

Complaint

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manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

THE SORRELLS BROS. PRODUCE COMPANY, INC.

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

Docket 8059. Complaint, July 29, 1960—Decision, Aug. 4, 1961

Consent order requiring a commission merchant in Forest Park, Ga., dealing in citrus fruits and other food products, to cease receiving and accepting from suppliers, commissions on substantial purchases of food products for its own account for resale—such as a discount of 10 cents per 1½ bushel box of citrus fruit or a lower price reflecting brokerage from Florida packers—thus violating Sec. 2(c) of the Clayton Act.

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 The Sorrells Bros. Produce Company, 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 19-21 Building G, State Farmers Market, Forest Park, Georgia.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business primarily as a wholesale grocer or commission merchant purchasing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, as well as other products, all of which are hereinafter sometimes referred to as food products. Respondent purchases its food products from a large number of suppliers located in many sections of the United States.

PAR. 3. In the course and conduct of its business for the past several years, respondent has purchased and distributed, and is 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 respondent is located. Respondent transports or causes such food products, when pur-

chased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to respondent who is located in the State of Georgia, or to respondent's 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 respondent and its respective suppliers or sellers of such products.

PAR. 4. In the course and conduct of its business for the past several years, but more particularly since January 1, 1959, respondent has been and is now making substantial purchases of food products for its own account for resale from some, but not all, of its suppliers, and on a large number of these purchases respondent 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 makes substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida, and receives from the packers 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 respondent receives a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its own purchases, 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. Basil J. Mezines* supporting the complaint.

Mr. Warren E. Hall, Jr., Bartow, Fla., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On July 29, 1960, the Federal Trade Commission issued a complaint against the above-named respondent, in which it was charged with violating § 2(c) of the Clayton Act, as amended (U.S.C. Title 15, § 13), by, among other things, receiving and accepting a brokerage or commission or an allowance or discount in lieu thereof, on its own purchases of food products which are sold and transported 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 respondent, as required by law.

Thereafter respondent agreed to dispose of this proceeding without a formal hearing, pursuant to the terms of an agreement dated June 12, 1961, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on June 14, 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 respondent 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 the president of respondent corporation, its attorney, and by counsel supporting the complaint, and has been approved by the Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement respondent admits all of the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondent waives: (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 respondent 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 respondent, 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 respondent that it has 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 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 The Sorrells Bros. Produce Company, 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 19-21 Building G, State Farmers Market, Forest Park, Georgia.

3. Respondent is engaged in commerce as "commerce" is defined in the Clayton Act.

4. The complaint filed herein states a cause of action against the respondent 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 respondent The Sorrells Bros. Produce Company, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or produce 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 produce 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.

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 June 20, 1961, accepting an agreement containing a consent order theretofore executed by the respondent and counsel in support of the complaint; and

It appearing that the first sentence in the initial decision purporting to summarize the charge in the complaint is in error; and that the initial decision contains a finding which is not based on the

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aforesaid agreement and is, to that extent, at variance with such agreement; and

The Commission being of the opinion that these errors should be corrected:

It is ordered, That the initial decision be, and it hereby is, amended by striking from the eighth line of the first paragraph on page 2 of said decision the words "Federal Trade Commission and Clayton Acts", and by substituting therefor the words "Clayton Act".

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

It is further ordered, That the initial decision, as so amended, shall on the 4th day of August 1961, become the decision of the Commission.

It is further ordered, That respondent, The Sorrells Bros. Produce Company, Inc., a corporation, 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 contained in the aforesaid initial decision, as amended.