

Complaint

59 F.T.C.

IN THE MATTER OF

J. A. MORGAN PRODUCE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(c) OF THE CLAYTON ACT*Docket 8128. Complaint, Sept. 26, 1960—Decision, July 19, 1961*

Consent order requiring a wholesale distributor of citrus fruit and other food products, and a brokerage company owned and controlled by the distributor's president, to cease violating Sec. 2(c) of the Clayton Act by receiving and accepting from suppliers, commissions on purchases for the distributor's own account made directly or through said associated brokerage company.

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 J. A. Morgan Produce, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at Georgia State Market, Forest Park, Georgia. Said respondent corporation was organized and incorporated on or about May 30, 1960, and is a successor to the business formerly located at the same address under the name of J. A. Morgan Produce Company, and operated as a sole proprietorship by Julian A. Morgan, Sr., and the other individual respondents named herein.

Respondent Julian A. Morgan, Sr., an individual, is president of respondent J. A. Morgan Produce, Inc.; respondent Julian A. Morgan, Jr., an individual, is vice-president of respondent J. A. Morgan Produce, Inc., and Gloria Ann Tynes, an individual, is secretary-treasurer of respondent J. A. Morgan Produce, Inc. The office and principal place of business of the individual respondents is the same as that of the corporate respondent. Said individual respondents own all, or substantially all, of the capital stock of said corporate respondent J. A. Morgan Produce, Inc., and direct and control the acts, practices and policies thereof, including the acts and practices hereinafter mentioned, and for a considerable period of time before said business was incorporated, the individual respondents directed and controlled the acts, practices and policies of its predecessors, the J. A. Morgan Produce Company.

Respondent J. A. Morgan Produce, Inc., is engaged in business primarily as a wholesale distributor, buying, selling and distributing citrus fruit, produce and other food products, all of which are hereinafter sometimes referred to as food products. This respondent purchases its food products from a large number of suppliers located in many sections of the United States and its volume of business in the purchase and sale of food products is substantial.

PAR. 2. In addition to being president and substantial owner of the J. A. Morgan Produce, Inc., respondent Julian A. Morgan, Sr. is also doing business as the Morgan Brokerage Company, a sole proprietorship, under and by virtue of the laws of the State of Georgia, with his office and principal place of business located at Georgia State Market, Forest Park, Georgia. This respondent is now, and for the past several years has been, engaged in the brokerage business, through the Morgan Brokerage Company, representing various principals located throughout the United States. However, a substantial part of the business done by the Morgan Brokerage Company is sales to the J. A. Morgan Produce, Inc., owned and controlled by the individual respondents as indicated above. In representing these principals, respondent Julian A. Morgan, Sr., or the Morgan Brokerage Company, is paid a brokerage fee or commission at varying rates depending on the product sold. In discussing the brokerage activities of this company, both the individual respondent Julian A. Morgan, Sr. and the Morgan Brokerage Company will sometimes hereinafter be referred to collectively as the Morgan Brokerage Company.

PAR. 3. In the course and conduct of their business the individual respondents, acting for and through the corporate respondent, J. A. Morgan Produce, Inc., as well as its predecessor, the J. A. Morgan Produce Company, have purchased and distributed, and are now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Georgia, in which respondents are located. Respondents transport or cause such food products, when purchased, to be transported from the places of business or packing plants of their suppliers located in various other states of the United States to respondents who are located in the State of Georgia, or to respondents' customers located in said State, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondents and their respective suppliers of such food products.

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Respondent Julian A. Morgan, Sr., in the course and conduct of his brokerage business under the name of Morgan Brokerage Company, has been and is now selling and distributing food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, for his principals located in the various States of the United States other than the State of Georgia, in which respondent is located. Said respondent has transported or caused said food products, when sold, to be transported from his principals' places of business to the buyers' places of business located in other states, or to their customers located therein. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the sale of said food products across state lines between respondent and his principals, or customers thereof.

PAR. 4. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, the individual respondents acting for and through respondent J. A. Morgan Produce Company, have been and are now making substantial purchases of food products for their own account for resale from some of their suppliers, and on a large number of these purchases respondents have received and accepted, and are now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith. For example, respondents make substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida, and receive on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1 $\frac{3}{4}$ bushel box, or equivalent. In many instances respondents receive a lower price from some of said suppliers which reflects said brokerage or commission.

In addition, the individual respondents herein, acting for and through respondent J. A. Morgan Produce, Inc., and prior to its incorporation the J. A. Morgan Produce Company, in the course and conduct of their business for the past several years, but more particularly since January 1, 1959, have made numerous and substantial purchases of food products from some of their suppliers through the Morgan Brokerage Company, and on a large number of these purchases Julian A. Morgan, Sr., through the Morgan Brokerage Company, has received and accepted, and is now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith. For example, respondent J. A. Morgan Produce, Inc., or the J. A. Morgan Produce Company, make, or have made, substantial purchases of citrus fruit from a number of packers

or suppliers located in the State of Florida through the Morgan Brokerage Company, and on these purchases the Morgan Brokerage Company has received and accepted, and is now receiving and accepting, from said suppliers a commission or brokerage, usually at the rate of 10 cents per $1\frac{3}{5}$ bushel box, or equivalent. In view of the ownership and control as described above the said Morgan Brokerage company on such purchases is acting for and in behalf, or is subject to the direct or indirect control of the J. A. Morgan Produce, Inc., and the individual respondent named herein, and prior to its incorporation, the J. A. Morgan Produce Company.

