

Commodity Futures Trading Commission
CEA CASES

NAME: DANIEL A. DE LATTRE

CITATION: 24 Agric. Dec. 1031

DOCKET NUMBER: 122

DATE: AUGUST 9, 1965

DOCUMENT TYPE: DECISION AND ORDER

(No. 10,023)

In re DANIEL A. DE LATTRE. CEA Docket No. 122. Decided August 9, 1965.

**Failure to segregate funds -- Failure to keep records and to report --
Suspension of registrations -- Denial of trading privileges**

Respondent's failure to keep a customer's fund separate from personal funds is in violation of the act and failure to keep records of the transactions and to report them is in violation of the regulations for which respondent's registrations as futures commission merchant and floor broker are suspended for 3 days and his trading privileges on the contract markets are denied for a like period.

Mr. Earl L. Saunders for complainant.

Mr. Harry H. Fortes, Chicago, Ill., for respondent.

Mr. Jack W. Bain, Referee

Decision by Thomas J. Flavin, Judicial Officer

DECISION AND ORDER

In this disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1) the referee issued a recommended decision, containing proposed findings and conclusions, to the effect that respondent, a registered futures commission merchant and floor broker, had violated the act as charged by (1) failing to segregate funds received from a customer for trading in futures, (2) by failing to segregate the resulting contracts and (3) by failing to keep records of the trades and to report them to the customer. The referee also proposed an order suspending respondent's registrations under the act for three days.

Respondent did not file exceptions to the recommended decision and order. Complainant filed exceptions requesting only that in addition to the three-day suspension of respondent's registrations respondent should also be denied all trading privileges on the contract markets under the act for the three-day period.

Upon consideration of the record we conclude that the referee's recommended decision and order should be adopted as the final decision and order except for the modification in the order sought by complainant.

Accordingly, the referee's recommended decision is adopted as the final decision and the final order is as follows:

ORDER

Effective August 30, 1965, the registrations of Daniel A. de Lattre as a futures commission merchant and as a floor broker under the Commodity Exchange Act are suspended for a period of 3 days, and effective on the same date all

contract markets shall refuse all trading privileges to him for a period of 3 days, such refusal to apply to all trading done and all positions held by the respondent directly or indirectly.

Copies hereof shall be served upon the parties and upon each contract market under the act.

REFEREE'S RECOMMENDED DECISION AND ORDER

PRELIMINARY STATEMENT

This is a proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1), hereinafter called the Act. It was instituted by a complaint filed October 13, 1964, by an Assistant Secretary of Agriculture. The respondent, Daniel A. de Lattre, of Chicago, Illinois, a registered futures commission merchant and floor broker, and member of the Chicago Open Board of Trade and the Chicago Mercantile Exchange, was charged with failing to segregate funds received from a customer for trading in futures, and the resulting futures contracts, and failing to keep records of the trades and to report them to the customer. Respondent filed an answer October 15, 1964, stating that the money received was a loan, to be used partly for paying off a note, and did not constitute customer's funds and contracts required to be segregated and reported.

An oral hearing was held in Chicago on November 18, 1964, before Jack W. Bain, Office of Hearing Examiners, United States Department of Agriculture. Earl L. Saunders, Office of the General Counsel of the Department, appeared as counsel for complainant, and Harry H. Fortes, of Chicago, as counsel for respondent. Three witnesses testified, and 12 exhibits were received in evidence. After the hearing, the parties filed suggested findings and briefs.

PROPOSED FINDINGS OF FACT

1. Respondent Daniel A. de Lattre is an individual whose business address is 343 South Dearborn Street, Chicago Illinois. He is, and was at all times material herein, a registered futures commission merchant and floor broker under the Act and a non-clearing

member of the Chicago Open Board of Trade and the Chicago Mercantile Exchange, both of Chicago and both duly designated contract markets under the Act.

2. From about 1950 through 1960, Mr. Rene Pervilhac, of New York City, occasionally traded in egg, wheat, and soybean futures on the Chicago Open Board of Trade and the Chicago Mercantile Exchange through respondent as futures commission merchant. In such trading, Pervilhac relied almost entirely on the judgment and advice of respondent, and permitted respondent in respondent's discretion to make trade for Pervilhac. Respondent in handling those trades operated as a futures commission merchant on a disclosed basis pursuant to section 1.31a of the regulations under the Act (17 CFR 1.31a), so that each trade and the margin put up for it by Pervilhac were carried in Pervilhac's name at the clearing firm through which the trade was cleared, and the clearing firm made the confirmation of the trade and kept the required records.

