

Commodity Futures Trading Commission  
CEA CASES

**NAME:** MYLES J. KERRIGAN

**CITATION:** 33 Agric. Dec. 1242

**DOCKET NUMBER:** 209

**DATE:** MAY 1, 1974

**DOCUMENT TYPE:** DECISION AND ORDER

(No. 16,019)

*In re* MYLES J. KERRIGAN. CEA Docket No. 209. Decided May 1, 1974.

**Speculative trading -- exceeding limits in, in corn futures -- negligent actions -- Sanction**

Where respondent, an experienced trader, acted negligently in exceeding the maximum daily trading limits in corn futures as found herein, respondent is ordered to cease and desist from such violations, and respondent is denied trading privileges on all contract markets for a period of 30 days.

*Darrold A. Dandy*, for complainant.

*John J. Enright*, Chicago, Ill., for respondent.

*Decision by John A. Campbell, Administrative Law Judge.*

**DECISION AND ORDER**

**PRELIMINARY STATEMENT**

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C., Chapter 1), hereafter referred to as the "Act", which was instituted by a complaint issued by the Assistant Secretary of Agriculture on March 8, 1973.

The complaint alleges that the respondent, Myles J. Kerrigan (a member of the Chicago Board of Trade, which is a duly designated contract market under the Act), on December 1, 1972, violated the speculative daily trading limits in corn futures fixed by the Commodity Exchange Commission (hereafter called the "Commission") by buying a total of 3,155,000 bushels and selling a total of 3,315,000 bushels on the Chicago Board of Trade. The complaint further alleges that all such transactions were speculative, were made for the account of respondent, and were in violation of section 4a of the Commodity Exchange Act (7 U.S.C. 6a) and section 150.11 of the Orders of the Commission (17 C.F.R. 150.11).

On March 23, 1973, respondent filed an answer to the complaint which admitted the jurisdictional allegations of the complaint and the December 1, 1972 trades in excess of the speculative daily trading limits in corn futures. Respondent's answer further alleges that the instance complained of was an innocent error or mistake, that upon discovering the error he immediately ceased trading, and that he reported his trading accurately to the Commodity Exchange Authority without attempting to conceal the fact that his trading had exceeded the daily speculative trading limits for that day.

Thereafter the complaint was amended on July 11, 1973 at the hearing to specifically add "willful" in paragraph V. Respondent denied the amended allegation. (Tr. pp. 5-10).

An oral hearing was held before me on July 11 and 12, 1973, in Chicago, Illinois. On February 19, 1974 the record was supplemented through stipulation

of the parties. The respondent was represented by John J. Enright, of the law firm of Arvey, Hodes, and Mantynband, Chicago, Illinois. Darrold A. Dandy and Earl L. Saunders, Office of the General Counsel, United States Department of Agriculture, Washington, D.C. appeared as counsel for complainant.

#### **FINDINGS OF FACT**

1. Myles J. Kerrigan, an individual whose address is Room 2300, 141 West Jackson Blvd., Chicago, Illinois 60604, is now and was at all times material herein a member of the Board of Trade of the City of Chicago (hereafter called the Chicago Board of Trade). (Pleadings)

2. The Chicago Board of Trade is now, and was at all times material herein, a duly designated contract market under the Act. (Pleadings)

3. The transactions involved herein were in corn futures on or subject to the rules of the Chicago Board of Trade and all such transactions were speculative and made for the account of respondent. (Pleadings)

4. On December 1, 1972, Myles J. Kerrigan violated the speculative daily trading limits in corn futures fixed by the Commission (3,000,000 bushels) by buying a total of 3,155,000 bushels and selling a total of 3,315,000 bushels on the Chicago Board of Trade. (Pleadings, Exhibits CX-1, CX-2, CX-3, Hearing

transcript pages [hereinafter designated Tr.] 16-49, 240A-240).

5. On December 4 and 6, 1972, Myles J. Kerrigan filed with the Commodity Exchange Authority reports on CEA Form 203, covering his transactions in corn futures on the Chicago Board of Trade for December 1, 1972. Such reports show that the respondent exceeded the daily speculative trading limits established by the Commission. (Exhibit CX-1, CX-2, Tr. 17-30).

