

Commodity Futures Trading Commission
CEA CASES

NAME: SECRETARY OF AGRICULTURE V. GEORGE P. HARBISON

DOCKET NUMBER: 30

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UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

COMMODITY EXCHANGE ADMINISTRATION

CE-A Docket No. 30

Secretary of Agriculture, Complainant v. George P. Harbison, Respondent

Proceedings, Findings of Fact, Conclusions, and Order

PROCEEDINGS

On June 18, 1941, pursuant to the provisions of the Commodity Exchange Act, as amended (7 U.S.C. 1940 ed. 1). the Under Secretary of Agriculture issued a complaint against the respondent, George P. Harbison, of Duluth, Minnesota. It was alleged that respondent, a registered floor broker and futures commission merchant, and a clearing member of the Duluth Board of Trade, had taken the other side of a customer's orders for Duluth wheat futures contracts in 38 instances in March 1941 without the customer's prior consent, which contracts could be used for hedging, or for determining the price basis of, interstate transactions in wheat. Respondent was given 15 days to answer the complaint, and a hearing was set for July 10 in Duluth.

A copy of the complaint was served by registered mail upon the respondent on June 23, with a referee's letter continuing the hearing to July 25. Respondent filed an answer denying that he had taken the trades willfully and knowingly and without prior consent, that the trades could be used for hedging or determining the price, and that he had violated the act.

The hearing was held in Duluth on July 25 before Jack W. Bain, the referee. Charles W. Bucy, Office of the Solicitor, Department of Agriculture, appeared for the Government, and John D. Jenswold, of the firm of Jenswold & Dahle, Duluth, for the respondent. Six witnesses testified, and exhibits were introduced.

From the evidence, it seems that M. A. Sauter has been manager of the Duluth office of the Farmers' Union Grain Terminal Association since its organization about three years ago. He executes the Association's orders for Duluth wheat futures, but has arranged with respondent to receive and execute the orders and confirm the trades when he, Sauter, is out of town or otherwise unavailable, for which respondent receives brokerage. Under this arrangement, respondent executed a number of orders for the Association in March 1941. Respondent, for his personal account, became the seller with respect to 21 orders to buy, involving 51,000 bushels, and became the buyer with respect to 17 orders to sell, involving 34,000 bushels. Respondent's name, or "Harb," an abbreviation for it, appeared on the trading cards which he made and turned in to the Association, as the clearing member on the other side of each of these 38 trades, and in one other instance wherein respondent made the trade for another customer. Respondent's itemized bill for brokerage on trades for 222,000 bushels, at 25 cents per 1,000, executed for the Association in March, included the 38 trades he had made with himself. The bill was paid. For some years

respondent had been trading for the Association as he did in March 1941, without criticism from Sauter, but Sauter had asked him a number of times to keep his name off of the Association's cards. Respondent's reputation is good, and in his nearly 30 years on the exchange his acts have not before been questioned by the exchange. He still trades for the Association. The Association's futures trades are hedges.

Only five or six of the more than 20 brokers on the Duluth exchange trade for themselves as well as execute orders for others. Of these five or six, respondent is probably the largest trader for himself. The Duluth contract is for durum wheat, and the market for that has been narrow in recent years. There are times when a Duluth futures order cannot be executed promptly, and it may have to wait for 30 minutes. The contract can be used for hedging wheat transactions in interstate commerce.

No substantial dispute appears regarding the facts outlined above. The testimony of the witnesses on the question of prior consent will be summarized.

Mr. Sauter testified that all of respondent's dealings with the Association were through him. Except for two trades, probably in January or February, he did not give respondent consent to take the other side. Possibly, in instances which he does not remember, when he was busy, he may have told respondent to go ahead on other trades when asked, but nothing like 38 times in one month. When he saw respondent's name on Association cards, he knew that meant respondent was the clearing member on the other side of the trade, but could not tell from the card that the trade was for respondent's own account.

From the general nature of respondent's trading, he assumed, but did not know, that respondent took some trades for his own account, and that brokerage bills included charges for at least two trades respondent had taken. Before the investigation in this case, he did not know respondent's name on the cards meant that the trades were respondent's own. He would not authorize payment of brokerage on a trade he knew respondent had taken, and when he approved the payment for March brokerage, he did not know it contained brokerage on such trades. He would not necessarily have consented to respondent's taking the 38 March trades, if respondent had asked consent. In the two trades to which consent had been given there were extenuating circumstances. He told respondent, a number of times, that his name should not appear on Association cards, as he could not offset orders. He may have told him, in this connection, to get another name, in accordance with a Duluth practice of substituting, on trading cards, names of other brokers who had made a trade at the same price. The practice amounts to matching buying and selling orders.