PAR. 5. The acts and practices of respondents, and each of them, in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on their own purchases, either directly or through a brokerage company owned and controlled by Julian A. Morgan, Sr., 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).

Cecil G. Miles, Esq., and *Ernest G. Barnes, Esq.*, supporting the complaint.

Randolph Hayes, Esq., of *Lindsay, Simons and Hayes*, and *Guy Tyler, Esq.*, all of Atlanta, Ga., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On September 26, 1960, the Federal Trade Commission issued a complaint against the above-named respondents, in which they were charged with violating § 2(c) of the Clayton Act, as amended (U.S.C. Title 15, § 13), by, among other things, receiving and accepting or soliciting a brokerage or commission or an allowance or discount in lieu thereof in connection with the sale of food products bought or sold by them in interstate commerce, as "commerce" is defined in the Federal Trade Commission and Clayton Acts. A true and correct copy of the complaint was served upon respondents and each and all of them, as required by law. Thereafter respondents agreed to dispose of this proceeding without a formal hearing, pursuant to the terms of an agreement dated January 16, 1961, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on January 18, 1961, in accordance with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondents and each and all of them and contains the form of a consent cease-and-desist order which the parties have represented is dispositive of the issues involved in this

proceeding. The agreement has been signed by all the respondents and by counsel for the parties, and has been approved by the Associate Director and the Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The parties further agree, in said agreement, 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 agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Federal Trade Commission; that the order to cease and desist entered in this proceeding by the Commission may be entered without further notice to the respondents, and when so entered such order will have the same force and effect as if entered after a full hearing. Said order may be altered, modified or set aside in the manner provided for other orders, and the complaint may be used in construing the terms of the order.

The parties have covenanted that the said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

Counsel supporting the complaint has advised the undersigned that paragraph 9 of said agreement, which was placed there at the insistence of the respondents in no manner restricts or limits the order provided for in said agreement. Counsel supporting the complaint has advised the undersigned and the undersigned so finds that in the opinion of counsel supporting the complaint paragraph 9 merely permits respondent Julian A. Morgan, Sr., to continue in the brokerage business, but provides nothing more than that he may continue the activity which has always been permissible under the appropriate statute.

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 which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement is hereby accepted

and approved as complying with §§ 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner, having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent J. A. Morgan Produce, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at Georgia State Market, in the City of Forest Park, State of Georgia.

3. Respondent Julian A. Morgan, Jr., and Gloria Ann Tynes are individuals and are officers of the said J. A. Morgan Produce, Inc., and Julian A. Morgan, Sr., is an individual and is an officer of the said J. A. Morgan Produce, Inc., and also does business as Morgan Brokerage Company, a sole proprietorship. All of the above-named individual respondents maintain their office and principal place of business at the same location as that shown for J. A. Morgan Produce, Inc.

4. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

5. The complaint filed herein states a cause of action against the respondents under § 2(c) of the Clayton Act, as amended (U.S.C. Title 15, § 13), and this proceeding is in the public interest. Now, therefore,

It is ordered, That respondents J. A. Morgan Produce, Inc., a corporation, and Julian A. Morgan, Sr., Julian A. Morgan, Jr., and Gloria Ann Tynes, individually and as officers of J. A. Morgan Produce, Inc., and respondents' agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of citrus fruit or other food 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 food products for respondents' own account, or on purchases made through the

Morgan Brokerage Company, or any other brokerage organization, where, and so long as, any relationship exists between the brokerage organization and the respondents named herein, either through ownership, control or management.

It is further ordered, That respondent Julian A. Morgan, Sr., individually and doing business as Morgan Brokerage Company, or under any other name, and his agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase or sale of citrus fruit or other food 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 food products for his own account, or for the account of the Morgan Brokerage Company, or for the account of the J. A. Morgan Produce, Inc., so long as any relationship exists between the brokerage organization and the buyer organization, either through ownership, control or management, or where respondent Julian A. Morgan, Sr., or the Morgan Brokerage Company, is the agent, representative or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer, including the J. A. Morgan Produce, Inc.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision, filed May 29, 1961, accepting an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that the initial decision contains a finding which is not based upon the aforesaid agreement and is, to that extent, at variance with such agreement; and

The Commission being of the opinion that this departure from the agreement of the parties should be corrected:

It is ordered, That the initial decision be amended by striking the words "Federal Trade Commission Act" from finding number 4, on page 3 of the said initial decision, and by substituting therefor the words "Clayton Act, as amended."

It is further ordered, That the initial decision, as so amended, shall, on the 19th day of July 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 Com