6. On December 1, 1972, the respondent, knew and at all times was aware that the maximum amount which any person may buy and the maximum amount which any person may sell, of corn, during any one business day, as set by the Commission, was 3,000,000 bushels in all futures combined. (Tr. 260).

7. According to the respondent, he routinely keeps a running tally of his trading volume by transferring the totals (buy and sell) from his trading cards to a blank trading card which he keeps in his hand. On such blank trading card he accumulates the totals from the day's trading cards as he completes them and adds them to his running total. (Respondent's Answer, RX-1, RX-2, 226-240).

8. Respondent's trading cards are picked up periodically during the course of the day and carried to the offices of O'Connor Grain Co. for the purposes of entering his trades on the books and clearing them. Respondent retains his trading card showing his running total. (Respondent's Answer, Tr. 217-219, 223-225).

9. After being picked up on the floor of the exchange, the respondent's trading cards and those of several other traders are numbered by a clerk of O'Connor Grain Co., starting with the number "1" and continuing consecutively to the end of the trading session regardless of whose trading cards they are. The earliest trading cards picked up get numbered first and the latter numbered with higher numbers. (Tr. 46-47, 217-219, 223-225).

10. The respondent testified that he became suspicious that his running tally of trading volume was lower than his actual trading volume at about 11:45 or 11:50, but before 12:00 noon. When he became suspicious that his running total of trading volume was in error, he telephoned O'Connor Grain Co., from the floor of the Exchange and said, "I think I'm getting close to the limit and I lost my count." He then asked for his totals (bought and sold) from the trading cards which he had already turned in to O'Connor Grain Company at approximately 11:30 a.m. (Respondent's Answer, Tr. 240-241, 266).

11. Examination and verification of trades shown on Mr. Kerrigan's trading card number 90 indicate that respondent's last trade in corn on December 1, 1972, took place between 12:02:20 and 12:03:00 (Tr. 61-62, Stipulation).

12. The volume of trading in corn futures on the Chicago Board of Trade on Friday, December 1, 1972, was 99,690,000 bushels and 62,585,000 bushels on November 30, 1972. The average volume of trading in corn futures on the Chicago Board of Trade for the month of November was 49,482,000 bushels, with 28,575,000 bushels being the lowest daily volume for the month, as reported on November 3, 1972, and the highest daily volume being 74,750,000 bushels as reported on November 16, 1972. The average daily volume of trading in corn futures on the Chicago Board of Trade for the month of December was 93,540,000 with the largest daily volume of 147,980,000 bushels being reported on December 11, 1972, and the lowest daily volume of 24,165,000 bushels being reported on December 26, 1972. (Exhibits CX-21, 22; Tr. pp. 240, 294-300).

13. On April 28, 1965, the Chicago office of the Commodity Exchange Authority, sent a letter to respondent confirming a prior telephone conversation informing the respondent that he had exceeded the 2,000,000 bushel speculative daily trading limit in all soybean futures combined on the Chicago Board of Trade on April 26, 1965, as revealed by respondent's 203 report. This letter also called to respondent's attention the section of the Order of the Commission which established for soybeans a speculative daily trading limit of 2,000,000 bushels. Also attached to such letter was a copy of a guide sheet: "Speculative Limits on Trading and Positions Under the Commodity Exchange Act." The purpose of the April 28, 1965, letter was to apprise the respondent of the daily speculative trading limits so that he could avoid any future incidents of exceeding the speculative limits established by the Commission. (Exhibit CX-8, Tr. 94-97).

14. On June 19, 1969, a complaint and notice of hearing was issued in CEA Docket No. 162, charging among other things, that respondent exceeded the daily speculative trading limits in corn futures on five separate days in June and July, 1966, and that he further attempted and did, for a period of time, conceal such violations by filing false reports with the Commodity Exchange Authority and by having another trader enter a portion of his trades on that other trader's trading cards. On September 19, 1969, respondent filed an Answer to the above charges in which

he admitted that he did exceed the daily speculative trading limits as charged in the complaint. An oral hearing was conducted in the matter on October 15, 1969 and thereafter on October 17, 1969 respondent filed a stipulation in which he admitted jurisdiction, factual allegations (for purposes of that proceeding) and consented to the entry of the order. On October 23, 1969 an order was issued by the Judicial Officer (28 Agric. Dec. 1239 (28 A.D. 1239)) suspending the registration of respondent as a floor broker for a period of 30 days and denying trading privileges to him for a like period of time. (Exhibit CX-7)

