

IN THE MATTER OF
NEWBERN GROVES, INC.

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

Docket 8016. Complaint, June 27, 1960—Decision, May 19, 1961

Consent order requiring a Tampa, Fla., packer 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 party 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 Newbern Groves, Inc., hereinafter sometimes referred to as respondent or respondent Newbern, 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 Tampa, Florida, with mailing address as Post Office Box 9157, Tampa 4, 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, as well as other fruit products, all of which are hereinafter 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. Where brokers are utilized in making sales for it, respondent pays them for their services a brokerage or commission, usually at the rate of 10 cents per 1 $\frac{3}{4}$ 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 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. In many instances respondent sells to brokers or buyers located in the State of Florida, **but ships, or causes 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 and fruit products across state lines, between said respondent and the respective buyers of such fruit, or the buyers' customers.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has been and is now making numerous and substantial sales of citrus fruit to some, but not all, of its brokers and 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 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 respondent in paying, granting or allowing a brokerage or commission, or an allowance or discount in lieu thereof, to buyers on their own purchases, 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.
Johnson & Johnson, by *Mr. Counts Johnson*, of Tampa, Fla., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 27, 1960, charging Respondent with violation of §2(c) of the Clayton Act, as amended, by

paying, granting, or allowing commission, brokerage, compensation, or an allowance or discount in lieu thereof, to certain of its brokers and direct buyers, on purchases for their own account for resale.

Thereafter, on December 9, 1960, Respondent, its 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 Associate Director of the Commission's Bureau of Litigation, and thereafter, on January 4, 1961, submitted to the Hearing Examiner for 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 beyond any possible doubt the intent of the complaint and of the proposed order to cease and desist.

The agreement identifies Respondent Newbern Groves, Inc. as a Florida corporation, with its office and principal place of business located in Tampa, Florida, with mailing address as Post Office Box 9157, Tampa 4, Florida.

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

Respondent 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 it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree 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 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 that it has violated the law as alleged in the complaint.

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. 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 the Respond-

Complaint

58 F.T.C.

ent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That the Respondent Newbern Groves, Inc., 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 the 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 17, 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 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.