

Commodity Futures Trading Commission
CEA CASES

NAME: RAYMOND A. GERSTENBERG, RAYMOND M. GERSTENBERG, GERSTENBERG & CO., AND JOHN W. DICKSON, JR.

CITATION: 26 Agric. Dec. 816

DOCKET NUMBER: 141

DATE: AUGUST 29, 1967

DOCUMENT TYPE: DECISION AND ORDER

NOTE: CORRECTION TO DECISION AND ORDER IS REPORTED IN 26 AGRIC. DEC. 947

(No. 11,342)

In re RAYMOND A. GERSTENBERG, RAYMOND M. GERSTENBERG, GERSTENBERG & Co., and JOHN W. DICKSON, JR. CEA Docket No. 141. Decided August 29, 1967.

Fictitious transactions -- Suspension of registrations -- Denial of trading privileges -- Stipulation

Fictitious transactions, the bucketing of customers' orders, taking the opposite side of a customer's trade and the keeping of false records are violations of the act for which suspension of registration and denial of trading privileges on the contract markets are ordered.

The sanctions against two of the respondents are not to become effective unless such respondents should be found in violation within a one-year period.

Earl L. Saunders for Commodity Exchange Authority.

Mitchell Edelson, Chicago, Ill., for Raymond A. Gerstenberg and Gerstenberg & Co.

Clark, Thomas, Harris, Denius & Winters, Austin, Texas, for Raymond M. Gerstenberg.

Hamper & Reiser, Chicago, Ill., for John W. Dickson, Jr.

John Curry, Hearing Examiner.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), in which the respondents are charged with violating certain provisions of the Act and the regulations issued thereunder. No hearing has been held. The respondents have filed separate stipulations under section 0.4(b) of the rules of practice (17 CFR 0.4(b)) in which they admit the facts hereinafter set forth insofar as such facts concern the particular respondent, waive hearing on the charges, and consent to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondents Raymond A. Gerstenberg and Raymond M. Gerstenberg, individuals, are now and were at all times material herein members of a partnership doing business under the firm name of Gerstenberg & Co., with offices and a place of business at Room 763, 141 West Jackson Boulevard, Chicago, Illinois. The said partnership is now and was at all times material herein a

registered futures commission merchant under the Commodity Exchange Act and a clearing member of the Chicago Board of Trade. Each of the said individual respondents is now and was at all times material herein a member of the Chicago Board of Trade, and respondent Raymond M. Gerstenberg is now and was at all such times a registered floor broker under the Commodity Exchange Act.

2. Respondent John W. Dickson, Jr., an individual whose business address is Room 1169, 141 West Jackson Boulevard, Chicago, Illinois, is now and was at all times material herein a member of the Chicago Board of Trade.

3. The Chicago Board of Trade (Board of Trade of the City of Chicago) is now and was at all times material herein a duly designated contract market under the Commodity Exchange Act. The transactions referred to herein relate to contracts for the purchase and sale of commodity futures on the Chicago Board of Trade. Such contracts were capable of being used for hedging transactions in interstate commerce in such commodities or the products or by-products thereof, or for determining the price basis of transactions in interstate commerce in such commodities or the products or by-products thereof, or for delivering such commodities sold, shipped, or received in interstate commerce.

4. On the dates hereinafter listed, respondent Raymond A. Gerstenberg entered into, and confirmed the execution of, fictitious transactions in commodity futures, in that the said respondent prepared and turned in to respondent Gerstenberg & Co. trading cards purporting to show that the following transactions had been executed, when, in truth and in fact, no such transactions had been executed.

