

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS*

28911. Wheat. (Inj. No. 357.)

COMPLAINT FOR INJUNCTION FILED: 5-6-59, Dist. N. Dak., against Kulm Milling Co., a corporation, Kulm, N. Dak., and Reinhold Beich, president, and Fred Rossman, secretary-treasurer.

CHARGE: The complaint alleged that the defendants were engaged in the operation of a grain elevator facility at Kulm, N. Dak., that two buildings were used for the storage of grain, a main elevator house and an annex, some distance away, that the defendants were engaged at Kulm, N. Dak., in the business of storing and distributing wheat for human consumption, and had been shipping in interstate commerce, wheat which was adulterated within the meaning of 402(a)(3) and 402(a)(4).

It was alleged further that the food consisted in part of a filthy substance by reason of the presence in and on the wheat of rodent excreta pellets, bird excreta fragments, insects, insect parts, and urine; and that the wheat was being held at the defendants' grain elevator at Kulm, N. Dak., under insanitary conditions whereby it may have become contaminated with filth; thereby rendering the food adulterated within the meaning of 402(a)(3) and 402(a)(4).

The complaint alleged further that the insanitary conditions in defendants' main elevator house, where wheat for human consumption was held, resulted from and consisted of a dead mouse on the window ledge 4 feet above the wheat in bins 3 and 4, and a dead mouse on the surface of the wheat near the north side of bins 3 and 4; an estimated 200 rodent excreta pellets on the eave line about 3½ feet above the grain in the southeast corner of bins 3 and 4, and an estimated 200 rodent excreta pellets along the eave line on the east wall above bins 3 and 4; and rodent excreta pellets on much of the surface of the wheat in bins 3 and 4; in a one-half pint sample of wheat, taken from the north side of bins 3 and 4, there were about 175 mouse excreta pellets, as well as urine on all kernels tested; in a one and one-half pint sample of wheat, taken from the southeast corner of bins 3 and 4, there were about 500 mouse excreta pellets, a bird excreta fragment, and a feather, as well as urine on all kernels tested; similar filth was found in the one-pint sample of wheat taken from the northwest corner and in the one-half pint sample taken from the southwest corner of bins 3 and 4; there was a dead mouse on the surface of the wheat in the northwest corner, and rodent excreta pellets on the surface of the wheat in bin 12; there were about 330 mouse excreta pellets in a one pint sample of wheat taken from the southwest corner of bin 12, and in a one-half pint sample of wheat taken from the surface in the northeast corner of bin 12 there were about 350 mouse excreta pellets and one feather; in a one-fifth pint sample of wheat taken from the surface in the southwest corner of bin 12, there were 40 mouse excreta pellets, and one flat grain beetle and urine on more than half of the kernels tested; and rodent entry holes were noted in bin 12 and two large holes were in the floor near the Carter cleaner in the center of the elevator, as well as numerous other openings where rodents and birds could enter the building.

The complaint alleged also that there were about 11,000 bushels of wheat stored in the annex; and that a live mouse was seen near the window at

*See also No. 28908.

the south end, and another live mouse running along the eave line at the east wall; about 50 mouse excreta pellets were seen along the sill of the south window, and in the chute there was a mouse nest with 3 live adult and 4 live baby mice; rodent excreta pellets were on the surface of the wheat; in a one-pint sample of wheat taken from under the doorway there were about 220 mouse excreta pellets and urine on all the kernels tested; and other samples of wheat taken from this elevator showed numerous mouse excreta pellets, bird excreta, insects, and urine on the kernels.

The complaint alleged further that the defendants were well aware that their activities were in violation of the Act; that inspections of the defendants' grain elevator at Kulm, N. Dak., were made on 2-19 and 20-59, and again on 3-3-59, by inspectors of the Food and Drug Administration, at which times the insanitary conditions in the elevator were called to the attention of the defendants; that in addition, 4 cars of wheat shipped by this elevator on 2-25, 3-4, and 3-17, 1959, were sampled in Minnesota and found to contain rodent pellets; and that despite the warnings conveyed to the defendants by the inspections and samplings, the defendants had failed to correct the insanitary conditions in the elevator and continued to ship into interstate commerce, wheat for human consumption which was adulterated.

DISPOSITION: On 5-5-59, a temporary restraining order was entered. Thereafter it was stipulated by the defendant and the Government that prior to the commencement of the injunction proceeding, the defendants used two buildings for the storage of grain, a main elevator and an annex; that the main elevator house of the Kulm Milling Company, a corporation, had been cleaned, renovated and rendered suitable for the storage of wheat for human consumption, and had been inspected and approved by the Food and Drug Administration; that the annex building of the Kulm Milling Company, a corporation, had not been cleaned, renovated or rendered suitable for the storage of wheat for human consumption, and was not presently being used for storage of wheat, and it was not contemplated that it would be so used; that all of the wheat on hand at the time the injunction proceeding was commenced had been removed and cleaned or otherwise reconditioned under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and brought into compliance with the provisions of the Act; and that the permanent injunction against the defendants as pertains to the main elevator building might be denied and as pertains to the annex building might be granted.

On 12-17-59, a consent decree of permanent injunction was filed, pursuant to the above stipulation. The decree perpetually enjoined and restrained 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 Federal Food, Drug, and Cosmetic Act, wheat for human consumption held in the defendants' annex building at Kulm, N. Dak., until (a) the annex building was thoroughly cleaned, renovated and rendered suitable for the storage of wheat for human consumption and all insect and rodent filth was removed from the annex; and (b) the annex building was inspected by a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and a report made to the court stating the annex building had been cleaned, renovated and was suitable for the storage of wheat for human consumption.