

Commodity Futures Trading Commission
CEA CASES

NAME: G. H. MILLER AND COMPANY; GILBERT H. MILLER; HOWARD RANDOLPH, D/B/A RANDOLPH AND COMPANY; REFRIGERATED PRODUCTS, INC.; J.W. HARDING; CENTRAL IOWA POULTRY AND EGG COMPANY; JOHN H. SNOWGREN; ALLEN HEADLEE, D/B/A HEADLEE PRODUCE COMPANY; E.E. HUMMEL AND K. HUMMEL, D/B/A HUMMEL PRODUCE COMPANY; ALBERT SCHIRM, D/B/A SCHIRM PRODUCE COMPANY; LEO HAGEN; A.L. MYRICK, D/B/A MARKET PRODUCE COMPANY; LEWIS R. VAN SANT AND ROY ROUNTREE, D/B/A DATED EGG COMPANY

DOCKET NUMBER: 60

DATE: DECEMBER 1, 1955

DOCUMENT TYPE: REFEREE'S REPORT

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re G. H. Miller and Company, et al., Respondents

CEA Docket No. 60

Referee's Report

Preliminary Statement

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. 1952 ed. Chapter 1), instituted by a complaint filed by John H. Davis, Assistant Secretary of Agriculture, on September 1, 1953. In the complaint it was charged that G. H. Miller and Company and fourteen other respondents, acting by agreement, attempted to and did corner and manipulate the price of eggs and egg futures on the Chicago Mercantile Exchange in December 1952. Respondents were given twenty days after receipt of notice to answer, and a hearing was set for November 3, 1953, in Chicago, Illinois. Copies of the complaint and the applicable rules of practice were served on respondents by registered mail on September 6, 7, 8, and 9, 1953. At the request of some of the respondents, the time allowed to answer was extended and the hearing postponed by Hearing Examiner Jack W. Bain, the referee, to whom the docket was assigned on September 24, 1953.

Most of the respondents filed motions to dismiss the complaint, motions for severance, and requests for separate hearings, some in Iowa and Texas. Reasons given were that there was a misjoinder of parties because the words "conspiracy" and "collusive" were not used in the complaint, that appeals to different courts may be necessary because of the different residences of respondents, and that no offense was charged under section 6(b) of the statute. Oral argument was requested. On December 17, 1953, the referee denied the motions, stating that the reasons given in their support seemed so clearly without merit that oral argument would serve no good purpose, and citing *General Foods Corporation v. Brannan*, 170 F. 2d 220 (1948), and *Great Western Food Distributors v. Brannan*, 201 F. 2d 476, 478 (1953). The decisions cited support the ruling. At complainant's request, the hearing was again postponed.

Answers were filed by ten of the respondents within the time allowed, and by the other five after the hearing opened. In general, all respondents admitted their individual transactions, but denied participation in any manipulation or corner.

A prehearing conference was held in Chicago on May 11, 1954, at which agreements were made concerning presentation of certain documentary evidence.

The oral hearing opened before the referee in Chicago on July 7, 1954. Benjamin M. Holstein, Attorney at Law, Office of the Solicitor (now Office of the General Counsel), United States Department of

Agriculture, Washington, D. C., appeared as counsel for the complainant, or "the government." Lee A. Freeman, Attorney at Law, Chicago, Illinois, appeared as counsel for Respondents G. H. Miller and Company, Gilbert H. Miller, Refrigerated Products, Inc., and John W. Harding. Hobart E. Newton, Attorney at Law, Stuart, Iowa, appeared for Respondents Howard Randolph, Allen Headlee, E. E. Hummel, K. Hummel, Albert Schirm, and Leo Hagen. Joe B. Tye, Attorney at Law, Marshalltown, Iowa, appeared for Respondents Central Iowa Poultry and Egg Company and John H. Snowgren. K. K. Smith, Attorney at Law, Fort Worth, Texas, appeared for Respondents A. L. Myrick, Lewis R. Van Sant, and Roy Rountree. Respondents' counsel argued that the motions to dismiss should be granted because the allegations in the complaint were insufficient to charge a conspiracy or manipulation and corner, but the referee saw no reason to change his December 1953 denial of the motions. Motions to strike parts of the complaint were also denied.