See original document—page 2

Date	Commodity	Future	Quantity (Bushels)	Price (Cents per Bushel)	Purchaser	Seller
1965 2/16	corn	March	20,000	127 5/8	Gerstenberg & Co.	Raymond A. Gerstenberg
2/16	corn	July	20,000	15,000 at 131-1/2 and 5,000 at 1313/8	Raymond A. Gerstenberg	Gerstenberg & Co.
2/18	corn	July	15,000	131 1/2	Raymond M. Gerstenberg	Raymond A. Gerstenberg
2/19	corn	March	10,000	127 1/2	Raymond A. Gerstenberg	Gerstenberg & Co.
2/19	corn	July	15,000	131 1/2	Raymond A. Gerstenberg	Gerstenberg & Co.
2/25	corn	May	5,000	129 1/2	Gerstenberg & Co.	Raymond A. Gerstenberg
2/26	corn	May	5,000	129 3/4	Gerstenberg & Co.	Raymond A. Gerstenberg
2/26	corn	March	5,000	126 3/4	Raymond A. Gerstenberg	Gerstenberg & Co.
3/2	soybeans	May	175,000	306	*	Raymond A. Gerstenberg
3/2	soybeans	July	175,000	306	Raymond A. Gerstenberg	*
3/5	oats	September	5,000	67	Gerstenberg & Co.	Raymond A. Gerstenberg
3/15	corn	September	35,000	128 7/8	Raymond A. Gerstenberg	*
3/22	oats	July	15,000	66 1/4	Gerstenberg & Co.	Raymond A. Gerstenberg
3/22	oats	September	15,000	67	Raymond A. Gerstenberg	Gerstenberg & Co.
5/3	oats	May	5,000	72 1/4	Gerstenberg	Raymond M.

Date 1965	Commodity	Future	Quantity (Bushels)	Price (Cents per Bushel)	Purchaser	Seller
5/3	corn	July	5,000	134 1/8	Raymond M. Gerstenberg & Co.	Gerstenberg & Co.
5/20	oats	December	10,000	70	Raymond A. Gerstenberg	Gerstenberg & Co.
7/9	corn	September	20,000	125 3/8	Raymond A. Gerstenberg	Gerstenberg & Co.
7/9	corn	July	10,000	129	Gerstenberg & Co.	Raymond A. Gerstenberg
7/13	corn	July	10,000	127	Gerstenberg & Co.	Raymond M. Gerstenberg
7/13	corn	September	25,000	124 3/4	Raymond A. Gerstenberg	Gerstenberg & Co.
7/26	soybeans	August	10,000	278 1/4	*	Raymond A. Gerstenberg
7/26	soybeans	November	10,000	250 1/4	Raymond A. Gerstenberg	*

* a person not a respondent herein

5. On August 25, 1965, respondent Raymond A. Gerstenberg received for execution an order to purchase 15,000 bushels of September oat futures for the account of a customer of respondent Gerstenberg & Co. Respondent Raymond A. Gerstenberg filled the said order without benefit of execution in the following manner: (1) respondent Raymond A. Gerstenberg prepared and turned in to respondent Gerstenberg & Co. a trading card purporting to show the purchase from Gerstenberg & Co. of 15,000 bushels of September oat futures at 66 cents per bushel for the account of the customer, and (2) respondent Raymond A. Gerstenberg prepared and turned in to respondent Gerstenberg & Co. a trading card purporting to show the sale to Gerstenberg & Co. of the same quantity of the same future and at the same price for respondent Raymond A. Gerstenberg's own account, thus taking the opposite side of the customer's purchase order into respondent Raymond A. Gerstenberg's own account.

6. On September 10, 1965, respondent Raymond A. Gerstenberg received for execution an order to purchase 10,000 bushels of December oat futures for the account of a customer of respondent Gerstenberg & Co. Respondent Raymond A. Gerstenberg filled the said order without benefit of execution in the following manner: (1) respondent Raymond A. Gerstenberg prepared and turned in to respondent Gerstenberg & Co. a trading card purporting to show the purchase from Gerstenberg & Co. of 10,000 bushels of December oat futures at 67-1/2 cents per bushel for the account of the customer, and (2) respondent Raymond A. Gerstenberg prepared and turned in to respondent Gerstenberg & Co. a trading card purporting to show the sale to Gerstenberg & Co. of the same quantity of the same future and at the same price for respondent Raymond A. Gerstenberg's own account, thus taking the opposite side of the customer's purchase order into respondent Raymond A. Gerstenberg's own account.