15. On March 3, 1967, respondent filed with the Commodity Exchange Authority a report on CEA Form 203 covering his transactions in corn futures on the Chicago Board of Trade for March 2, 1967, which shows that the respondent exceeded the daily speculative trading limits established by the Commission. Respondent further acknowledged such transactions in a letter dated March 3, 1967. Respondent was apprised of the daily speculative trading limits so that he could avoid any future instances of exceeding the speculative limits established by the Commission. (Exhibits CX-7, CX-9, CX-12, Tr. 103-109).

16. On April 5, 1968 and January 13, 1969, respondent filed with the Commodity Exchange Authority reports on CEA Form 203 covering his transactions in corn futures on the Chicago Board of Trade for April 4, 1968 and January 10, 1969, which state that the respondent exceeded the daily trading limits established by the Commission. Such violations were not drawn to respondent's attention because the matter covered in CEA Docket No. 162 had not been concluded at the time of these violations and because it is a policy of the

Commodity Exchange Authority not to contact the individual trader under these circumstances. (Exhibit CX-10, CX-11, Tr. 103-109).

### CONCLUSIONS

Respondent, as alleged in the complaint and as admitted in his answer, exceeded the speculative daily trading limits in corn futures fixed by the Commission by buying a total of 3,155,000 bushels and selling a total, of 3,315,000 bushels in violation of section 4a of the Act (7 U.S.C. 6a) and section 150.11 of the orders of the Commission. (17 C.F.R. 150.11)

Section 4a of the Act reads in part as follows:

(1) Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by order, proclaim and fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden . . . Nothing in this section shall be construed to prohibit the Commission from fixing . . . different limits for purposes of subparagraphs 2(A) and (B) of this section, or from exempting transactions normally known to the trade as "spreads" or "straddles" or from fixing limits applying to such transactions or positions from limits fixed for other transactions or positions.

(2) The Commission shall in such order fix a reasonable time (not to exceed ten days) after the order's promulgation; after which, and until such order is suspended, modified, or revoked, it shall be unlawful for any person --

(A) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets to which the order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such order for or with respect to such commodity; . . . \*

\* This section of the Act was construed by the Court in: *Corn Products Refining Co. v. Benson*, 232 F.2d 554, 560 (C.A. 2, 1956).

Pursuant to such authority the Commission has issued section 150.11 which establishes daily trading limits in corn for future delivery. (17 C.F.R. 150.11) This section provides in pertinent part that:

(B) Daily trading limit. The limit on the maximum amount which any person may buy, and on the maximum amount which any person may sell, of corn, on or subject to the rules of any one contract market during any one business day is 3,000,000 bushels in any one future or in all futures combined. \*

\* Prior to June 26, 1971, the daily speculative trading limits in corn futures was 2,000,000 bushels.

The principle issue in this proceeding is whether the trading limit violation of section 4a of the Act and section 150.11 of the orders of the Commission was a simple mistake as respondent contends or whether the violation was willful as complainant

contends. The decisive facts in this proceeding are not in dispute and resolution of the issue boils down to this: Respondent shortly before noon on

December 1, 1972 suspected that he was close to or over the trading limits. In spite of such suspicion he nevertheless executed his last trade between 12:02 and 12:03 p.m. This action by respondent was not a mistake but instead was a careless disregard of the statutory requirements. See: *In re David G. Henner*, 30 Agric. Dec. 1151, 1161-1162, 1261-1262 (30 A.D. 1151, 1161-1162, 1261-1262); *In re Economou and Economou & Co.*, 32 Agric. Dec. 14, 98-99 (32 A.D. 14, 98-99), Appeal pending; and *Butz v. Glover Livestock Comm'm Co.*, 411 U.S. 182, 187 FN.5.

The findings of fact demonstrate that the respondent was well informed of the daily speculative limits established for trading in corn. The daily speculative trading limits had been repeatedly drawn to his attention; first in April of 1965, then in March of 1967, and more forcefully in the proceeding in CEA Docket No. 162.

