopted by the Commission; and

It appearing that no appeal has been taken from the aforesaid initial decision by the respondents, E. B. Garrett Company, Inc., and Sam J. Bushala, the effective date of said initial decision having been stayed as to those respondents by Commission order issued August 10, 1960; and

It further appearing that the hearing examiner filed an initial decision in this matter on May 27, 1960, accepting an agreement containing a consent order to cease and desist theretofore executed

by respondent Dale G. Snyder and by counsel supporting the complaint, which agreement specified, among other things, that the effective date of the initial decision based thereon shall be stayed by the Commission and shall not become the decision of the Commission in this matter unless and until the Commission issues orders to cease and desist against the other respondents named in this proceeding; and

It further appearing that the initial decision of May 27, 1960, the effective date of which was stayed by Commission order of June 16, 1960, is appropriate in all respects to dispose of this proceeding as to respondent Dale G. Snyder; and

It further appearing that the aforesaid stipulation dated January 16, 1961, and entered into by respondent Haines City Citrus Growers Association and counsel supporting the complaint is for the purpose of making clear the intent of the complaint and of the order to cease and desist contained in the initial decision as to that respondent; and

The Commission having considered the aforesaid stipulation and the record herein, and having determined that the order contained in the initial decision of June 30, 1960, as construed by the stipulation, constitutes an appropriate disposition of this proceeding as to the respondent Haines City Citrus Growers Association and that the order directed against the respondents E. B. Garrett Company, Inc., and Sam Bushala is appropriate in all respects to dispose of this proceeding as to those respondents:

It is ordered, That the motion of respondent Haines City Citrus Growers Association requesting leave to withdraw its appeal from the initial decision be, and it hereby is, granted.

It is further ordered, That the initial decision of June 30, 1960, be, and it hereby is, modified by incorporating therein the aforesaid stipulation as part of the findings of fact and conclusions of law.

It is further ordered, That the initial decision of the hearing examiner as to all respondents except Dale G. Snyder, filed June 30, 1960, as hereinabove modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the initial decision of the hearing examiner as to respondent Dale G. Snyder, filed May 27, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Haines City Citrus Growers Association, E. B. Garrett Company, Inc., Sam Bushala, and Dale G. Snyder, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing,

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setting forth in detail the manner and form in which each of them has complied with the relevant order contained in the initial decision applicable to such respondent.

IN THE MATTER OF
KEEN FRUIT CORPORATION

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

Docket 7918. Complaint, June 3, 1960—Decision, May 19, 1961

Consent order requiring a packer of citrus fruit in Frostproof, Fla., to cease violating Sec. 2(c) of the Clayton Act by paying brokerage, or its equivalent, to customers making purchases for their own accounts for resale.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Keen Fruit Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Frostproof, Florida, with mailing address as Post Office Box 278, Frostproof, Florida.

PAR. 2. Respondent is now and for the past several years has been engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are hereinafter sometimes referred to as citrus fruit or fruit products. Respondent sells and distributes its citrus fruit through brokers, as well as direct, to customers located in many sections of the United States. Respondent pays its brokers, when utilizing their services in making sales for it, a brokerage or commission, usually at the rate of 7 to 10 cents per 1¾ bushel box, or equivalent. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondent has sold and distributed and is now selling and distributing its citrus fruit 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 Florida in which respondent is located. Respondent transports or causes such citrus fruit, when sold, to be transported from its place of business or packing plant, or other places, in the State of Florida to such buyers, or to the buyers' customers, located in various other states of the United States. Thus there has been at all times mentioned herein a continuous course of trade in commerce in said citrus fruit across state lines between said respondent and the respective buyers of such citrus fruit.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has made substantial sales of citrus fruit to some, but not all, of its brokers and other direct buyers purchasing for their own account for resale, and on a large number of these sales respondent paid, granted, or allowed, and is now paying, granting or allowing to these brokers and other direct buyers on their purchases, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof.

PAR. 5. The acts and practices of respondent, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles and Mr. Ernest G. Barnes for the Commission.
Mr. David B. Higginbottom, of Frostproof, Fla., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued June 3, 1960, charges the respondent Keen Fruit Corporation, a Florida corporation, located at Frostproof, Florida, with violation of Section 2(c) of the Clayton Act, as amended, in connection with packing, selling and distributing citrus fruit or fruit products.

After the issuance of the complaint, respondent entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director and Associate Director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

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By said agreement, the respondent expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondent further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and issues the following order:

ORDER

It is ordered, That the respondent, Keen Fruit Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit or fruit products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

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 citrus fruit or fruit 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 19th day of

GROVELAND FRUIT COMPANY, INC.

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