At sessions of the hearing held on July 7, 8, 9, 10, 12, and 13, 1954, the government called 15 witnesses and presented more than 50 exhibits. Eleven of the witnesses were cross examined after their direct testimony, and the 13 exhibits identified by them were received in evidence. At the respondents' request, however, cross examination of the four government employees who testified was postponed until all of the government's direct testimony was in, and rulings on exhibits

they presented were delayed until after their cross examination. When their direct testimony was completed, the hearing was recessed to October 26, which setting was later postponed to November 16, 1955.

The four witnesses were cross examined at sessions held on November 16-19, 22, 23, 30, and December 1, 1954, and exhibits identified by them were admitted. There was redirect and recross examination on December 2, 1954, and February 15, 1955, when the government rested. Respondents then filed written motions to dismiss and requested that briefs be ordered and oral argument set on the motions after a recess. The referee recessed the hearing until the following day to consider the motions and see if briefs and oral argument were needed.

The reasons given in the motions to dismiss were that the government had presented no evidence that respondents had acted together and no evidence of any manipulation or corner. Some details were listed as necessary for the government to prove, followed by assertions that these details had not been established. On February 16, 1955, the referee stated that he found nothing in the motions requiring further written or oral argument, and that he thought the government had made out a prima facie case. He denied the motions to dismiss. Respondents offered no evidence. In view of some indications that respondents might want more time, the referee specifically asked if there was a motion for a continuance. There being none, and nothing further being offered, he declared the hearing closed.

The transcript of the hearing contains 1,841 pages, and 68 exhibits were received, many of which contain a number of pages. An outline of the testimony and exhibits will not be given here. The material facts will be shown below in the Findings of Fact, and the issues and evidence will be discussed in the Conclusions.

The parties filed suggested findings and conclusions, and supporting briefs, on May 9, 13, and 16, 1955, in which their various claims and contentions were expressed and discussed. In general, the government claimed that the record proved manipulation and corner by respondents, while the respondents claimed

that no agreement, control, intent, artificial price, nor corner had been shown. Shortly after the suggestions and briefs were filed, some of the respondents requested that oral argument be held on them before the referee, asserting that this was necessary to an adequate presentation of their positions. The government opposed the request, in view of the argument already of record. On July 26, 1955, the referee ruled that a first reading of the suggestions and briefs filed seemed to disclose no issued warranting oral argument before the referee, but that if more thorough consideration disclosed need for clarification, oral argument would be arranged.

The referee's report, favorable to the government, was issued on December 1, 1955.

Proposed Findings of Fact

1. Respondent G. H. Miller and Company is an Illinois corporation whose principal place of business is at 1136 West Fulton Street, Chicago, Illinois. It deals in eggs and egg futures for its own account and for customers, is registered as a futures commission merchant under the Commodity Exchange Act, and is a clearing member of the Chicago Mercantile Exchange. Respondent Gilbert H. Miller is president of G. H. Miller and Company, manages and controls its business, and is registered as a floor broker under the Commodity Exchange Act.

2. Respondent Howard Randolph, doing business as Randolph and Company, of Guthrie Center, Iowa, is a dealer in eggs and egg futures, is a member of the Chicago Mercantile Exchange, and is an associate broker for G. H. Miller and Company, authorized to solicit orders for egg futures contracts to be executed on the Exchange by G. H. Miller and Company.

3. Respondent Refrigerated Products, Inc., a Texas corporation whose principal place of business is at 1109 Jones Street, Fort Worth, Texas, is a dealer in eggs. Respondent John W. Harding is its president and principal stockholder, and manages and controls its business.

4. Respondent Central Iowa Poultry and Egg Company, an Iowa corporation whose principal place of business is at Marshalltown, Iowa, is a dealer in poultry and eggs. Respondent John H. Snowgren is its president, and manages and controls its business.

