

30022. Flour. (F.D.C. No. 50767. S. Nos. 112-045/6 A.)

QUANTITY: 648 25-lb. bags and 85 100-lb. bags at Muskogee, Okla., in possession of Griffin Grocery Co.

SHIPPED: Between 9-5-64 and 11-13-64, from Topeka, Kans.

LIBELED: 12-4-64, E. Dist. Okla.

CHARGE: 402(a) (3)—the article was rodent gnawed, and contained rodent urine and rodent hairs; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 1-4-65. Consent—claimed by Griffin Grocery Co. Segregated; 12,975 lbs. destroyed.

30023. Flour. (F.D.C. No. 49592. S. No. 56-123 X.)

QUANTITY: 750 100-lb. bags, at Chattanooga, Tenn., in possession of Turnbull Cone Baking Co.

SHIPPED: 11-21-63, from Chicago, Ill.

LIBELED: 1-9-64, E. Dist. Tenn.

CHARGE: 402(a) (4)—held under insanitary conditions.

DISPOSITION: 1-15-64. Consent—claimed by Turnbull Cone Baking Co. Segregated; 252 bags destroyed.

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS*

30024. Shelled corn (for human use). (F.D.C. No. 50759. S. No. 22-746 A.)

QUANTITY: 40 100-lb. bags, at Ellwood City, Pa., in possession of Leopardi Products, Inc.

SHIPPED: 9-23-64, from Williamsport, Ohio, by Heffner Grain Co.

RESULTS OF INVESTIGATION: Inspections of the Heffner Grain Co., and of Leopardi Products, Inc., showed that the article was held under insanitary conditions in both plants.

LIBELED: 12-1-64, W. Dist. Pa.

CHARGE: 402(a) (3)—when shipped and while held for sale, contained rodent urine and rodent hairs; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 12-22-64. Default—destruction.

30025. Wheat. (Inj. No. 485.)

COMPLAINT FOR INJUNCTION FILED: 4-14-64, Dist. N. Dak., against Buxton Co-operative Grain Co., a corporation, Buxton, N. Dak., Wallace Nygaard, president, and Marvin Solberg, manager.

CHARGE: The complaint alleged that the defendants were engaged in the operation at Buxton, N. Dak., of a grain elevator facility which included a wooden crib-type elevator structure designated as Main House and No. 1 House, a wooden crib-type elevator structure designated as North House and No. 2 House, a 27,000-bushel capacity, flat-storage, Butler-type building, a 2,000-bushel capacity storage-tank and three 7,000-bushel capacity storage-tanks, for the storage and distribution of wheat for human consumption, and were introducing and causing to be introduced and delivering and causing to be delivered for introduction into interstate commerce, wheat which was adulterated within the meaning of 402(a) (3) and 402(a) (4).

*See also No. 30018.

The complaint alleged further that the wheat consisted in part of a filthy substance by reason of the presence of rodent excreta; that the wheat had been and was being held at the defendants' grain elevator facility at Buxton, N. Dak., under insanitary conditions whereby it may have become contaminated with filth thereby rendering the wheat adulterated within the meaning of 402(a) (3) and 402(a) (4), and that the insanitary conditions of the defendants' grain elevator facility at Buxton, N. Dak., resulted from and consisted of the following conditions:

(a) In the wooden crib-type elevator structure designated as North House and No. 2 House, on the surface of the wheat of the southeast corner bin No. 7, approximately 500, 50, 100, and 200 rodent pellets per square foot, respectively, at the four corners of bin No. 7, and in the surface wheat of bin No. 7 approximately 2,100 rodent pellets in 0.7 pints of such wheat; on the surface of the wheat of the northeast corner bin No. 4, approximately 50, 10, 150, and 100 rodent pellets per square foot, respectively, at the four corners of bin No. 4, and in the surface wheat of bin No. 4, approximately 2,600 rodent pellets in 1.87 pints of such wheat; on the surface of the wheat of the north side of middle bin No. 3, approximately 50 and 200 rodent pellets per square foot at two of the four corners of bin No. 3, and in the surface wheat of bin No. 3 approximately 500 rodent pellets in 1.7 pints of such wheat; on the surface of the wheat of the southwest corner bin No. 10, approximately 40 rodent pellets per square foot at one corner of bin No. 10; on the surface of the wheat of the south side of middle bin No. 9, approximately 300, 20, 30, and 10 rodent pellets per square foot, respectively, at the four corners of bin No. 9; and on the main floor, adjacent to the west door, 2 dead mice, approximately 1,000 rodent pellets in a 3-foot square area, approximately 30 bird droppings on the floor and the window sill, a broken pane in the window above the bird droppings; and