Respondent is an experienced trader, and the inference is inescapable that he acted negligently or with careless disregard of the maximum daily trading limits by purchasing a total of 3,155,000 bushels and selling a total of 3,315,000 bushels in corn futures on December 1, 1972 after he became suspicious that his running tally of his trading volume was lower than his actual trading volume.

Complainant's reply brief contends further (footnote 1) that a legal conclusion concerning willfulness is not necessary to support the relief sought by complainant. Complainant states that the provisions of the Administrative Procedure Act (5 U.S.C. 558(c)) and section 0.3(c) of the Rules of Practice under the Act (17 C.F.R. 0.3(c)) do not apply to an order denying trading privileges to a person who is not registered under the Act. Since respondent was not a registered floor broker on December 1, 1972 (footnote 9, reply brief) this contention has merit in the light of the Judicial Officer's holding in *Economou*, *supra* at page 131, and in *In re George Rex Andrews*, 32 Agric. Dec. 553, 583 (32 A.D. 553, 583).

## II

It is believed that the sanction imposed herein, although different from that sought by complainant, is appropriate considering the facts in this case, the testimony reflecting the expertise of the Agency, and the guidelines set forth by the Judicial Officer in several recent decisions.

Based on the record evidence we would impose the following

sanction: (1) An order to cease and desist, and (2) A thirty-day denial of trading privileges.

We consider this sanction appropriate for several reasons. First it appears from the record evidence that respondent's action, although negligent, was not deliberate. (Tr. 63-64, 88). In adding the total trades appearing at the bottom of trading cards contained in Exhibit CX-3, it appears that respondent traded in excess of the limits at a point in time immediately after cards 1 through 11 were picked up by a member of respondent's office (Tr. p. 224). The total trades per cards 1 through 11 indicate 2,915,000 bushels bought, and 2,840,000 bushels sold. After these eleven cards were picked up respondent executed further trades on card 46. At that point he was over the limits with total trades of 3,010,000 bought and 3,050,000 sold.

This we believe lends credence to respondent's contention that he failed to fully record the trading card totals onto his blank tally card and lost count after the trading cards were picked up.

Respondent testified that he exercised care in his trading practices since the prior consent order of October 1969 \* (which involved a cluster of violations, many of which were far more serious than the present violation), particularly in the use of the blank cards to reflect his daily total trades (Tr. pp. 228-229, 238-240, 245, 251-253). This we believe is supported by the three year time span in which respondent remained in compliance with the trading limits.

\* CEA Docket No. 162

Complainant introduced at the hearing a series of statistical reports (CX-13, 14, 15, 16, 17, 18) to show instances of violations of the daily speculative trading limits in corn futures. The reports indicate 18 instances where one or more violations were discovered and that four such violations involved respondent. In view of the large number of respondent's previous violations it is doubtful that respondent's record of violations (depending on how they are counted) will ever be equalled or exceeded by anyone else.

The fact remains however that all of the four violations counted in the statistics are past violations which were considered by complainant, in the disposition of CEA Docket No. 162, and that respondent, thereafter remained in compliance with the trading limits until December 1, 1972.

In particular the record discloses: that respondent is a floor trader (a spreader) who speculates for his own account, and whose presence in the market place provides market liquidity; that the main purpose of the trading limits is to reduce the availability of trading power to persons who by the very weight of their accumulated transactions, affect the direction of prices for commodity futures; that the "spreader" is less likely to produce such an undesirable economic result; that respondent's trades based upon an examination of CX-3 were characterized at the hearing as "the lesser of the things we are trying to accomplish by limits"; and that respondent's trading had less impact on the market prices than a sustained trade in one direction. (Tr. pp. 73, 144-147, 149, 221, 230-231).

The record also shows that trading on December 1, 1972 was hectic. The volume of trades that day was 30 % more than that of the previous day (Tr. pp. 50, 54, 240, 263-264, Exhibits CX-21 and 22). When trading is heavy and prices become erratic there tends to be a higher incidence of such violations (Tr. p. 130).

Finally we are impressed by the fact that respondent stopped trading when he was informed of his overtrades and cooperated fully with the investigation of such violation. (Tr. pp. 47-51, 58, 74, 243-244).