7. With respect to the transactions referred to in paragraphs 4, 5, and 6 above, respondent Gerstenberg & Co. (1) showed on its books and records that the transactions had been executed, and (2) kept the trading cards prepared by respondent Raymond A. Gerstenberg as a part of the records of the said firm and as a record of respondent Raymond A. Gerstenberg.

8. On March 8, 1965, respondent Raymond M. Gerstenberg received for execution an order to sell two tank cars of July soybean oil futures for the account of a customer of respondent

Gerstenberg & Co. Respondent Raymond M. Gerstenberg filled the said order without benefit of execution in the following manner: respondent Raymond M. Gerstenberg prepared and turned in to respondent Gerstenberg & Co. (1) a trading card purporting to show the sale to Gerstenberg & Co. of two tank cars of July soybean oil futures at 11.95 cents per pound for the account of the customer, and (2) a trading card purporting to show the purchase from Gerstenberg & Co. of the same quantity of the same future and at the same price for respondent Raymond M. Gerstenberg's own account, thus taking the opposite side of the customer's selling order into respondent Raymond M. Gerstenberg's own account.

9. On December 20, 1965, respondent Raymond M. Gerstenberg received for execution an order to purchase 10,000 bushels of March corn futures for the account of a customer of Illinois Cooperative Futures Co., a clearing member of the exchange. Respondent Raymond M. Gerstenberg filled the said order without benefit of execution in the following manner: respondent Raymond M. Gerstenberg (1) prepared and turned in to Illinois Cooperative Futures Co. a trading card purporting to show the purchase from John W. Dickson, a clearing member of the exchange, of 10,000 bushels of March corn futures at \$ 1.24-1/2 per bushel for the account of the customer, and (2) prepared and turned in to John W. Dickson a trading card purporting to show the sale to Illinois Cooperative Futures Co. of the same quantity of the same future and at the same price for respondent Raymond M. Gerstenberg's own account at John W. Dickson, thus taking the opposite side of the customer's purchase order into respondent Raymond M. Gerstenberg's own account.

10. On July 19, 1965, respondent Raymond M. Gerstenberg received for execution an order to purchase 10,000 bushels of August soybean futures for the account of a customer of respondent Gerstenberg & Co. Respondent Raymond M. Gerstenberg filled the said order without benefit of execution in the following manner: (1) respondent Raymond M. Gerstenberg prepared and turned in to respondent Gerstenberg & Co. a trading card purporting to show the purchase from Gerstenberg & Co. of 5,000 bushels of August soybean futures at \$ 2.73 per bushel for the account of the customer, and the purchase from John W. Dickson of the same quantity of the same future and at the same price for the account of the customer; (2) respondent Raymond M. Gerstenberg prepared and turned in to respondent Gerstenberg & Co. another trading card purporting to show the sale to that firm of

5,000 bushels of August soybean futures at \$ 2.73 per bushel for respondent Raymond M. Gerstenberg's own account; and (3) respondent John W. Dickson, Jr., acting on the instructions of respondent Raymond M. Gerstenberg, prepared and turned in to John W. Dickson a trading card purporting to show the sale to respondent Gerstenberg & Co. of 5,000 bushels of August soybean futures at \$ 2.73 per bushel for the account of Raymond M. Gerstenberg at John W. Dickson. Thus, respondent Raymond M. Gerstenberg took the opposite side of the customer's purchase order into respondent Raymond M. Gerstenberg's own account. Although respondent John W. Dickson, Jr., prepared the trading card which he turned in to the firm of John W. Dickson to make an interoffice transfer of 5,000 bushels of August soybean futures from such firm to respondent Gerstenberg & Co., in preparing such trading card respondent John W. Dickson, Jr., recorded the interoffice transfer in a manner which indicated that it was competitively executed in the pit at a price within the daily price range on July 19, 1965.

