

Commodity Futures Trading Commission
CEA CASES

NAME: A. E. ALBERT AND A. E. ALBERT AND SONS, INC.

CITATION: 13 Agric. Dec. 1140

DOCKET NUMBER: 64

DATE: DECEMBER 28, 1955

DOCUMENT TYPE: DECISION AND ORDER

NOTE: SUPPLEMENTAL ORDER DATED DECEMBER 29, 1954 IS ATTACHED TO THE END OF THE DECISION AND ORDER. ANOTHER VERSION OF THE SUPPLEMENTAL ORDER THAT WAS NOT REPORTED IN THE AGRICULTURAL DECISIONS AVAILABLE IN THIS DATABASE.

(No. 4119)

In re A. E. ALBERT AND A. E. ALBERT AND SONS, INC. CEA Docket No. 64. Decided December 28, 1955. Supplemental Order December 29, 1954.

**Suspension of Trading Privileges -- Failure to Submit Reports -- Wilfulness -
- Consent Order**

Where respondents failed to submit reports concerning transactions in potato futures and submitted incomplete and inaccurate reports with respect to similar transactions, in spite of previous warnings, and respondents admitted the allegations and consented to the entry of an order, *held*, effective January 3, 1955, all contract markets shall refuse all trading privileges to the respondents for a period of 15 days, with the exception of bona fide orders with which respondents have no interest other than the usual broker-customer relationship.

Mr. Benjamin M. Holstein for Commodity Exchange Authority. *Mr. A. E. Albert and A. E. Albert and Sons, Inc.*, of Worthington, Massachusetts, respondents, *pro se*.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a quasi-judicial proceeding under the Commodity Exchange Act (7 U.S.C., Chapter 1), instituted by a complaint and notice of hearing issued under section 6(b) of the act (7 U.S.C. 9) on November 12, 1954, by the Assistant Secretary of Agriculture. The complaint charged that the respondent corporation failed to submit reports concerning its transactions in potato futures on 30 occasions within a period of approximately 13 months and that it submitted incomplete and inaccurate reports with respect to similar transactions on 46 other occasions within that period, in violation of section 4i of the act (7 U.S.C. 6i) and sections 6.10, 6.11, 6.12, and 6.21 of the rules and regulations thereunder (17 CFR 6.10, 6.11, 6.12, 6.21). The complaint alleged that these violations were wilful because the respondents had been previously informed in writing that their continued delinquency in connection with reporting requirements would result in formal action.

No hearing was held. On December 21, 1954, prior to the date set for hearing, the respondents filed a document under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they admitted the facts alleged in the complaint, waived hearing on the charges, and consented to the entry of the order hereinafter set forth, with findings of fact.

FINDINGS OF FACT

1. Respondent A. E. Albert and Sons, Inc. is a corporation organized under the laws of the State of Massachusetts. The address of the said corporation is P. O. Box 107, Worthington, Massachusetts. On September 24, 1954, the said corporation was registered as a futures commission merchant under the Commodity Exchange Act and is presently so registered. Respondent A. E. Albert, an individual whose address is Chesterfield Avenue, Worthington, Massachusetts, is the president and principal shareholder of the respondent corporation, and manages and controls its business. At all times material to this complaint, the said A. E. Albert was a member of the New York Mercantile Exchange, and by reason thereof the respondent corporation exercised membership trading privileges on the said exchange.

2. The New York Mercantile Exchange is a duly designated contract market under the Commodity Exchange Act.

3. The acts and transactions hereinafter described were initiated and carried out under the supervision and direction of respondent A. E. Albert in his capacity as president and managing officer of the respondent corporation.

4. On each day during the periods from September 10, 1953 to November 17, 1953, from December 17, 1953 to March 23, 1954, from May 13, 1954 to May 16, 1954, and from July 22, 1954 to October 18, 1954, the net long or net short open contract position of respondent A. E. Albert and Sons, Inc. in potato futures on the New York Mercantile Exchange ranged from 25 carlots to 174 carlots in a single future. By reason of the fact that such quantities were equal to or in excess of 25 carlots in one potato future, the said corporation was in reporting status and was required to report to the Commodity Exchange Authority with respect to all transactions executed and all open contract positions held for its account in all potato futures on all boards of trade (exchanges) during the said periods, as provided in section 4i of the Commodity Exchange Act and sections 6.10, 6.11, 6.12, and 6.21 of the rules and regulations thereunder (17 CFR 6.10, 6.11, 6.12, 6.21).

