

IN THE MATTER OF
FLOTILL PRODUCTS, INC., ET AL.

Docket 7226. Order, Sept. 3, 1964

Order denying respondents' petition for reconsideration, three participating Commissioners constituted a quorum.

ORDER DENYING RESPONDENTS' PETITION FOR RECONSIDERATION

This matter has come on to be heard by the Commission upon respondents' petition, filed August 5, 1964, for reconsideration of that portion of the Commission's final order issued herein on June 26, 1964 [65 F.T.C. 1099], which prohibits violations of Section 2(c) of the amended Clayton Act, and upon the answer of counsel supporting the complaint in opposition thereto.

In support of their petition, respondents assert that all members of the Commission should participate in the consideration of this case and that since the Section 2(c) provision of the order is supported by only two members of the Commission rather than a majority thereof, the order is not lawful.

The fact that a vacancy existed in the Commission at the time of the issuance of this final order does not render the order invalid.¹ Of the four Commissioners serving at that time, three participated in the decision. These three participating Commissioners constituted a quorum for the transaction of business in accordance with the Commission's rules and in the absence of a statutory provision relating thereto. *Drath v. Federal Trade Commission*, 239 F. 2d 452 (D.C. Cir. 1956), *cert. denied*, 353 U.S. 917. A majority of a quorum is sufficient to sustain the validity of a final order of an administrative body. *Frischer v. Bakelite Corp.*, C.C.P.A. (Patents), 39 F. 2d 247 (1930), *cert. denied*, 282 U.S. 852. Since two of the three participating Commissioners concurred in the issuance of the final order, respondents' argument on this point must be denied.

In further support of their petition, respondents contend, in effect, that a new question has been raised by the opinion for the reason that the evidence relied upon does not sustain the Section 2(c) provision of the final order. Respondents have submitted certain affidavits in support of this argument.

The Commission has carefully considered respondents' argument and concludes that respondents have made no showing of any new

¹ Section 1 of the Federal Trade Commission Act provides, in part, that "A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission."

questions upon which they had no opportunity to argue before the Commission, as provided in § 3.25 of the Commission's Rules of Practice. Accordingly,

It is ordered, That respondents' petition for reconsideration of the Commission's decision and final order be, and it hereby is, denied. Commissioner Elman not concurring.

IN THE MATTER OF

HUMBLE OIL & REFINING COMPANY

Docket 8544. Order, Sept. 3, 1964

Order denying respondent's request to quash two subpoenas duces tecum for production of certain of respondent's records.

ORDER DENYING ENTERTAINMENT OF RESPONDENT'S
INTERLOCUTORY APPEAL

Upon consideration of respondent's appeal, filed August 14, 1964, from rulings of the hearing examiner issued August 5, 1964, denying respondent's motion to quash two subpoenas duces tecum requiring respondent to produce certain records from its New York, New York, and Charlotte, North Carolina, offices,

The Commission has determined that respondent has not made the showing required by § 3.17(f) of the Rules of Practice for entertainment of said appeal. Therefore,

It is ordered, That respondent's appeal, not being entertained by the Commission, be, and it hereby is, denied.

IN THE MATTER OF

UNION BAG-CAMP PAPER CORPORATION

Docket 7946. Order, Sept. 23, 1964

Order ruling that captioned-case be conducted in conformity with Rules of