

IN THE MATTER OF
EGAN, FICKETT & CO., INC., ET AL.

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

Docket 8005. Complaint, June 27, 1960—Decision, May 19, 1961

Consent order requiring a wholesale distributor of fresh fruits and produce in Mountainside, N.J., and its subsidiary packer of citrus fruit in Ocoee, 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 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, as amended (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Egan, Fickett & Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1248 Route #22, Mountainside, New Jersey.

Respondent The Lake Fruit Co., Inc. 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 Ocoee, Florida, with mailing address as Post Office Box 547, Ocoee, Florida.

PAR. 2. Respondent The Lake Fruit Co., Inc., is a wholly-owned subsidiary of respondent Egan, Fickett & Co., Inc. which controls and directs the activities and operations of respondent The Lake Fruit Co., Inc., including its sales and distribution policies. Respondent Egan, Fickett & Co., Inc., the parent corporation, is engaged in business primarily as a wholesale distributor of fresh fruits

and produce and is also, through its subsidiary, The Lake Fruit Co., Inc., engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are hereinafter referred to as citrus fruit or fruit products. Both the parent corporation and the subsidiary are hereinafter sometimes referred to jointly as respondents. The primary activities involved in this complaint are respondents' method of selling and distributing their citrus fruit and fruit products through the subsidiary corporation, The Lake Fruit Co., Inc.

PAR. 3. Respondents, both parent and subsidiary, are now and since April 1957 have been engaged in the business of packing, selling and distributing citrus fruit and fruit products. Respondents sell their citrus fruit through brokers, as well as direct, to customers located in many sections of the United States. When brokers are utilized in making sales for them, respondents pay them for their services a brokerage or commission, usually at the rate of 10 cents per $1\frac{3}{4}$ bushel box, or equivalent. Respondents' annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 4. In the course and conduct of their business over the past several years, respondents have sold and distributed and are now selling and distributing their 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 The Lake Fruit Co., Inc. is located. Respondents transport, or cause such citrus fruit when sold, to be transported from their place of business or packing plant in the State of Florida, or from other places within the State, 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 such citrus fruit across state lines between said respondents and the respective buyers of such fruit.

PAR. 5. In the course and conduct of their business as aforesaid, respondents have been and are now making substantial sales of citrus fruit to some, but not all, of their brokers and direct buyers purchasing for their own account for resale, and on a large number of these sales respondents paid, granted or allowed, and are 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, in connection therewith.

PAR. 6. The acts and practices of respondents, 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.
Gurney, McDonald & Handley, of Orlando, Fla., by *Mr. J. Thomas Gurney*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of Section 2(c) of the Clayton Act, as amended. An agreement for disposition of the proceeding by means of a consent order has now been executed by respondents and their counsel and counsel supporting the complaint and submitted to the hearing examiner for his consideration. Attached to and made a part of the agreement is a stipulation entered into by the same parties for the purpose of making clear the intent of the complaint and of the proposed order to cease and desist. The word "agreement" as used hereinafter will include the stipulation.

The agreement provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; 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 inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the 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.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Egan, Fickett & Co., Inc., is a Delaware corporation with its office and principal place of business located at 1248 Route No. 22, Mountainside, New Jersey.

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Decision

Respondent The Lake Fruit Co., Inc., is a Florida corporation with its office and principal place of business located at Ocoee, Florida, and with mailing address as Post Office Box 547, Ocoee, Florida.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That the respondents Egan, Fickett & Co., Inc., a corporation, and The Lake Fruit Co., Inc., a corporation, and their 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

The Commission having considered the hearing examiner's initial decision, filed February 20, 1961, accepting an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that through inadvertence the word "acting" in the second line of the order to cease and desist contained in the consent agreement has been misspelled in the initial decision and should be corrected:

It is ordered, That the initial decision be, and it hereby is, amended by substituting the word "acting" for the seventh word in the second line of the order to cease and desist.

It is further ordered, That the initial decision, as so amended, shall, on the 19th day of May, 1961, become the decision of the Commission.

It is further ordered, That the respondents 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 contained in the aforesaid initial decision, as amended.

Complaint

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IN THE MATTER OF

SMITH ENTERPRISES INCORPORATED ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(c) OF THE CLAYTON ACT*Docket 8006. Complaint, June 27, 1960—Decision, May 19, 1961*

Consent order requiring parent and subsidiary corporations in Vero Beach, Fla., packers of citrus fruit, 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 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, as amended (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Smith Enterprises Incorporated 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 Vero Beach, Florida, with mailing address as Post Office Box 2226, Vero Beach, Florida.

Respondent Magic River Associates 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 Vero Beach, Florida, with mailing address as Post Office Box 2226, Vero Beach, Florida.

PAR. 2. Respondent Magic River Associates is a wholly-owned subsidiary of respondent Smith Enterprises Incorporated which controls and directs the activities and operations of respondent Magic River Associates, including its sales and distribution policies. The parent corporation and the subsidiary are hereinafter sometimes referred to jointly as respondents. Respondents are now, and for the past several years have 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. Respondents sell and distribute their citrus fruit through brokers, as well as direct, to customers located in many sections of the United States. When brokers are utilized in making sales, respondents pay them for their services a brokerage or commission, usually at the rate of 10 cents per 1 $\frac{3}{4}$ bushel box,

or equivalent. Respondents' annual volume of business in the sale and distribution of citrus fruit and fruit products is substantial.

PAR. 3. In the course and conduct of their business over the past several years, respondents have sold and distributed, and are now selling and distributing, their 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 respondents are located. Respondents transport or cause such citrus fruit, when sold, to be transported from their places of business or packing plant in the State of Florida, or from other places within the State, 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 respondents and the respective buyers of such fruit.

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

PAR. 5. The acts and practices of respondents, 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* supporting the complaint.

Respondents, *pro se*.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 27, 1960, charging them with having violated Section 2(c) of the Clayton Act, as amended. After being served with said complaint, respondents entered into an agreement, dated September 21, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondents, and by counsel supporting the complaint, and approved by the Di-

rector and Associate Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or 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 such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Smith Enterprises Incorporated is a corporation 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 Vero Beach, State of Florida. Respondent Magic River Associates is a corporation 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 Vero Beach, State of Florida.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the provisions of the Clayton Act.

Complaint

ORDER

It is ordered, That respondents Smith Enterprises Incorporated, a corporation, and Magic River Associates, a corporation, and their 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 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.