5. On approximately 30 business days within the periods specified in paragraph 4, and while the respondent corporation was in reporting status as therein described, transactions in potato futures on the New York Mercantile Exchange were executed for the account of the said corporation, but the respondents failed or refused to report to the Commodity Exchange Authority with respect to such transactions. On approximately 46 other business days within the periods specified in paragraph 4, and while the respondent corporation was in reporting status as therein described, transactions in potato futures on the New York Mercantile Exchange were executed for the account of the said corporation, but the respondents submitted incomplete and inaccurate reports with respect to such transactions.

6. Between July 17, 1952 and January 12, 1954, the Commodity Exchange Authority communicated with the respondents nine times because of their failure to submit reports and because of the submission of incomplete and inaccurate reports. On January 12, 1954, the Administrator of the Commodity Exchange Authority addressed a letter to respondent A. E. Albert, calling attention to the delinquency of the respondents in submitting reports, informing them that such delinquency was a continuing violation of the Commodity Exchange Act, and warning them that continued failure in this regard might result in the institution of administrative proceedings directed toward denial of trading privileges on contract markets.

CONCLUSIONS

Section 4i of the Commodity Exchange Act provides as follows: Sec. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the Secretary of Agriculture (1) . . . and (2) whenever such person shall directly or

indirectly have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture

Section 6.10 of the rules and regulations provides as follows: Sec. 6.10. Persons holding or controlling open contracts of specified size; reports on Form 603. Every person who holds or controls open contracts in any one potato future on any one contract market which equal or exceed the amount fixed by the Secretary of Agriculture (in sec. 6.21 hereof) for reporting purposes under section 4i (2) of the Commodity Exchange Act shall report to the Commodity Exchange Authority on Form 603. Such report shall be made daily: . . .

With respect to potato futures, the amount fixed by the Secretary of Agriculture for reporting purposes under these provisions is 25 carlots (17 CFR 6.21). Other sections of the rules and regulations prescribed the time for filing reports and the information to be furnished (17 CFR 6.11, 6.12).

The respondents have admitted the facts alleged in the complaint, which have been adopted as the findings of fact in this proceeding. It thus appears that they failed to file reports on 30 occasions when they were required to do so and that they submitted incomplete and inaccurate reports on 46 similar occasions. The failure to file complete, correct, and accurate reports when and as required is contrary to and constitutes a violation of the provisions of the act and the regulations. The number of instances involved and the fact that the respondents were given prior warning justify the conclusion that these violations were wilful. The complainant has recommended that the stipulation which the respondents have filed under section 0.4(b) of the rules of practice be accepted and that the order to which they have consented be issued. It is so concluded.

ORDER

Effective January 3, 1955, all contract markets shall refuse all trading privileges to A. E. Albert, either for his own account or for the accounts of other persons, such refusal to apply to all trading done and positions held directly by the said A. E. Albert, and also to trading done and positions held indirectly through persons owned or controlled by the said A. E. Albert, or otherwise.

Effective January 3, 1955, all contract markets shall refuse to A. E. Albert and Sons, Inc., all trading privileges for its own or house account for a period of fifteen (15) days, such refusal to apply to all trading done and positions held directly by the said A. E. Albert and Sons, Inc., and also to all trading done and positions held indirectly through persons owned or controlled by the said A. E. Albert and Sons, Inc., or otherwise, *Provided*, that such refusal shall not be construed to prohibit the execution of *bona fide* orders received by the said A. E. Albert and Sons, Inc., in its capacity as a registered futures commission merchant under the Commodity Exchange Act, in connection with which orders neither the said A. E. Albert and Sons, Inc. nor A. E. Albert has any interest other than the usual broker-customer relationship.

A copy of this decision and order shall be served on the respondents and on each contract market.

SUPPLEMENTAL ORDER

On December 28, 1954, an order was entered in this proceeding, effective January 3, 1955, directing all contract markets to deny all trading privileges on such markets to A. E. Albert and A. E. Albert and Sons, Inc. The denial of trading privileges to A. E. Albert did not state the period of denial. Such period is fifteen (15) days.

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