5. Respondent Allen Headlee, doing business as Headlee Produce Company in Coon Rapids, Iowa, is a packer and shipper of eggs.

6. Respondents E. E. Hummel and K. Hummel are partners doing business as Hummel Produce Company in Oakland, Iowa. The partnership is in the egg and produce business.

7. Respondent Albert Schirm, doing business as Schirm Produce Company in Walnut, Iowa, is a packer and shipper of eggs.

8. Respondent Leo Hagen is in the automobile business in Guthrie Center, Iowa, and is the only respondent not in the egg business.

9. Respondent A. L. Myrick, doing business as Market Produce Company at 315 East First Street, Fort Worth, Texas, is a dealer in eggs and poultry.

10. Respondents Lewis R. Van Sant and Roy Rountree are partners doing business as Dated Egg Company at 321 Franklin Street, Houston, Texas. The partnership is a dealer in eggs. Lewis R. Van Sant is a member of the Chicago Mercantile Exchange.

11. The fifteen persons and corporations named as respondents in Findings 1 through 10, above, are the respondents in this proceeding, as named in the complaint. The descriptions of their organizations, addresses, businesses, memberships, registrations, etc., stated in the present tense, are applicable to all times material herein.

12. The Chicago Mercantile Exchange is a duly designated contract market under the Commodity Exchange Act.

13. Trading in egg futures on the Chicago Mercantile Exchange occurs on "business days", Monday through Friday of each week, except for holidays occurring on those days. During the closing month of a future, e.g., the month of December for the December future, there is no trading during the last five business days. Accordingly, the trading days for the December 1952 egg future were December 1-5, 8-12, 15-19, 22, and 23. The last five business days were December 24, 26, 29, 30, and 31, on which there was no trading in the future, but on which contracts previously made in it could be settled by delivery and receipt of eggs.

14. During the first twelve trading days in December 1952, December 1-5, 8-12, 15, and 16, the net change in the price of the December 1952 egg future on the Chicago Mercantile Exchange at the close of the day in comparison with the close on the preceding day, in cents per dozen eggs, was down on seven days and up on five, the largest decline being 1.50 cents on December 4 and the largest gain being .66 of a cent on December 9. Thereafter, however, the change was up every day, being up 1.08, 1.97, 1.97, 2.03, and 1.80 cents, respectively, on the last five days of trading.

15. Prices fluctuate in egg futures on the Chicago Mercantile Exchange in five point units, a point being .01 of a cent. The opening and closing prices of the opening flurry and the last minute of trading are often recorded as a range, e.g., the opening on December 19 was

"42.00-43.25" and the close was "43.70-75." In computing the change in price from the close on the day before, which was 41.75 for December 18, the mid-point of the closing range was used, so that the price increase from close to close was computed as 1.97 instead of 1.95 or 2.00 or 1.95-2.00. Under the rules of the Exchange, the price may not go more than 2 cents ("2.00") above or below the close on the preceding day.

16. Merrill Lynch, Pierce, Fenner & Beane, a broker in securities and commodities, publishes each business day and distributes to the trade in Chicago and to its offices in various parts of the United States, a mimeographed sheet titled "Daily Mercantile Letter." This letter for December 18, 1952, stated that there seemed nothing to warrant the tightness in the December egg future that day, and that there was "rumor that a small group of merchandisers are the new buyers in December." In this letter for December 19, there is mention of the "same group" as "still buyers again today." For December 22, the next business day, there is mention of "the group that has been instrumental in holding these prices so high." On December 23, the opinion is expressed that "the interests" purchasing the last few days "have ended up with quite a long position."

17. In somewhat similar market letters issued and distributed by Harris, Upham & Company, another broker in stocks and commodities, titled "Morning Produce Letter", "Closing Produce Letter", and "Weekly Produce Letter", for December 17, 18, 19, 22, and 23, 1952, there are

references to technical reasons for the December future price advance, a technical situation, aggressive buying, concentrated buying, suddenly developed congestion, and acute congestion.

