

Commodity Futures Trading Commission
CEA CASES

NAME: GARNAC GRAIN COMPANY, INC.

CITATION: 8 Agric. Dec. 509

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(A. D. 2085)

In re GARNAC GRAIN COMPANY, INC., et al. CEA Doc. No. 45. Decided May 20, 1949.

**Vacation of Stay Order -- Effective Date of Suspension of Registration as
Futures Commission Merchant -- Effective Date of Refusal of Trading Privileges**

For reasons stated herein the stay order of April 14, 1949, is vacated and the five-day suspension of Garnac's registration as a futures commission merchant and the five-day refusals of trading privileges to Garnac, Fred Hediger, H. R. Schmid and George Lulie, ordered in the Order of March 24, 1949, shall commence on the thirtieth day after the date of issuance of this order. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Mr. Benj. M. Holstein for complainant. Mr. Robert Perret, of New York City, for respondent..

Decision by Thomas J. Flavin, Judicial Officer

DISMISSAL OF PETITION FOR RECONSIDERATION

I

Respondents, on April 7, 1949, filed a petition for reconsideration of the order entered on March 24, 1949 8 Agric. Dec. 244 (8 A. D. 244), in this proceeding under the Commodity Exchange Act (7 U. S. C., Chapter 1). The order prescribed a suspension for five days of the registration of Garnac Grain Company, Inc., as a futures commission merchant and ordered contract markets to refuse trading privileges thereon to respondents Garnac Grain Company, Inc., Fred Hediger, H. R. Schmid, and George Lulie for five days. A stay order was issued on April 14, 1949, 8 Agric. Dec. 362 (8 A. D. 362), pending action upon the petition for reconsideration.

Respondents' petition for reconsideration contends that publication of the charges that Garnac had defrauded its Swiss customer, Andre et Cie., which charges were dropped during the course of the proceeding, had caused Garnac and Company and Andre et Cie. irreparable harm and that, in compensation, the order of March 24, 1949, should be modified to suspend the five-day suspensions of registration and trading privileges. The petition recites the following:

"Respondents feel that such modification of the order would to some extent at least repair the damage caused by the Department of Agriculture in launching formal charges against Garnac Grain Company, Inc., and individual respondents without first thoroughly investigating such charges, contacting the alleged victims of fraud or affording respondents an opportunity to explain the facts. It is to be noted that the Department of Agriculture did not act on charges

filed with it but solely on the report of its investigators who had entirely failed to ask respondents to explain the transactions described as fraudulent.

"Respondents feel that the publication of such unfounded charges may constitute a tort committed by the Department of Agriculture and demand that this tort be redressed by the rehabilitation of respondents. A suspension of the trading suspension would be considered such a rehabilitation."

II

Complainant filed a lengthy answer to the petition for reconsideration. It relates in considerable detail the events leading up to the issuance of the complaint. From this answer, it appears that Garnac became a subject of interest to the Commodity Exchange Authority early in 1947 for apparent failure to meet reporting requirements of the act and regulations, that letters were sent and personal calls made by officials of the Commodity Exchange Authority to secure the required reports and that, when these efforts proved unavailing, a warning letter was sent by the Administrator of the Commodity Exchange Authority on September 3, 1947. The answer relates that

up to this time, the Department was unaware of any possible violations other than those involving reporting and that officers of the respondent corporation made representations at that time that the firm was trading only for itself and that no customers' accounts were being handled.

The answer points out further (1) that subsequent to the letter of September 3, 1947, it was indicated by reports of carrying brokers that Garnac was trading for customers and (2) that since Garnac was not registered as a futures commission merchant although it had been so registered in prior years, the New York office of the Commodity Exchange Authority was ordered to conduct an audit of Garnac which disclosed that the firm was not only trading but had engaged in the bucketing operations alleged in the complaint. The answer then describes what happened as follows:

"Officials of the New York office were immediately instructed to confer with the respondents, inform them of the findings disclosed by the audit, and request them to explain. On January 30, 1948 Mr. George H. Baston, Supervisor in charge of the New York office of the Commodity Exchange Authority, together with Mr. John R. Pope and Mr. Robert L. Caldwell of the same office, called on the respondents and conferred with Mr. Fred Hediger and Mr. George Lulie. These respondents were questioned and asked to explain the transactions of May 23, 1947, July 23, 1947, and October 31, 1947, described in paragraphs nine, ten and eleven of the complaint. Their answers and explanations are transcribed in a report dated February 4, 1948, contained in the files of the Washington office of the Commodity Exchange Authority. Mr. Hediger and Mr. Lulie admitted that the transactions in question were bucketed and fictitious, and they informed the representatives of the Commodity Exchange Authority that these transactions were 'given' to Andre and Company, the customer, in order to enable the firm to report other fictitious trades theretofore represented to Andre and Company as having been executed. The matter was discussed at length and in detail, and in spite of the fact that the respondents' books showed profits of more than \$ 100,000 which they had collected from Andre as a result of these nonexistent trades, the respondents failed to state that Andre and Company did not object to the manner in which the transactions had been handled. As a matter of fact, they did not even suggest that Andre and Company was aware of the circumstances. These respondents knew that their books had been examined by the investigators with whom they were then conferring, and they also knew that the investigators were familiar with what the books showed. Yet, when specifically questioned as to what connection existed between the respondent corporation and Andre, Mr. Lulie replied only that there was no connection and offered no further information. The respondents did not reveal the fact that Jean Jacques Pasche, who was listed as their Vice President, was actually an employee of Andre and Company.

