

Complaint

59 F.T.C.

IN THE MATTER OF

SERGEANT & NICHOLY, INC., ET AL.

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

Docket 8364. Complaint, Apr. 17, 1961—Decision, Sept. 21, 1961

Consent order requiring a corporate broker of canned and other food products, a corporate food wholesaler, and the individual controlling both, to cease accepting illegal brokerage payments from sellers on purchases by said broker for the account of said wholesaler, which amounted to the wholesaler's receiving brokerage on its own purchases 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 Sergeant & Nicholoy, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at N. 56th 13740 West Silver Spring Road, Butler, Wisconsin, with mailing address as Post Office Box 702, Butler, Wisconsin.

Respondent Little Farmer Foods, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at the same address as that of respondent Sergeant & Nicholoy, Inc. Respondent Little Farmer Foods, Inc. also has as its mailing address Post Office Box 702, Butler, Wisconsin.

Respondent Robert C. Engle is an individual and is President of respondent Sergeant & Nicholoy, Inc. and is Secretary and Treasurer of respondent Little Farmer Foods, Inc. Said individual respondent has the same business and mailing address as that of the corporate respondents. Respondent Robert C. Engle is also principal stockholder of both corporate respondents and at all times hereinafter mentioned has formulated, directed and controlled, and now formulates, directs and controls the policies, acts and practices of said corporate respondents, including the acts and practices hereinafter mentioned. Respondent Robert C. Engle and both corporate respondents are hereinafter sometimes collectively referred to as respondents.

PAR. 2. Respondent Sergeant & Nicholoy, Inc. is engaged in business primarily as a broker representing various principals in the sale and distribution of canned goods and other food products, hereinafter referred to as food products. In representing these principals, said respondent is paid a brokerage fee or commission at varying rates of from 3 percent to 5 percent, depending upon the product sold. The volume of business done by respondent Sergeant & Nicholoy, Inc. is substantial.

Respondent Little Farmer Foods, Inc. is engaged in business primarily as a wholesale distributor or jobber, buying, selling and distributing food products. Said 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. On a substantial part of the purchases of food products made by respondent Little Farmer Foods, Inc., respondent Sergeant & Nicholoy, Inc. acts as broker. Such transactions likewise represent a substantial part of the brokerage business of respondent Sergeant & Nicholoy, Inc.

PAR. 3. Respondent Sergeant & Nicholoy, Inc., in the course and conduct of its business, as aforesaid, has been and is now selling and distributing food products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, for its principals located in various states of the United States other than the State of Wisconsin, in which respondent is located. Said respondent has transported, or caused said food products, when sold, to be transported from its principals' places of business to the buyers' places of business located in other states, or to their customers located therein, including shipments to respondent Little Farmer Foods, Inc. 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 its principals, or customers thereof.

Respondent Little Farmer Foods, Inc., in the course and conduct of its business, as aforesaid, has been and is now purchasing, selling and distributing food products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, in that said respondent purchases food products from suppliers or sellers located in several states of the United States other than the State of Wisconsin, in which respondent is located. Respondent transports, or causes such food products, when purchased, to be transported from the places of business of its suppliers to respondent who is located in the State of Wisconsin, or to respondent's customers located in said state, or elsewhere, including purchases made through the brokerage firm of respondent Sergeant & Nicholoy, Inc. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of food prod-

ucts across state lines between respondent and its suppliers, and in the sale of food products across state lines between respondent and its customers.

PAR. 4. In the course and conduct of its business in commerce, and more particularly since January 1, 1959, respondent Little Farmer Foods, Inc. has been and is now making numerous and substantial purchases of food products for its own account for resale from suppliers who utilize the services of respondent Sergeant & Nicholoy, Inc. as an intermediary or broker. On many of these transactions said respondent Sergeant & Nicholoy, Inc. is paid or allowed a brokerage or commission by the seller. In view of the ownership and control exercised by respondent Robert C. Engle over both corporate respondents, as hereinafter alleged and described, said respondent Sergeant & Nicholoy, on such transactions, is acting for and in behalf, or is subject to the direct or indirect control, of respondent Little Farmer Foods, Inc., or the individual respondent Robert C. Engle, or both. This would, in effect, be the equivalent of respondent Little Farmer Foods, Inc. receiving a brokerage or commission on its own purchases.

PAR. 5. The acts and practices of respondents in receiving 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 individual respondent Robert C. Engle, 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).

Messrs. Cecil G. Miles and Basil J. Mezines for the Commission.
Burlingame, Gibbs & Roper, by *Mr. Richard S. Gibbs*, Milwaukee, Wis., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued April 17, 1961, charges the above-named respondents with violation of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended.

On July 31, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an ad-

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mission by the respondents that they have violated the law as alleged in the complaint, and that the complaint may be used in construing the terms of the order.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondents Sergeant & Nicholoy, Inc. and Little Farmer Foods, Inc. are corporations existing and doing business under and by virtue of the laws of the State of Wisconsin, with their offices and principal place of business located at N. 56 13740 West Silver Spring Road, in the City of Butler, State of Wisconsin, with mailing address as Post Office Box 702, Butler, Wisconsin.

Respondent Robert C. Engle is an individual and is an officer of both the above-named respondent corporations, with his office and principal place of business the same as that of respondent corporations.

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

ORDER

It is ordered, That respondents Sergeant & Nicholoy, Inc., a corporation, and its officers, and Robert C. Engle, individually and as an officer of Sergeant & Nicholoy, Inc., and respondents' agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase or sale of canned goods 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 canned goods or other food products for their own account, or for the account of Little Farmer Foods, Inc., or any other buying organization, where, and so long as, any relationship exists between the brokerage organization and the buying organization either through ownership, control, or management by the individual respondent Robert C. Engle, or any other party, or where respondent

Sergeant & Nicholoy, Inc., or respondent Robert C. Engle, individually or as an officer of Sergeant & Nicholoy, Inc., is the agent, representative, or intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer, including Little Farmer Foods, Inc.

It is further ordered, That respondents Little Farmer Foods, Inc., a corporation, and its officers, and Robert C. Engle, individually and as an officer of Little Farmer Foods, Inc., and respondents' agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of canned goods 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 canned goods or other food products for their own account, or on purchases made through the brokerage firm of Sergeant & Nicholoy, Inc., or any other brokerage organization, where, and so long as, any relationship exists between the brokerage organization and the buying organization either through ownership, control, or management by the individual respondent Robert C. Engle, or any other party.

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 21st day of September 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.