18. On December 22, 1952, Oscar W. Olson, Executive Vice President of the Chicago Mercantile Exchange, having noticed that the long December commitments of Gilbert H. Miller's firm as a clearing member of the Exchange had increased the previous day, suggested to Miller that he not increase such commitments. On that day, all long December contracts were held through four clearing members,

and on the following day all such contracts were held through one clearing member, G. H. Miller and Company.

19. At the close on the last two days of trading in the future, December 22 and 23, 1952, all of the open long contracts, or the entire long position, were held by the respondents.

20. Before December 17, 1952, Randolph traded in Chicago egg futures through G. H. Miller and Company quite a lot. Headlee had not traded substantially, but got as many as twelve cars, or contracts, at one time. Schirm and Hummel had gone as high as six cars each. No other respondent had traded through Miller.

21. At the close of trading on December 16, 1952, through G. H. Miller and Company, the company for itself held 22 long and 3 short Chicago December 1952 egg futures contracts, and Randolph and Company held 13 long. Through other commission firms, Market Produce Company

was 5 long and Central Iowa Poultry and Egg Company was 6 long. No other respondent held a position. The total position of all respondents was 46 long and 3 short.

22. On December 17, Miller and Company bought 2 for itself, leaving it 22 long and 1 short. It also bought 19 for Refrigerated Products, Inc., 24 for Lewis R. Van Sant, 20 for Headlee Produce Company, and 1 each for Schirm Produce Company and Hummel Produce Company. No other respondent traded that day. The total purchase of 67 left the total position of respondents at the close as 111 long and 1 short.

23. On December 18, Miller and Company bought and sold 2 for itself, leaving its position unchanged. It bought 31 for Refrigerated Products, 24 for Market Produce, and 30 for Randolph, to give them, respectively, 50, 24, and 43 long. It sold 1 each for Schirm and Hummel, closing them out. Central Iowa sold the 6 it held through two other firms, to leave it with no position. No other respondent traded. These total purchases of 87 and sales of 10 left the total position of respondents as 188 long and 1 short.

24. On December 19, Miller and Company sold 14 and took delivery on 2 for itself, leaving it 6 long and 1 short. It bought 7 for Randolph to give him 50 long, and bought 9 each for Schirm and Hummel and 24 for Central Iowa, to put them back into the market. Market Produce Company sold the 5 it held through another firm, leaving it long 24, all through Miller and Company. These 49 purchases, 19 sales, and 2 receipts of delivery left respondents' total position as 216 long and 1 short.

25. On the next trading day, December 22, Miller and Company for itself sold 8 and received delivery on 6, leaving it 9 short. It received delivery on 11 for Randolph, leaving him 39 long through Miller. It sold 10 for Headlee, leaving him 10 long, and sold 9 each for Schirm and Hummel, to close them out of the future finally. Through other firms, Hummel bought and sold 1, leaving it with no position; Randolph bought 11, to give him a total of 50 with the 39 he held through Miller; Hagen bought 10 to enter the market; and Central Iowa bought 8, to give it 32 with its 24 through Miller. These 30 purchases through others, 37 sales through Miller and another, and 17 receipts of delivery through Miller, left respondents' total position as 200 long and 9 short.

26. On December 23, the last day of trading, Miller and Company sold 12 and received 2 on delivery for Refrigerated Products, leaving the latter 36 long; sold 5 and received 14 on delivery for Van Sant, to leave him 5 long; sold 10 for Market Produce to leave him 14 long; sold 30 and received 2 for Randolph, leaving him 7 long through Miller; received 10 for Headlee, to get him out finally; and sold 20 for Central Iowa, to leave it 4 long through Miller. Through three other firms, Randolph and Central Iowa sold 11 and 8 respectively, leaving them with only their positions through Miller, and Hagen sold 10,

getting him out finally. These 106 sales through Miller and others and 28 receipts through Miller left respondents' total position 66 long and 9 short, all through Miller.

27. The only customers Miller and Company had in the Chicago December 1952 future other than respondents were long 11 on December 16, sold 1 on December 17, bought 3 and sold 2 on December 18, bought 2 and sold 3 on December 19, and sold 10, getting out finally, on December 22, 1952. Positions held involved 2 customers on December 16 and 18, and 1 on December 17 and 19.