11. With respect to the transactions referred to in paragraphs 8, 9, and 10, respondent Gerstenberg & Co. (1) showed on its books and records that the transactions had been executed, and (2) kept the trading cards prepared by respondent Raymond M. Gerstenberg as a part of the records of the said firm and as a record of respondent Raymond M. Gerstenberg.

12. On July 13, 1965, respondent Gerstenberg & Co., having received an order to sell 20,000 bushels of July corn futures, knowingly, and without the prior consent of its customer, became the buyer in respect to the selling order of such customer in that, in filling a part of the said order, respondent Raymond

M. Gerstenberg, acting as selling floor broker, sold 15,000 bushels of July corn futures at \$ 1.27 per bushel for the customer's account to respondent Raymond A. Gerstenberg who made the corresponding purchase for the corn hedge account of respondent Gerstenberg & Co. Neither of the said individual respondents prepared a trading card with respect to such transaction which showed his own name and identified the opposite floor broker with whom the transaction was executed.

CONCLUSIONS

By reason of the findings set forth in the Findings of Fact, it is concluded that (1) respondents Raymond A. Gerstenberg and

Raymond M. Gerstenberg entered into, and confirmed the execution of, transactions which were fictitious sales, and bucketed customers' orders, in violation of sections 4b and 4c of the Commodity Exchange Act (7 U.S.C. 6b, 6c); (2) respondent Gerstenberg & Co. knowingly, and without the prior consent of its customer, became the buyer in respect to the selling order of such customer, in violation of section 4b of the Act; and (3) each of the respondents prepared and kept false and incomplete records of futures transactions in violation of section 4g of the Act and section 1.35 of the regulations (7 U.S.C. 6g; 17 CFR 1.35).

Complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the proposed stipulations and order, and that they believe the proposed sanctions are adequate and that the prompt entry, without further proceedings, of the order to which the respondents have consented will constitute a satisfactory disposition of this case, serve the public interest, and effectuate the purposes of the Commodity Exchange Act. Complainant recommends, therefore, that the stipulations and waivers submitted by the respondents be accepted and that the proposed order be issued. It is so concluded.

ORDER

Effective October 1, 1967, (1) the registration of respondent Raymond M. Gerstenberg as a floor broker is suspended for a period of ten (10) days, and (2) all contract markets shall refuse all trading privileges to respondent Raymond M. Gerstenberg for a period of ten (10) days and to respondent Raymond A. Gerstenberg for a period of thirty (30) days, such refusal to apply to all trading done and positions held by them directly or indirectly.

The registration of respondent Gerstenberg & Co. as a futures commission merchant is suspended for a period of ten (10) days, and all contract markets shall refuse all trading privileges to respondent Gerstenberg & Co. for a period of ten (10) days, *Provided, However*, that the aforesaid suspension of registration and refusal of trading privileges shall not become effective unless, after complaint and hearing in accordance with established procedure, respondent Gerstenberg & Co. should be found to have violated the Commodity Exchange Act within one year from the date of entry of this order, in which event the Secretary of Agriculture may, without further notice to respondent Gerstenberg & Co., issue a supplemental order making effective forthwith the

aforesaid suspension of registration and refusal of trading privileges.

All contract markets shall refuse all trading privileges to respondent John W. Dickson, Jr., for a period of five (5) days, *Provided, However*, that such refusal of trading privileges shall not become effective unless, after complaint and hearing in accordance with established procedure, respondent John W. Dickson, Jr., should be found to have violated the Commodity Exchange Act within one year from the date of entry of this order, in which event the Secretary of Agriculture may, without further notice to respondent John W. Dickson, Jr.,

issue a supplemental order making effective forthwith such refusal of trading privileges.

A copy of this Decision and Order shall be served on each of the parties and on each contract market.

LOAD-DATE: June 8, 2008

