

Complaint

IN THE MATTER OF

A. GREENHOUSE, INC., ET AL.

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

Docket C-1201. Complaint, Apr. 27, 1967—Decision, Apr. 27, 1967

Consent order requiring an Albany, N.Y., grocery products wholesaler and two brokerage concerns to cease engaging in illegal brokerage practices.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and herein-after more particularly described, have been and are violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended, (15 U.S.C. § 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent A. Greenhouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Dott and Railroad Avenues, Albany, New York. This organization is a closed corporation, the entire stock of which is owned by respondent Saul Greenhouse.

PAR. 2. Respondent A. Greenhouse, Inc., has been and is engaged in business primarily as a wholesale distributor, buying, selling and distributing grocery products. This respondent purchases its grocery products from a large number of suppliers located in many sections of the United States. Its volume of business in the purchase and sale of such products is substantial, estimated to be somewhat in excess of \$3 million annually.

PAR. 3. Respondent Saul Greenhouse is president of respondent A. Greenhouse, Inc., owns all of the capital stock of the said corporate respondent, and together with Eugene Greenhouse, directs and controls the acts, practices and policies thereof.

Respondent Eugene Greenhouse was, prior to July 1, 1963, vice president of respondent A. Greenhouse, Inc., and owned a substantial part of the capital stock of said corporate respondent. Despite his ostensible severance of any connection with A. Greenhouse, Inc., subsequent to that date, he continues to act as its agent in the manner described in Paragraph Ten.

PAR. 4. Respondent Food Trends, Inc., is a corporation organized, existing and doing business under and by virtue of the laws

of the State of New York, with its office and principal place of business located in the building partially occupied by respondent A. Greenhouse, Inc., at Dott and Railroad Avenues, Albany, New York.

PAR. 5. Respondent Consumer Motivation, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in the building partially occupied by respondent A. Greenhouse, Inc., at Dott and Railroad Avenues, Albany, New York.

PAR. 6. Respondents Food Trends, Inc., and Consumer Motivation, Inc., are now, and for the past several years have been, engaged in the brokerage business, purportedly representing various seller-principals located throughout the United States in connection with the sale and distribution of grocery products. However, a substantial part of the business done by respondents Food Trends, Inc., and Consumer Motivation, Inc., consists of arranging sales to respondent A. Greenhouse, Inc. In representing alleged seller-principals in sales to A. Greenhouse, Inc., respondents Food Trends, Inc., and Consumer Motivation, Inc., are paid brokerage fees or commissions by such sellers.

PAR. 7. Respondent Eugene Greenhouse owns a substantial amount of the capital stock of respondents Food Trends, Inc., and Consumer Motivation, Inc., and serves as an officer of both corporate respondents. Said individual respondent, Eugene Greenhouse, along with other officers and directors of said corporations, directs and controls the acts, practices and policies of the corporate respondents Food Trends, Inc., and Consumer Motivation, Inc., including the acts and practices hereinafter mentioned.

PAR. 8. In the course and conduct of its business for the past several years, respondent A. Greenhouse, Inc., has purchased and distributed, and is now purchasing and distributing, grocery products in commerce, as "commerce" is defined in the Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of New York, in which said respondent is located. Said respondent transports or causes such grocery products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to said respondent which is located in the State of New York or to said 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 grocery products by said respondent

and the sale of such grocery products by its respective suppliers.

PAR. 9. Respondents Food Trends, Inc., and Consumer Motivation, Inc., in the course and conduct of their brokerage business, have been, and are now effecting the sale and distribution of grocery products in commerce, as "commerce" is defined in the Clayton Act, as amended, for their suppliers located in the various States of the United States other than the State of New York in which said respondents are located. Said respondents have transported or caused said grocery products, when sold, to be transported from their purported 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 grocery products by said respondents for their purported principals.

PAR. 10. In the course and conduct of their business for a number of years last past, but more particularly since May 1963, the individual respondents, Saul and Eugene Greenhouse have made and are now making substantial purchases of grocery products for the corporate respondent A. Greenhouse, Inc. Many of said purchases were made from suppliers through respondents Food Trends, Inc., and Consumer Motivation, Inc., who received a commission, brokerage or other compensation or allowances or discounts in lieu thereof, in connection with such sales from said suppliers. Respondents Food Trends, Inc., and Consumer Motivation, Inc., are receiving assistance from full-time employees of respondent A. Greenhouse, Inc., who are under the direct control of said corporate respondent. In addition, respondent Eugene Greenhouse, who ostensibly no longer has any connection with respondent A. Greenhouse, Inc., continues to act as its agent in conducting the affairs of said corporate respondent, particularly as they relate to the purchase, marketing and sale of grocery products, including the grocery products purchased through the brokerage operations of respondents Food Trends, Inc., and Consumer Motivation, Inc.

PAR. 11. The brokerage commissions received from sellers of grocery products by Food Trends, Inc., and Consumer Motivation, Inc., on sales made by these sellers to respondent A. Greenhouse, Inc., are substantial. In many instances, respondent A. Greenhouse, Inc., has been the principal account for which respondents Food Trends, Inc., and Consumer Motivation, Inc., have arranged sales.

PAR. 12. In view of the control and relationship described

above, respondents Food Trends, Inc., and Consumer Motivation, Inc., in the conduct of their business have been acting for and in behalf of the buyer, respondent A. Greenhouse, Inc., or have been subject to the direct or indirect control of the buyer, A. Greenhouse, Inc.

PAR. 13. 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, from sellers on their own purchases, through respondent brokerage companies, Food Trends, Inc., and Consumer Motivation, Inc., are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Commissioner Elman dissented from the issuance of the complaint.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent A. Greenhouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Dott and Railroad Avenues, Albany, New York.

Respondent Saul Greenhouse is president of A. Greenhouse, Inc., and his business address is the same as that of said corporation.

Respondent Food Trends, Inc., is a corporation organized, exist-

ing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in the building partially occupied by respondent A. Greenhouse, Inc., at Dott and Railroad Avenues, Albany, New York.

Respondent Consumer Motivation, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in the building partially occupied by respondent A. Greenhouse, Inc., at Dott and Railroad Avenues, Albany, New York.

Respondent Eugene Greenhouse is an officer of both Food Trends, Inc., and Consumer Motivation, Inc., and his business address is the same as that of said 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 A. Greenhouse, Inc., a corporation, and its officers, and Saul Greenhouse, individually and as an officer and stockholder of A. Greenhouse, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase of grocery products in commerce, as "commerce" is defined in the Clayton Act, as amended, 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 grocery products for respondents' own account, or on purchases made through Food Trends, Inc., or Consumer Motivation, Inc., 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, management or representation.

It is further ordered, That respondents Food Trends, Inc., Consumer Motivation, Inc., corporations, and their officers, and Eugene Greenhouse, individually and as an officer and stockholder of Food Trends, Inc., and Consumer Motivation, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase or sale of grocery products in commerce, as "com-

merce" is defined in the Clayton Act, as amended, 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 grocery products for their own account, or for the account of A. Greenhouse, Inc., so long as any relationship exists between said brokerage organizations and the buyer organization, either through ownership, control or management, or where respondents Food Trends, Inc., Consumer Motivation, Inc., or Eugene Greenhouse, 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 A. Greenhouse, Inc.

It is further 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 this order.

Commissioner Elman dissented from the issuance of the complaint.
