

UNITED STATES v. THE SUGAR INSTITUTE, INC.
IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

In Equity No 59-103.

UNITED STATES OF AMERICA, PLAINTIFF

VS.

THE SUGAR INSTITUTE INC.; THE AMERICAN SUGAR Refining Company; Margaret A. Jamison and Martha A. Jamison, doing business under the firm name and style of Arbuckle Bros; California & Hawaiian Sugar Refining Corporation, Ltd.; Colonial Sugars Co.; The Cuban-American Sugar Co.; Godchaux Sugars, Inc.; William Henderson, Hunt Henderson, Chris Gambel and Fred Gambel, doing business under the firm name and style of Henderson Sugar Refinery; Imperial Sugar Co.; W. J. McCahan Sugar Refining & Molasses Co.; The National Sugar Refining Co. of New Jersey; Pennsylvania Sugar Co.; Revere Sugar Refinery; Savannah Sugar Refining Corp.; Spreckles Sugar Corp.; Texas Sugar Refining Corp.; J. D. and A. B. Spreckles Securities Co. (doing business under the trade name of Western Sugar Refinery); J. F. Abbott; Earl D. Babst; W. Edward Foster; J. P. Cody; M. E. Goetzinger; George M. Rolph; William B. Tyler; C. B. Newman; George E. Keiser; Jacob Moog; I. H. Kempner; Harry G. Thompson; Louis V. Place; Manuel E. Rionda; James H. Post; Charles D. Bruyn; William H. Hoodless; Henry E. Worcester; Benjamin O. Sprague; Thomas Oxnard; Rudolph Spreckles; W. W. Harper; Edgar H. Stone; Alexander Smith; H. B. Moore; Frank E. Sullivan; and Fred G. Taylor, defendants.

FINAL DECREE

This cause having come on for final hearing upon the petition, filed March 30, 1931, as amended, and upon the several answers thereto, and the issues thereby presented having been duly tried before the undersigned, Julian W.

Mack, United States Circuit Judge, and having been argued and the Court having duly rendered and filed its opinion herein, and having this day duly made and entered special Findings of Fact and Conclusions of Law in accordance with Equity Rule 70½;

Now, upon consideration thereof, and upon motion of plaintiff, by the United States Attorney for the Southern District of New York, and by Harold M. Stephens, Assistant Attorney General, and James Lawrence Fly and Walter L. Rice, Special Assistants to the Attorney General, for relief in accordance with the prayer of the petition, and defendants Spreckles Sugar Corporation, Rudolph Spreckles, W. W. Harper and Edgar H. Stone, having appeared by their attorneys, Messrs. Cadwalader, Wickersham & Taft, and all the other defendants having appeared by their attorneys, Messrs. Sullivan & Cromwell, it is hereby

ORDERED, ADJUDGED, AND DECREED:

I. That the Court has jurisdiction of the subject matter hereof and of all parties hereto; that the petition states a cause against defendants under the Act of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209), commonly known as the Sherman Anti-Trust Act;

II. That all of the defendant Corporations, firms and individuals have engaged in a combination and conspiracy to restrain trade and commerce in sugar among the several states and in the District of Columbia in violation of the said Sherman Anti-Trust Act.

III. That the petition is dismissed as to defendants George M. Rolph and William Henderson (both deceased) insofar as they are individual parties to this action and as to W. W. Harper and Edgar H. Stone.

IV. That as hereinafter used:

1. "Said defendants" shall mean all the defendant corporations, firms and individuals, except George M. Rolph, William Henderson, W. W. Harper and Edgar H. Stone.

2. "Representatives" shall mean all the officers, agents, attorneys, servants and employees of each or any of said defendants and all persons acting under, through, by or in behalf of each or any of said defendants or claiming so to act.

3. "Program" shall mean any agreement, understanding or concerted action, including, but without limiting the generality of the foregoing, any rule, policy or code provision or interpretation, concertedly adopted or maintained.

