

Commodity Futures Trading Commission
CEA CASES

NAME: JOSEPH J. CRILLY AND WILLIAM E. HENNER

CITATION: 20 Agric. Dec. 178

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(No. 7041)

In re JOSEPH J. CRILLY AND WILLIAM E. HENNER. CEA Docket No. 95. Decided March 27, 1961.

Suspension of Registration -- Denial of Trading Privileges -- Consent Order

The registrations of respondents as floor brokers are suspended for 15 days and all contract markets are ordered to refuse trading privileges to respondents for a 15-day period.

Mr. Benj. M. Holstein, for Commodity Exchange Authority. *Mr. James J. Coughlin*, of Chicago, Illinois, for respondent Joseph J. Crilly. Respondent William E. Henner *pro se*.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

The complaint in this administrative proceeding, issued November 30, 1960, names two registered floor brokers on the Chicago Mercantile Exchange as respondents. The charges are

based upon transactions in egg futures by and between the respondents. Respondent Joseph J. Crilly is charged with offsetting orders of customers for the purchase of egg futures against other orders of customers for the sale of such futures, in willful violation of section 4b(D) of the act (7 U.S.C. 1958 ed., § 6b(D)), and both respondents are charged with executing purchases and sales of egg futures in a manner which was not open and competitive, in willful violation of section 1.38 of the regulations (17 CFR 1.38) (Complaint, VI).

As the basis for these charges, the complaint alleges that on August 4, 1960, respondent Crilly had in his possession, for execution on the Chicago Mercantile Exchange on behalf of his principals, various orders to buy October 1960 egg futures and other orders to sell such futures; that before trading opened on that day Crilly gave Henner some of these orders, viz., orders to sell seven carlots and an order to buy one carlot; that shortly thereafter during the opening period of the trading session Henner sold twenty carlots to Crilly at 30.65 cents per dozen, applied seven carlots against the selling orders he had received from Crilly, and took the remaining 13 carlots into his own account; that Crilly applied his purchase of the 20 carlots against the buying orders which he had; and that immediately after this 20 carlot sale by Henner to Crilly, Henner bought one carlot from Crilly and applied the purchase against the buying order which he had received from Crilly, who took the sale side of this transaction into his personal account. The complaint also alleges that the 20 carlot trade in question established the high price quotation for the day and was the only transaction at that price during that day (Complaint, IV, V.)

No hearing has been held. On March 20, 1961, there was filed on Crilly's behalf a stipulation in which Crilly withdraws his previous answer, admits the facts hereinafter set forth insofar as they concern him, waives hearing on the charges, and consents to the entry of the order contained herein. On March 23, 1961, a similar stipulation was filed by respondent Henner withdrawing Henner's answer and admitting the facts with respect to Henner, waiving hearing, and consenting to the entry of an order.

While each respondent admits only his own activities and not those of his fellow respondent, the net effect of the stipulations,

taken together, is an admission of all the allegations in the complaint. Accordingly, we believe that a single decision and order is appropriate.

FINDINGS OF FACT

1. Respondent Joseph J. Crilly, 110 North Franklin Street, Chicago 6, Illinois, is now and was at all times material herein a registered floor broker under the Commodity Exchange Act and a member of the Chicago Mercantile Exchange.

2. Respondent William E. Henner, 110 North Franklin Street, Chicago 6, Illinois, is now and was at all times material herein a registered floor broker under the Commodity Exchange Act and a member of the Chicago Mercantile Exchange.

3. The Chicago Mercantile Exchange is now and was at all times material herein a duly designated contract market under the Commodity Exchange Act.

4. On August 4, 1960, respondent Joseph J. Crilly, in his capacity as floor broker representing various futures commission merchants, had received and had in his possession for execution on behalf of his principals a number of orders to sell October 1960 egg futures on the Chicago Mercantile Exchange and a number of orders to buy such futures on the said Exchange. Thereupon respondent Crilly, shortly prior to the opening of the trading session on that day, turned over several of such orders to respondent William E. Henner for handling by respondent Henner -- to wit, orders to sell seven carlots of October 1960 egg futures and an order to buy one carlot of such future, and respondent Henner received and accepted the said orders.

