

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the aforesaid initial decision.

IN THE MATTER OF

KILLARNEY FRUIT COMPANY, INC., AND
NATHAN RUBIN DOING BUSINESS AS
KILLARNEY FRUIT COMPANY

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

Docket 8012. Complaint, June 27, 1960—Decision, May 19, 1961

Consent order requiring packers of citrus fruit in Killarney, 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 named in the caption hereof, and hereinafter more par-

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ticularly 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 Killarney Fruit Company, 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 Killarney, Florida. Respondent Killarney Fruit Company, Inc., is also a copartner, along with individual respondent Nathan Rubin, doing business as Killarney Fruit Company.

Respondent Nathan Rubin is an individual and is a copartner, along with respondent Killarney Fruit Company, Inc., doing business as Killarney Fruit Company under and by virtue of the laws of the State of Florida. All respondents named—corporate, individual, and partnership—are hereinafter sometimes referred to collectively as respondents.

PAR. 2. Respondents are now, and for the past several years have been, engaged primarily in the business of packing, selling, and distributing citrus fruit, such as oranges, tangerines, and grapefruit, as well as other fruit products, all of which are hereinafter sometimes referred to as citrus fruit. 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 for respondents, the brokers are paid for their services, in connection therewith, a brokerage or commission, usually at the rate of 10 cents per 1 $\frac{3}{8}$ bushel box, or equivalent. Respondents' annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of their business for the past several years, but more particularly since October 1, 1957, to date, respondents have sold and distributed and are now selling and distributing 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.

PAR. 4. 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 such buyers' customers located in various other states of the United States. In many instances, respondents make substantial sales to brokers or buyers located in the State of Florida, but ship or cause the citrus fruit to be shipped to the buyers'

customers located outside of said state. 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. 5. In the course and conduct of their business, as aforesaid, for the past several years, and more particularly since October 1, 1957, respondents have been and are now making numerous and 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 direct buyers on their own 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 in paying, granting, or allowing a brokerage or commission, or an allowance or discount in lieu thereof, to buyers on purchases for their own account, as hereinabove 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. Edward J. Hanlon, of Winter Garden, Fla., 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

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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 the 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 Killarney Fruit Company, Inc. is a corporation and is also a copartner, along with the individual respondent Nathan Rubin, doing business as Killarney Fruit Company, existing and doing business under and by virtue of the laws of the State of Florida, with their principal office and place of business located in the City of Killarney, State of Florida.

Respondent Nathan Rubin is an individual and is a copartner along with Killarney Fruit Company, Inc. doing business as Killarney Fruit Company under and by virtue of the laws of the State of Florida, with his principal office and place of business located in the City of Killarney, State of 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, Killarney Fruit Company, Inc., a corporation, and as a copartner along with Nathan Rubin, an individual, doing business as Killarney Fruit Company, and Nathan Rubin individually, and respondents' officers, agents, representatives, and employees, directly or through any corporate, partnership, 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 now determined that the hearing examiner's initial decision, filed January 18, 1961, is adequate and appropriate to dispose of this proceeding:

It is ordered, That said decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents shall, within sixty (60)