Ely Salyards, president of the Duluth Board of Trade, testified that he had heard Sauter, about 20 to 25 times a year, give his consent to respondent to take half of an Association trade, Salyards to take the other half. About as often, he had heard Sauter tell respondent to follow the practice of getting another name on his cards. He concluded that Sauter approved the trades, but wanted another name to show on the cards.

W. B. Joyce, a member of the exchange since 1914, testified that, a dozen or more times a year, when the market had hit a dead spot, he had heard respondent tell Sauter that he could clean up an Association order by taking half and letting the witness take half. Sauter never refused, but always told respondent to fill the order.

Mr. Harbison testified that he got consent from Sauter to take specific trades almost once a week from 1938 on through March 1941, when he could not execute the order and would tell Sauter he would take it. Sauter would tell him to go ahead, but to try to get another name. He knew he should have consent, as a matter of common honesty, but had not read the Commodity Exchange Act, and did not know it required consent until May 1941. He thought he had Sauter's consent to take trades at the posted quotations. He thought that the Association wanted the orders executed, and that if he did not execute them, someone else would get

the business. To render the service he thought his customer wanted, he took trades which he could not otherwise execute promptly, without asking anyone. Since he learned of the provisions of the act, in May 1941, he has not indulged in the practice.

After the close of the hearing, respondent filed a brief and suggested findings. He stated that specific, express consent is not required, but that consent may be implied from prior dealings; that he had implied consent; that good faith is a defense because there is no violation unless the act was done willfully and knowingly; that the testimony regarding interstate commerce is insufficient to confer jurisdiction; and that, if there is a violation, it is only technical

and warrants no more disciplinary action than a reprimand.

The referee, in his report, proposed the findings of fact contained herein, and an order revoking respondent's registrations as floor broker and futures commission merchant. Respondent excepted to the report and requested oral argument, but waived his exceptions and request if an order should issue suspending for 90 days, instead of revoking, his registrations. The Government did not oppose such suspension.

FINDINGS OF FACT

1. George P. Harbison, the respondent, of Duluth, Minnesota, is, and was during March 1941, a clearing member of the Duluth Board of Trade, a contract market. He registered with the Secretary of Agriculture as a floor broker and, in the name of Harbison Grain Company, a sole proprietorship owned and operated by him, as a futures commission merchant, for the years 1940 and 1941, and neither of his registrations has heretofore been suspended or revoked.

2. During March 1941, respondent, as floor broker, executed orders for the purchase and sale of wheat for future delivery on the Duluth Board of Trade for Farmers Union Grain Terminal Association, his customer, the resulting contracts involving 222,000 bushels, for which he collected brokerage from the customer at the rate of 25 cents per 1,000 bushels, or \$ 55.50.

3. Of the orders mentioned in Finding 2, respondent for his own account became the seller with respect to 21 orders to buy, involving 51,000 bushels, and the buyer with respect to 17 orders to sell, involving 34,000 bushels.

4. Respondent occasionally asked and received the consent of the Farmers Union Grain Terminal Association to take, for his own account, the other side of its orders for Duluth wheat futures, but he did not ask nor receive, and did not have, such consent with regard to any of the orders mentioned in Finding 3.

5. Respondent knew that he should have consent before taking a customer's trade, knew that he had not received consent as to the 38 orders mentioned in Finding 3, and was fully aware of the nature and consequences of his acts in executing those orders.

6. The futures contracts mentioned in Finding 2 could be used for hedging transactions in wheat in interstate commerce, and actually were used as hedges.

CONCLUSIONS

The record shows that respondent intentionally and voluntarily, or wilfully and knowingly, took his customer's trades without prior consent. His having obtained consent in some specific instances does not imply consent in other instances, and his having taken trades over a period of years is not sufficient to nullify the requirements of the statute. For these violations of Section 4b(D) of the Commodity Exchange Act, his registrations as a floor broker and as a futures commission merchant should be suspended for 90 days.

ORDER

IT IS ORDERED that the registration of the respondent, George P. Harbison, as a floor broker for the year 1941, and his registration as a futures commission merchant for the year 1941, the latter in the name of Harbison Grain Company, be, and they are hereby, suspended for a period of 90 days, beginning on the effective date of this order.

IT IS FURTHER ORDERED that a copy hereof be served on the respondent, and upon each contract market, by registered mail or in persons, and that this order shall become effective on December 31, 1941.

(SEAL)

Done at Washington, D.C., this 29th day of December 1941. Witness my hand and the seal of the Department of Agriculture.

(S) Grover B. Hill

Assistant Secretary of Agriculture

LOAD-DATE: June 11, 2008