5. Shortly after respondent Henner had received the above described orders from respondent Crilly, and during the opening of the trading session on the Chicago Mercantile Exchange, in a manner which was not open and competitive, respondent Henner sold 20 carlots of October 1960 egg futures to respondent Crilly at 30.65 cents per dozen, applied seven carlots of the said sale against the selling orders which he had received from respondent Crilly, and took the remaining 13 carlots into his personal account. Respondent Crilly applied the purchase of the said 20 carlots against the buying orders which he had for

execution, as described in paragraph 4. This transaction between the respondents established the high price quotation for the October 1960 egg future for August 4, 1960, and was the only transaction at that price during that day. Immediately following this transaction, in a manner which was not open and competitive, respondent Henner purchased one carlot of October 1960 egg futures from respondent Crilly at 30.50 cents per dozen and applied the purchase against the buying order which he had theretofore received from respondent Crilly, and Crilly took the sale side of this transaction into his personal account.

CONCLUSIONS

The requirement that orders be executed openly and competitively is inherent in the provisions of the Commodity Exchange Act, and section 1.38 of the regulations under the act (17 CFR 1.38) provides, in pertinent part, as follows:

Sec. 1.38 Execution of transactions -- (a) Competitive execution required; exceptions. All purchases and sales of any commodity for future delivery on or subject to the rules of a contract market shall be executed openly and competitively as to price by open outcry or posting of bids and offers or by other equally open and competitive methods, . . .

When Crilly and Henner bought from and sold to each other in a manner which was not open and competitive, each of the respondents violated this requirement.

It appears also that Crilly violated the prohibition in the act against offsetting. Section 4b(D) of the act (7 U.S.C. 1958 ed., § 6b(D)) makes it unlawful for any member of a contract market who has an order to buy or sell futures on behalf of any person "to fill such order by offset against the order or orders of any other person . . ." The orders to sell seven carlots which Crilly had originally received from his principals were turned over by him to Henner, who proceeded to fill these orders by selling to Crilly noncompetitively and Crilly then applied the purchases to orders of his principals to buy seven carlots. In other words, Crilly caused his buying customers to purchase from his selling customers by means of a noncompetitive trade with another broker. The effect was no different than if he had matched the orders to sell seven carlots against the orders to buy seven carlots without any transaction.

A customer who orders the purchase or sale of futures has a right to expect open and competitive execution in the market, and when his order is matched against an opposite order held by the broker, without open and competitive offering or bidding in the market place, it is offset within the meaning of section 4b(D). *Nichols and Company v. Secretary of Agriculture*, 136 F. 2d 503, 505 (C. A. 1st, 1943).

Accordingly, it is concluded that respondent Crilly offset orders for the sale of futures against the orders of other persons for the purchase of such futures, in violation of section 4b(D), and that both respondents executed trades in a manner which was not open and competitive, in violation of section 1.38 of the regulations. Since it is clear that each respondent intended to make these trades and intended to make them in the manner described, the violations were willful. *Goodman v. Benson*, (C. A. 7, No. 12920, February 16, 1961); *Eastern Produce Company v. Benson*, 278 F. 2d 606, 609 (C. A. 3).

The complainant states that it has carefully considered the stipulations and waivers filed by the respondents, and the terms of the order to which each of them proposes to consent. It believes that the proposed sanctions would be adequate and that the prompt entry of such an order without further proceedings would constitute a satisfactory disposition of this case, serve the public interest, and effectuate the purposes of the act. The complainant therefore recommends that the stipulations and waivers be accepted and that the proposed order be issued. It is so concluded.

Respondent Crilly has requested that any order which may be entered against him be made effective as soon as possible, and the complainant has no objection to granting this request. Respondent Henner has not so requested. There appears to be no reason why the sanctions should run concurrently, and the sanction as to respondent Crilly will be made effective April 10, 1961, while that against respondent Henner will allow for the customary period of approximately thirty days before it takes effect, and will become effective May 1, 1961.

ORDER

Effective April 10, 1961, the registration of Joseph J. Crilly as a floor broker under the Commodity Exchange Act is suspended for a period of fifteen (15) days, and effective on

the same date all contract markets shall refuse all trading privileges to the said Joseph J. Crilly for a period of fifteen (15) days, such refusal to apply

to all trading done and all positions held by the said Joseph J. Crilly directly or indirectly.

Effective May 1, 1961, the registration of William E. Henner as a floor broker under the Commodity Exchange Act is suspended for a period of fifteen (15) days, and effective on the same date all contract markets shall refuse all trading privileges to the said William E. Henner for a period of fifteen (15) days, such refusal to apply to all trading done and all positions held by the said William E. Henner directly or indirectly.

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

LOAD-DATE: June 8, 2008