(b) In the wooden crib-type elevator structure designated as Main House and No. 1 House, a small door containing holes as large as 1' x 2' at the north end of the head house, broken siding leaving a hole approximately 1' x 6' at the east end of the head house near the man-lift, a broken door leaving a crack approximately 1' x 5' at the south end of the head house, a 1' x 8' crack in the screen on the east end of the gallery, approximately 15 rodent pellets per square foot along the main floor's west door, approximately 30 bird droppings next to the dump pit, 3 live sparrows above the dump pit, 2 dead mice in a corner south of the Carter Cleaner, a new sliding door at the north end of the dump pit with a crack 2' x 3' wide along its length, and approximately 10 rodent pellets in a pile of wheat in the northwest corner of the south room.

The complaint alleged also that the defendants were well aware that their activities were in violation of the law, that inspections of the defendants' grain elevator facility at Buxton, N. Dak., were made on 11-8-61, 9-6-62, and 1-17/18-64, by inspectors of the Food and Drug Administration, that the activity of rodents and birds was readily observable and the defendants were so advised, and that despite the warnings conveyed to the defendants by the aforesaid inspections, the defendants had failed to correct the above insanitary conditions.

DISPOSITION: On 4-14-64, a temporary restraining order was entered which temporarily restrained and enjoined the defendants from directly or indirectly

introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, in violation of the law, wheat for human consumption and any similar article of food which was adulterated within the meaning of 402(a) (3) in that it consisted in part of a filthy substance, and within the meaning of 402(a) (4) in that it had been held under insanitary conditions whereby it may have become contaminated with filth, and from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, in violation of the law, wheat for human consumption and any similar article of food held at defendants' grain elevator facility at Buxton, N. Dak., unless and until:

(a) the facility was thoroughly cleaned and renovated and rendered suitable for use in connection with the storage of wheat for human consumption and any similar article of food, namely, unless and until all rodent and bird filth were removed from the facility; all rodent and bird infestation in and about the facility was eliminated; the means of ingress and egress of the facility by rodents and birds were closed; and any similar insanitary conditions which may result in wheat for human consumption and any similar article of food being contaminated with filth while held at the facility were eliminated; and

(b) all of the wheat which was on hand at the facility at the time the facility was cleaned, renovated and rendered suitable for the storage of food for human consumption was destroyed, denatured for use as animal feed, or cleaned and otherwise reconditioned under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and all expenses of such supervision paid by the defendants.

On 5-12-64, the Government and the defendants stipulated in part, that the defendant, Buxton Co-Operative Grain Co., had determined to abandon and discontinue the use of the wooden crib-type elevator structure designated as North House and No. 2 House and in those circumstances to require that this portion of defendant's facility be cleaned, renovated, and rendered suitable for the storage of wheat or other articles for human consumption imposed an unnecessary hardship upon the defendants, and that all grain heretofore stored in the North House or No. 2 House had been removed from the structure and was now ready for shipment upon approval of the conditions thereof by the Food and Drug Administration, Department of Health, Education, and Welfare.

On 5-15-64, the court, pursuant to the above stipulation, ordered that the requirements for the cleaning, renovation, and rendering suitable of the facility known as the North House or No. 2 House were eliminated from the restraining order, and the wheat which was on hand and which had been stored in the North House or No. 2 House might be shipped in interstate commerce if and when the same shall have been cleaned and otherwise reconditioned under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare under all the terms and conditions of paragraph (b) of the temporary restraining order.

In compliance with the order of the court, the defendants corrected the deficiencies of the Main House and removed and cleaned all the wheat in the North House. The defendants thereafter discontinued use of the North House for grain storage and the temporary restraining order was dismissed.