"The Commodity Exchange Authority was not interested then and is not now in the connection, as such, between these two corporations. However, fraud would be non-existent or at least doubtful if the firms were parent and subsidiary or if they were subject to common ownership, and respondents were accordingly questioned in this regard. For reasons best known to themselves

they chose to take the position that there was no connection, despite the fact that their Vice President was an officer or employee of Andre and Company, and the further fact that financial arrangements between the firms were such that Andre and Company could afford to be unconcerned over a charge of \$ 100,000 for losses not actually incurred. (These facts and the fact that they had 'close business relations' with Andre and Company were first revealed when the answer was filed.) Since the respondents admitted that the trades were bucketed and fictitious, denied any connection between the two firms, and did not mention Andre's knowledge or attitude in the matter, the Commodity Exchange Authority took the transactions to be exactly what the books showed and what the respondents admitted."

III

On May 12, 1949, respondents filed a reply to complainant's answer to the petition for reconsideration. This reply is brief and is as follows:

"Respondents, by Robert Perret, their attorney, herewith make the following reply to the Answer of the Commodity Exchange Authority to the petition for reconsideration of order:

"**FIRST:** Prior to publication of charges of fraud, the Department did not intimate to respondents that they had reached the conclusion that fraud was involved or that they intended to press fraud charges.

"**SECOND :** When publishing such fraud charges the Department did not possess conclusive evidence of fraud, and it had entirely failed to check with the alleged victim of such fraud or to request respondents to show that no fraud was involved.

"**THIRD:** The Department charged all the individual respondents with fraud without even attempting to determine whether they personally had any connection whatsoever with the transactions described as fraudulent.

"**FOURTH:** The publication of charges of fraud in the daily press ipso facto causes irreparable harm to those accused.

"The contention of the Department that there was no injury is untenable, as a public accusation of fraud by a government department obviously harms the record and standing in the community and in the trade of the corporation and the individuals involved. The extent of the injury cannot be measured because it is not ascertainable.

"The infractions of regulations on the part of some of the respondents were of a technical nature, harming no one, whereas the harm done the respondents by the Department through reckless publication of fraud charges did palpable harm.

"Respondents have been sufficiently penalized already by publication of unfounded charges, and it is respectfully suggested that suspension be suspended."

IV

The circumstances leading up to the issuance of the complaint are not matters of evidence in this proceeding, i. e., they were not the subject of testimony at the hearing or otherwise introduced into evidence. In support of a plan for reconsideration, respondents claim that the fraud charges in the complaint were unfounded and issued without

seeking any explanation from respondents. Complainant on the other hand contends that several opportunities for explanation were afforded. Respondents reply that the Department did not tell them *specifically* that *fraud* charges were contemplated.

There seems no doubt that respondents were given several chances to explain the transactions that served as the basis for the complaint and the order of March 24, 1949. Respondents' reply to complainant's answer to respondents' petition for reconsideration does not deny that these opportunities existed and does not deny the statements in the answer to the effect that officials of Garnac, prior to the issuance of the complaint, denied any connection with Andre. Respondents' grievances on the score of unfounded charges of fraud have become narrowed down then to the lack of *specific* warning that a fraud charge might be forthcoming.

In view of Garnac's failure to come forward during the investigation with the information later supplied in the answer and at the hearing as to Andre's knowledge of and acquiescence in the transactions in question and in view of the undenied statement that Garnac's officials denied any connection between the two firms, it is not arbitrary, censurable or illegal for the complainant to have assumed for the purposes of the complaint that Andre was defrauded. Any unfavorable publicity attendant upon the issuance of a complaint containing fraud charges seems to be due mainly to Garnac's reticence in explaining the entire nature of the transactions until after the issuance of the complaint when they had been given several prior opportunities.

The grounds urged for modification of the order in the petition for reconsideration were also pressed in respondents' exceptions to the referee's report. For the reasons given above, we are not convinced that the suspension of registration and trading privileges ordered should be modified because of any unwarranted injury allegedly done Garnac and its officials by the issuance of a complaint charging that Andre was defrauded. As to the argument that Garnac's foreign customers may suffer financial consequences because of a five-day suspension of Garnac's registration and trading privileges, we do not see why these two or three accounts could not be transferred to other brokers. Garnac has no domestic customers, it does not solicit business from the public at large and confines its trading activities to three foreign companies with which it has "close business relations." Under the circumstances, the suspension ordered does not have the far-reaching effects that a suspension might have in other cases. In summary, we conclude that the order of March 24, 1949, should not be modified.

Accordingly, the stay order of April 14, 1949, is vacated and the five-day suspension of Garnac's registration as a futures commission merchant and the five-day refusals of trading privileges to Garnac, Fred Hediger, H. R. Schmid and George Lulie, ordered in the order of March 24, 1949, shall commence on the thirtieth day after the date of issuance of this order.

Copies hereof shall be served upon the parties and the contract markets under the act by registered mail or in person.

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