V. That the said defendants and their representatives are hereby perpetually enjoined, restrained and prohibited, individually and collectively, in connection with the sale, marketing, shipment, transportation, storage, distribution or delivery of refined sugar from engaging or attempting to engage directly or indirectly with one another or with any competitor, through any program, in

1. Effectuating any general plan to give the same terms, conditions, or freight applications to customers, regardless of the varying circumstances of particular transactions or classes of transactions or regardless of the varying situation of particular refiners, distributors or customers or classes thereof;

2. Selling only upon or adhering to prices, terms, conditions or freight applications announced, reported or relayed in advance of sale or refraining from deviating therefrom;

3. Effectuating any system for or systematically reporting to or among one another or competitors or to a common agency, information as to current or future prices, terms, conditions, or freight applications, or lists or schedules of the same;

4. Relaying by or through The Sugar Institute Inc. or any other common agency, information as to current or future prices, terms, conditions or freight applications, or any list or schedule of the same;

5. Giving any prior notice of any change or contemplated change in prices, terms, conditions, or freight

applications, or relaying, reporting or announcing any such change in advance thereof;

6. Restraining or preventing repricing, or limiting the period during which or the extent to which a sales contract may be repriced or new prices arranged therefor;

7. Effectuating any system of gathering and/or disseminating statistical information regarding melt, sales, deliveries, stocks on hand, stocks on consignment, stocks in transit, volume of sugar moved by differential or other particular routes or types of routes, new business or ~~any other statistical information of a similar character~~, wherever and to the extent that said information is not made, or is not readily, fully and fairly available to the purchasing and distributing trade;

8. Requiring, persuading or requesting third parties to abide by or conform to any program enjoined by this decree;

9. Meeting, suppressing, or restraining prices, terms, conditions, or freight applications of particular refiners or distributors;

10. Requiring or requesting any broker, warehouse, customer, carrier, trucking concern, or any combination thereof, to elect to perform one or more such distribution functions to the exclusion of others or to discontinue or refrain from any distribution function or to dispose of any business or property interest;

11. Obtaining, requesting, exacting or attempting to exact pledges or uniform contracts or obligations from any broker, as part or in aid of any program enjoined by this decree;

12. Obtaining, requesting, exacting or attempting to exact non-rebating agreements from any broker, warehouseman or trucking concern;

13. Making or circulating lists of warehouses, brokers, carriers or trucking concerns employed or to be employed by any refiner or competitor, as a part or in aid of any program enjoined by this decree;

14. Refusing or threatening to refuse to deal with any broker, warehouse, customer, trucking concern, carrier or any combination thereof, as part or in aid of any program enjoined by this decree;

15. Dealing or threatening or purporting to deal exclusively or primarily with any defined group or class of brokers, warehouses, customers, carriers or trucking concerns, as a part or in aid of any program enjoined by this decree;

16. Subjecting or threatening to subject any broker, warehouseman, customer, carrier, trucking concern, or any combination thereof, or any agent of any refiner to any loss of business or employment, damage, injury, forfeiture, fine or penalty, as a part or in aid of any program enjoined by this decree;

17. Determining or restricting brokerage commissions or fees;

18. Determining transportation charges or freight applications to be collected from customers, or limiting freight absorptions;

19. Selling only on delivered prices or on any system of delivered prices, including zone prices or refusing to sell f. o. b. refinery;

20. Restricting routes of shipments;

21. Making or disseminating at or through The Sugar Institute, Inc., or any other common agency, and freight book or digest of freight applications or selling terms, or conditions, or supplying information relating thereto, but the foregoing shall not be construed to prevent said defendants from agreeing to report and relay announcements of prices, terms, conditions or freight applications in past and closed transactions through The Sugar Institute, Inc., or a common agency;

22. Preventing, restraining, or refusing to grant the privilege of transiting or diverting shipments, but the foregoing shall not be construed to prevent said defendants from freely discussing and advising one another as

to the most effective means for taking steps individually to prevent fraudulent use of transiting and diversion privileges;

23. Requiring, inducing, or requesting water carriers to announce rates or terms openly in advance or to agree not to deviate from such announced rates or terms or to agree not to carry or to refuse to carry sugar except upon such openly announced rates or terms;

24. Preventing, restraining or refusing to enter into private charters;

25. Preventing, restraining or refusing to participate with customers in pool-car or pool-cargo shipments;

26. Determining switching charges or restricting the absorption thereof;

27. Imposing service or extra charges;

28. Eliminating, reducing, limiting or restricting consignment points, reconsignment points, or storage at ports of entry or other points;

29. Imposing a service charge on less than carload deliveries, or on any deliveries from consignment;

30. Preventing, restraining or refusing to enter into long-term contracts, or refusing to arrange for deliveries over periods in excess of thirty days;

31. Submitting contracts or information to the Sugar Institute or any other agency before entering into any contract or sale;

32. Determining whether or not to what extent to relax or change contract terms, or using statistics of unspecified or undelivered contract balances as a part or in aid of such conduct;