3. Respondent and Pervilhac were born in the same town in France, knew many of the same people there, and became good friends after meeting in Chicago. Early in 1961 Pervilhac was having domestic troubles. He borrowed \$ 2,208 from the First National City Bank of New York, repayable \$ 92 monthly. He planned to take his children to Europe for an indefinite time. He did not want to continue a futures account in his own name. He went to Chicago and discussed the situation with respondent. They considered closing out Pervilhac's account and opening one for him in respondent's wife's name. Among the results of their discussions were the following: Pervilhac closed out his commodity account, receiving from the clearing firm a \$ 1,000 check and \$ 150 in cash; gave respondent \$ 5,000 to use at respondent's discretion to make money for Pervilhac, principally if not entirely in futures trading, and to pay off the \$ 2,208 loan; and Pervilhac turned over two life insurance policies to respondent

(in respondent's wife's name) which respondent promised to use to educate Pervilhac's children in case of Pervilhac's death.

4. Respondent deposited in his personal bank account the \$ 5,000 he received from Pervilhac, and gave his check for \$ 5,000 to Miller and Lamb, a Chicago Open Board of Trade clearing firm, to margin, guarantee, and secure his trades in regulated commodity futures through that firm. From time to time from May 14, 1961 through March 13, 1963, respondent made regulated commodity

futures trades in Pervilhac's behalf on the Chicago Open Board of Trade and placed such trades in respondent's personal account at Miller and Lamb. During the same period respondent also placed in such account trades he made in his own behalf. The financial results of all such trades, both those made in behalf of Pervilhac and those in behalf of respondent, appeared in the latter's personal account at Miller and Lamb. From May 2, 1961 through March 13, respondent maintained no record showing the amount of money held by him for Pervilhac or the transactions made in Pervilhac's behalf, and sent him no statements or accountings. Respondent paid off the New York loan on schedule.

PROPOSED CONCLUSIONS

Complainant asserts in its brief that receipt and use by respondent of \$ 5,000 for trading in futures was simply a continuation of the past relationship of customer and broker, and recommends suspension of registration and denial of trading privileges for 15 days.

Respondent, on the other hand, says that receipt of the money under the circumstances did not continue or create a customer-broker relationship subject to the Act, but something entirely different. He argues that receiving money from a friend in trouble, to use in any way thought advisable to make him money, made respondent trustee for a friend rather than broker for a customer.

It seems obvious, as has been found above, that it was contemplated by both parties to the transaction that the money was to be used principally, if not entirely, for futures trading, the main difference from the prior situation being that Pervilhac would not give the order and his name would not be used. It is not too clear in the record, but the conclusion may well be drawn that even the loan payments would be made not from the original \$ 5,000, but from profits made in its full use for trading in futures. While different from the usual trading by a broker who executes specific orders given by a customer, here involved was money received by a registered futures commission merchant to finance trading in futures. The Act contains requirements as to such money, and respondent's contention that the matter was something not subject to the Act can not be sustained.

As stated in Findings 2 and 3, respondent, a futures commission merchant, received money from one who had been his customer for ten years, at least part of which was to be used in commodity futures trading, although not in the customer's name as had been the case before. Section 4d(2) of the Act (7 U.S.C. 6d(2)) requires that such funds and property be kept separate and segregated from the commission merchant's personal funds. Respondent's failure to do so (Finding 4) was in violation of this provision. His failure to keep records of transactions and to report them was in violation of sections 1.32-1.36 of the regulations under the Act (17 CFR 1.32-1.36). Sections 4g, 6(b), and 9 of the Act (7 U.S.C. 6g, 9, and 13) authorize suspension or revocation of registration and denial of trading privileges on contract markets for these violations.

While it is held that respondent was subject to the segregation, recording, and reporting requirements of the Act, the situation after receipt of the \$ 5,000 was considerably different from before. It was not a mere continuation of the usual trading for a customer, as should be apparent from the outline of it in Finding 3. It was so unusual in its origin and purpose that there is some ground for respondent's argument that it was so different that it did not

involve a customer's funds covered by the Act. While respondent's intentional action was willful within the meaning of Section 9 of the Administrative Procedure Act (*Goodman v. Benson*, 286 F. 2d 896, C.A. 7, 1961), apparently he really did not think the Act applied to the matter, and probably still does not think so. Lest someone construe these violations as condoned by the Department, some sanction should be ordered, but because of the peculiar circumstances here involved, it should not be severe.

It is concluded that a suspension of registration of three days would be sufficient herein and should be ordered.

PROPOSED ORDER

Effective on the 20th day after the date of this order, the registrations of Daniel A. de Lattre as a futures commission merchant and as a floor broker are suspended for three days.

Copies hereof shall be served upon the parties and upon each contract market.

LOAD-DATE: June 8, 2008