28. Long positions carried by respondents during the last six days of trading in the Chicago December 1952 egg future were through, respectively, 4, 4, 2, 1, 4, and 1 clearing member of the Exchange. Such figures for all traders other than respondents and other Miller customers were 25, 20, 14, 9, 0, and 0. For short positions, these two series of figures were: 1, 1, 1, 1, 1, and 1; and 33, 35, 34, 29, 28, and 12.

29. Long positions held by respondents on such last six days were held by, respectively, 4, 9, 6, 9, 7, and 5 traders. Such figures for all traders other than respondents and other Miller customers were 102, 70, 39, 13, 0, and 0. For short positions, these two series of figures were: 1, 1, 1, 1, 1, and 1; and 109, 100, 101, 93, 75, and 20.

30. As can be seen from Findings 21-26, the total long positions held by respondents at the close of such last six days were, respectively, 46, 111, 188, 216, 200, and 66. Such figures for all traders other than respondents and other Miller customers were 271, 195, 102, 49, 0, and 0. For short positions, these two series of figures were: 3, 1, 1, 1, 9, and 9; and 325, 315, 300, 274, 191, and 57. The

percentages of the total long interest held by respondents were 13.98, 34.91, 61.64, 77.98, 100, and 100.

31. The average numbers of long contracts held by those respondents who held long positions at the close of such last six days were, respectively, 11.5, 12.3, 31.3, 24, 28.6, and 13.2. For all other traders than respondents and other Miller customers, these figures were 2.7, 2.8, 2.6, 3.8, 0, and 0. For short positions, these two series were: 3, 1, 1, 1, 9, and 9; and 3, 3.2, 3, 2.9, 2.5, 2.9.

32. The number of respondents who bought futures during the last five days of trading were 6, 4, 4, 4, and 0. For all traders other than respondents and other Miller customers, these figures were 55, 37, 48, 36, and 57. For traders who sold on these days, these two series were: 0, 4, 2, 4, and 6; and 86, 73, 65, 26, and 13.

33. Of respondents' purchases of futures on the last five days of trading, respectively, 65, 85, 49, 29, and 0 contracts represented new purchases, or resulted in long positions, while their purchases of only 2 contracts were covering purchases, or resulted in closing out short positions. For all other traders, the figures for new purchases were 26, 11, 8, 0, and 0 for the five days, and for covering purchases the figures were 55, 70, 80, 84, and 122. Respondents' new sales for the five days were 8, all on one day, while other traders' were 48, 59, 63, 34, and 16. Respondents made 0, 8, 19, 28, and 106 covering or liquidating sales, while others made 100, 99, 55, 43, and 0.

Respondents made only 3 in and out trades (not resulting in positions held at the close), while others made 65, 35, 39, 4, and 11.

34. At the close on the last six trading days, the number of traders on the long side were, respectively: 108, 80, 47, 23, 7, and 5. They were from the

following number of States (counting the District of Columbia and three foreign countries as States for this purpose): 28, 22, 14, 7, 2, and 2. For the short side, the two series of figures were: 110, 101, 103, 94, 76, and 21; and 20, 18, 21, 25, 21, and 7.

35. The 36 sales made on December 22 by Miller and Company for respondents, mentioned in Finding 25, and the 10 for another, mentioned in Finding 27, were all at 45.75, the maximum price permitted for that day. Hummel's sale of 1 through another firm was at 45.50. Liquidating sales of 33 by 18 other traders through other firms ranged from 1 at 44.00, 3 at 44.50, 2 at 44.75, to 2 at 45.65, 13 at 45.70, and 2 at 45.75. Of the 77 sales through Miller and Company on December 23, mentioned in Finding 26, 7 were at 47.50 and 70 were at 47.55, the highest price registered that day. Respondents' 29 sales through three other firms were all at 47.50.