33. Preventing, restraining or refusing to grant quantity or other discounts where such discounts reflect, effect, or result in economies to refiners either in direct or indirect costs;

34. Preventing, restraining or refusing to enter into tolling arrangements for customers;

35. Preventing, restraining or refusing to enter into tolling arrangements for others than customers as a part

or in aid of any program enjoined by this decree;

36. Preventing, restraining or refusing to grant the four-payment plan or split billing;

37. Fixing, restraining or refusing to grant cash discounts, or restricting the periods for which cash discounts are granted;

38. Preventing, restraining or refusing to grant price guaranties;

39. Preventing, restraining or refusing to make allowances on containers, used bags, or customers' bags or containers or discouraging experiments with or preventing or restraining the use of new types of containers;

40. Preventing, restraining or refusing to arrange the packing or selling of private brands;

41. Preventing, restraining or refusing to make resales of sugar or sales of second-hand sugar, but the foregoing shall not be construed to prevent said defendants from agreeing to invoice resales to the original buyers;

42. Preventing, restraining or refusing to make sales of damaged sugar or frozen stocks;

43. Requesting, obtaining, exacting or attempting to exact any promise or agreement from any merchant or distributor to maintain any price;

44. Requiring buyers to elect between the guarantee and nonguarantee form of contract at the time of entering the contract or at any other time before delivery or refusing to grant buyers the privilege of changing from one destination to another by resale or otherwise;

45. Engaging in any policing activities or investigating or maintaining any system of investigation, or examining files, records or stocks, or holding any trials, to ascertain or prevent violations of or departure from any program enjoined by this decree;

VI. That said defendants and their representatives, individually and collectively, are hereby directed forthwith to cancel such part of all outstanding pledges and agreements with brokers, warehousemen, carriers and

trucking concerns and agreements with parties for whom sugar has been or is being tolled, as obligates such brokers, warehousemen, carriers, trucking concerns or parties to support or adhere to any program enjoined by this decree:

VII. That jurisdiction of this cause is hereby retained for the purpose of enforcing, enlarging or modifying the terms of this decree and to enable any party hereto to apply to the court for such other orders, directions and decrees as may be necessary and proper for the aforesaid purpose.

VIII. Any program enjoined by this decree is enjoined without prejudice to applications by any party hereto for such modification of this decree as may be necessary and proper to permit adopting, maintaining and effectuating such program insofar as such program may be permissible under and pursuant to the act of Congress of June 16, 1933, known as the National Industrial Recovery Act and/or the act of Congress of May 12, 1933 known as the Emergency Farm Relief Act and/or under any other present or future statutes of the United States.

IX. That the plaintiff have and recover from the defendants all costs of this suit, except the amounts allowed to the Special Master pursuant to agreement of the parties to share therein in equal parts.

JULIAN W. MACK,
United States Circuit Judge.

OCTOBER 9, 1934.

October, 1934, from which decree an appeal was duly taken to the Supreme Court, and the Supreme Court having duly issued its mandate to this Court, May 2, 1936, ordering that the decree of this Court be modified as provided in the opinion of the Supreme Court filed March 30, 1936, and, as thus modified, affirmed, and ordering that the United States recover against defendants \$2570.64, being one-half of the cost of printing certain exhibits and supplemental record on appeal, and that the United States have execution therefor,

Now, therefore, it is ORDERED, ADJUDGED AND DECREED that sub-paragraphs 3, 4 and 5, of paragraph V, and the words "or any other statistical information of a similar character" of sub-paragraph 7, of paragraph V, be eliminated from the final decree of this Court entered October 9, 1934; and that the words "any applicable act of Congress" be substituted for the words "the act of Congress of June 16, 1933, known as the National Industrial Recovery Act and/or the act of Congress of May 12, 1933 known as the Emergency Farm Relief Act and or any other present or future statutes of the United States" in paragraph VIII of said final decree; and that said final decree in all other respects be, and the same hereby is, affirmed:

It is further ORDERED, ADJUDGED AND DECREED that the United States of America recover against the Sugar Institute, Inc., et al., Two Thousand Five Hundred and Seventy Dollars and Sixty-four Cents (\$2570.64), being one-half of the cost of printing exhibits and supplemental record on appeal in addition to the costs heretofore awarded in this Court, and have execution therefore.

(Signed) JULIAN W. MACK,
United States Circuit Judge.

October 19, 1936.
