RODALE PRESS, INC., ET AL.

Docket 8619. Order, Jan. 5, 1965

Order denying motion to reconsider order which denied request for permission to file interlocutory appeal.

Order Denying Motion To Reconsider Order Denying Request for Permission To File Interlocutory Appeal

Respondents having moved that the Commission reconsider its Order Denying Request for Permission to File Interlocutory Appeal, dated December 3, 1964; and the Commission, after duly considering

initial decision based on the record developed therein, with direction that such further proceeding be conducted as expeditiously as possible.

SOUTHERN FRUIT DISTRIBUTORS, INC.

Docket 7566. Order, Jan. 26, 1965

Order denying respondent's petition to reopen proceeding involving the brokerage section of the Clayton Act.

Order Denying Petition of Respondent To Reopen Proceeding

This matter is before the Commission on petition of respondent to reopen proceeding, filed December 28, 1964, and answer in opposition thereto filed by the Bureau of Restraint of Trade January 7, 1965.

On February 13, 1960, the Commission issued its order to cease and desist against respondent prohibiting discounts in lieu of brokerage to buyers of its products. The complaint had alleged discounts in lieu of brokerage to "certain favored buyers," not otherwise identified, purchasing for their own accounts in violation of Section 2(c) of the Clayton Act as amended, U.S.C., title 15, sec. 13.

The matter was disposed of without hearings upon acceptance by the Commission of an Agreement Containing Consent Order to Cease and Desist executed pursuant to the then effective Rule 3.25, of the Commission's Rules, governing consent orders.

Thus, the entire record upon which the Commission's decision and order rests consists of the complaint and consent order.

The respondent's petition to reopen, citing the Commission's decision in *Hruby Distributing Company*, Docket 8068, December 26, 1962 [61 F.T.C. 1437], states that the challenged discounts in this matter paid by respondent were not discounts in lieu of brokerage because the recipient was an independent food distributor not competing on the same functional level with the wholesalers to whom he sold.

In support of this, respondent's petition cites *In the matter of Smith Grain Company, Inc., et al.*, Docket 7641, wherein the Commission's complaint, issued October 29, 1959 [58 F.T.C. 1058], charged Smith Grain Company with violation of 2(c) of the amended Clayton Act based upon discounts received by Smith from petitioner herein.

Petitioner states that it was sales by it to Smith Grain which formed the basis also of the Commission's complaint against petitioner in the instant matter and that a fair reading of the complaint in Docket 7641 reveals that Smith Grain was operating at a different functional