We believe the sanction proposed herein to be consistent with the Judicial Officer's decision in *In re George Rex Andrews*, 32 Agric. Dec. 553 (32 A.D. 553).

However, it must be recognized that the severity of the sanction must be measured by its impact on the particular respondent rather than by the number of months or years of the suspension order. A suspension order should be sufficiently long to serve as an effective deterrent to the respondent and to other potential violators, considering the impact of the suspension order on the particular respondent.

V

Another principle in determining the sanction to be imposed in a particular case is that, in general, there should be a reasonable relationship between the sanction and the unlawful practices found to exist. In other words, the more serious the violation, the more severe should be the sanction. Even though punishment for the sake of punishment is not a relevant consideration in the field of administrative law, the principle of having a reasonable relationship between the violation and the sanction still has validity in a case of this nature. This is because in order to achieve the major Congressional purposes of the regulatory program, it is more important to deter serious violations than minor violations. Hence a severe sanction for a serious violation will have a greater deterrent effect than a milder sanction for a lesser violation, and thus will tend to effectuate the

major objectives of the regulatory program." (32 Agric. Dec. at page 578-579 (32 A.D. at page 578-579)).

+ + +

"For the reason set forth above, where the violation is intentional, I believe in severity rather than lenity to deter future violations by the respondent and others." (32 Agric. Dec. at page 583 (32 A.D. at page 583)).

+ + +

Considering the impact of respondent's violation upon the regulatory program as disclosed by the record, as well as the impact of this recommended sanction upon respondent whose sole occupation involves commodity futures trading (Tr. pp. 221, 256-257), we believe the imposition of a cease and desist order and the 30 day denial of trading privileges to be sufficiently effective to deter future violations by respondent and other potential violators.

In conclusion we might add that this decision should not be construed as a quibble with the Agency on the propriety of sanctions to be imposed. \* We believe that the full range of sanctions contained in Sections 6(b) and 6(c) of the Act (7 U.S.C. 9 and 13b) should be utilized wherever appropriate. While we respect the Agency's expertise in matters of this nature, we believe there exist in this proceeding mitigative factors which justify a sanction less stringent than that suggested by complainant.

\* It seems appropriate however in the light of language such as appears in *In re J. A. Speight et al.*, P&S Docket No. 4686, page 49, FN 23 (Feb. 15, 1974).

"In any case, the weight that I will give to the Administrative Law Judge's determination as to the sanction will depend upon the extent to which it appears, either from the record or from his prior experience, that he was fully informed as to all of the "legislative," background facts relevant to the particular type of violation involved in the case."

#### **ORDER**

(1) The respondent, Myles J. Kerrigan, shall cease and desist from exceeding the trading and position limits fixed by the Orders of the Commodity Exchange Commission.

(2) Respondent, Myles J. Kerrigan, is prohibited from trading on or subject to the rules of any contract market for a period of thirty (30) days, and all contract markets shall refuse trading privileges to the said respondent during this period. Such

prohibition and refusal shall apply to all trading done and positions held directly by the respondent, either for his own account or as the agent or representative of any other person or firm, and also to all such trading done through, and all positions held indirectly by, persons or firms owned wholly or in substantial amount by the said respondent, or in any way subject to his direction or control, including but not limited to O'Connor Grain Company.

(3) The cease and desist provisions of this order set forth in paragraph 1, above, shall become effective on the date this decision and order becomes final. The period of the prohibition of trading and denial of trading privileges to the Respondent set forth in paragraph 2, above, shall become effective on the thirtieth day after the date this decision and order becomes final. \*

(4) Pursuant to the amended Rules of Practice governing proceedings under the Commodity Exchange Act, this decision and order becomes final without further procedure thirty-five (35) days after service hereof, unless appealed to the Secretary by a party to the proceeding within thirty (30) days after service, as

provided in sections 0.16 and 0.18 of the amended Rules of Practice published in the Federal Register of August 20, 1973, (38 F.R. 22381).

(5) A copy of this decision and order shall be served on each of the parties and on each contract market.

\* The Decision and order became final May 1, 1974. -- Ed.

**LOAD-DATE:** June 9, 2008

