

Commodity Futures Trading Commission
CEA CASES

NAME: CHARLES B. GRADY

CITATION: 8 Agric. Dec. 506

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(A. D. 2084)

In re CHARLES B. GRADY. CEA Doc. No. 49. May 13, 1949.

Validity of Referee's Order Setting Dates for Answer and Hearing -- Criminal Suit Upon Same Matter Pending in District Court

Where respondent, a registered futures commission merchant who was charged in the complaint in this proceeding with converting customers' funds, and a criminal action against him upon the same facts was pending in the United States District Court, filed a motion to postpone this proceeding upon the ground that the requirement that he file an answer here, during the pendency of the criminal action, was tantamount to compelling him to testify against himself, held, on certification to the Judicial Officer, that the referee's order setting the dates for answer and hearing was proper, and that in accordance with the complainant's request and in order to expedite matters, the hearing should be held without necessity of filing of an answer by respondent. *

* 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. Maurice J. Walsh*, of Chicago, Illinois, for respondent. *Mr. Earl J. Smith*, Referee.

Decision by Thomas J. Flavin, Judicial Officer.

DECISION AND ORDER ON CERTIFICATION FROM REFEREE

I

A complaint was issued on August 31, 1948, in this disciplinary proceeding under the Commodity Exchange Act alleging in general that respondent, a registered futures commission merchant, had converted customers' funds to his own use in a number of instances. The complaint fixed the date of hearing as October 19, 1948. Robert J. Hilliard of Chicago, Illinois, counsel then representing respondent, sought and secured from the referee, Earl J. Smith, Hearing Examiner, an extension of time for filing an answer until November 15, 1948, and a postponement of the hearing until December 1, 1948. Mr. Hilliard withdrew from the case about this time. Subsequently on November 10, 1948, counsel for complainant stated that there was pending in the United States District Court a case involving the respondent touching upon the same subject matter as this administrative proceeding and that complainant, not desiring to handicap respondent in the preparation and presentation of his case in the court proceeding, requested a postponement of the filing of answer and a hearing date until after determination of the case in the United States District Court. This request was granted by the referee on November 12, 1948. On that day respondent, through Maurice J. Walsh, of Chicago, Illinois, new counsel of record for

respondent, made a motion for postponement somewhat similar to the request of counsel for complainant. Of course action upon this motion was unnecessary because of the granting of complainant's request.

II

On March 24, 1949, complainant filed a motion to set dates for the filing of an answer and for hearing. The motion recites that complainant's former request for postponement was based upon the assumption that the court proceeding would be consummated in a matter of weeks, that respondent's counsel had secured a postponement of the trial date, and that complainant has now learned that the trial date has been further postponed until October 10, 1949. The motion goes on to relate that the complaint alleges fraud by respondent in converting large sums of money received from customers, that complainant was required to register respondent as a futures commission merchant for the year 1949, that respondent has been trading through a foreign brokerage house and that, in view of these circumstances and the unexpected delay in the court proceedings, it is not in the public interest to delay further the administrative proceeding.

Respondent filed an answer to this motion urging in general the same grounds contained in his motion of November 12, 1948, namely that it would be unconstitutional to compel respondent to file an answer in the administrative proceeding while a criminal proceeding upon the same grounds was pending and that it would be inappropriate for complainant to go on with the administrative proceeding under the circumstances.

III

On April 26, 1949, the referee, after consideration of this latter motion and answer, issued an order setting May 10, 1949, as the final date for filing an answer and May 26, 1949, as the date for hearing. On May 5, 1949, respondent filed a motion to vacate this order. In this motion, respondent asks that respondent's time for answering the complaint and the time of hearing be extended to some date after October 10, 1949, that his motion of November 10, 1948, be ruled upon and that his motion to vacate the order of April 26, 1949, and all pleadings subsequent to his motion of November 10, 1948, be certified to the Secretary for a ruling. Respondent recites in the motion that respondent is a defendant in a criminal action in the United States District Court for the Northern District of Illinois involving substantially the same grounds as the complaint in this proceeding, that to compel him to answer in this proceeding would be unconstitutionally forcing him to testify against himself, that complainant previously acknowledged and requested that this proceeding should be deferred until the criminal proceeding should be disposed of, that the facts are substantially the same now as then, that the referee's order of April 26, 1949, setting dates for answer and hearing, contains no findings of fact, etc., and that the cause is moot because the registration of respondent in effect at the time of the alleged violations has expired.

On May 10, 1949, complainant filed an answer to this motion of respondent. The answer relates that one of the officials of the Commodity Exchange Authority who will be available as a witness is leaving for Europe on May 31, 1949, and will not return for several months, that respondent applied for registration as a futures commission merchant for 1949 and had to be so registered, that he has recently been engaged in trading operations through a foreign brokerage house, that the trial in the court proceeding has been postponed until October 10, 1949, and that in view of all these circumstances and the nature of the charges, further delay in the administrative proceeding would not be in the public interest. The answer requests that the hearing be ordered held without the filing of an answer because of the need for expedition. On May 11, 1949, Earl J. Smith, Hearing

Examiner, in accordance with the request of both parties, certified the matters in dispute for a ruling by the Secretary.

IV

We conclude that there was nothing wrong with the referee's order of April 26, 1949. The order itself recites that the motion to set dates and the answer was considered. Such an order requires no formal findings of fact, conclusions, etc., and there was no need to rule specifically upon respondent's motion of November 12, 1948. There is no merit to respondent's contention that the cause is moot because the alleged violations occurred at a time for which the registration of respondent has expired. The hearing shall be held, as scheduled upon May 26, 1949. The charges in the complaint involve conversion of customers' funds, the respondent is still a registered futures commission merchant, and the trial in the court proceeding will not take place for some months with the possibility of delay beyond October 10, 1949. Eight months have elapsed since the filing of the complaint and it seems to me highly appropriate and in the public interest to defer the administrative proceeding no longer. However, as suggested by complainant to expedite matters and as provided by section 0.9 (a) of the rules of practice (17 CFR, 1947 Supp., 0.9 (a)), the hearing shall be held without the necessity of filing of an answer by respondent.

Copies hereof shall be served in person or by registered mail upon the parties or their counsel of record.

LOAD-DATE: March 12, 2008