36. Of the 76 lots of eggs finally received on delivery in satisfaction of the December 1952 future (i.e., received and not again delivered on that future), 6 were received by three firms other than Miller and Company on December 11, 12, and 15. The other 70 were all

received by Miller and Company on December 22, 23, 24, 29, and 30.

37. On December 26, 1952, Miller and Company sold Fox DeLuxe Foods, Inc., 9 lots of eggs it had received in settlement of December futures contracts for itself on December 19 and 22. On December 29, Miller and Company again received some of these lots, in settlement of long futures contracts of Refrigerated Products, Inc. It sold 3 of these to Bauer Brokerage Company and 2 to Sol Weinger Company on the same day. All three purchasers bought these eggs to deliver on short December futures contracts. The price in each sale was 48.50. On December 26 and 29, Miller and Company had eggs received on delivery theretofore for Randolph, Headlee, Van Sant, Market Produce Company, and Refrigerated Products.

38. Morris Weinger, who bought the 2 for Sol Weinger Company mentioned in Finding 37, thought that the 48.50 was too high and that he was squeezed, but testified that Miller and Company had the only eggs available for delivery. Sig Bauer, who bought the 3 for Bauer Brokerage Company, looked for deliverable eggs and was directed to Miller and Company. He thought the price was too high, but paid it after failing to obtain eggs to deliver from his plant in Missouri.

39. Harry H. Redfearn, a broker who had a customer short in the future, offered Miller and Company 47.50 for eggs to deliver after trading closed, but could not get them for less than 48.50. The customer refused to pay this, and defaulted on the future.

40. On December 17, the order of Miller and Company, given by telephone by Gilbert H. Miller, with some other unnamed person also on the line, to its broker, Frank M. Darby, for purchases of the December future, was "Buy all can at 39.75." On December 19, the order of Miller and Company, given by telephone by Gilbert H. Miller, to a broker acting for it, Edwin J. Geurkink, was to buy all he could up to within five points of the limit. These orders authorized the brokers to buy unlimited quantities at or below the prices specified. On December 23, Darby received an order from Miller and Company to sell all he could at 47.60. He was unable to sell at that price.

41. On the morning of December 22, 1955, by telephone, Howard Randolph gave an order to Marlowe King, a floor broker, to buy 11 of the December future at the market. Randolph then put Leo Hagen on the telephone, and Hagen gave King an order to buy 10. King filled the orders and confirmed. That afternoon, King telephoned Randolph about other things, and during the conversation Randolph instructed King that, in the absence of further contact before the opening the

next morning, King had an open order to sell his 11 and Hagen's 10 at 47.50. King sold the 21 at 47.50 on December 23.

42. About December 17, 1952, all respondents herein except Leo Hagen agreed to concentrate purchases of Chicago December 1952 egg futures, to manipulate and raise the price of such future and of deliverable eggs in Chicago, to corner such future and eggs, and to profit thereby. Leo Hagen joined with the others in their agreement

on or shortly before December 22, 1952. In pursuance of their plan, respondents engaged in the activities mentioned above and below in these Findings of Fact.

43. The transactions of the Iowa respondents through Miller and Company went in through Howard Randolph, and those from the Texas respondents went through J. W. Harding.

44. Under the rules of the Chicago Mercantile Exchange, December 1952 egg futures contracts could have been settled by delivery of "refrigerator" eggs (eggs in original cold storage more than 29 days) stored in approved warehouses, during December, by serving notice of delivery by 9 a.m. on December 31, 1952. Refrigerator eggs in approved warehouses out of Chicago could be delivered by tendering notice prior to 7 a.m. on December 24, with freight adjusted to Chicago. "Fresh" eggs (eggs not in cold storage for more than 29 days) in refrigerator cars on track in Chicago or stored in approved warehouses could be delivered with the same adjustments as refrigerator eggs. For delivery as a unit, to satisfy one future contract, there had to be 480 cases (with adjustments for more or less) in not more than three lots, no lot of less than 100 cases.

45. The volume of eggs stored in approved warehouses in Chicago which met specifications for delivery on the December egg future on the last 11 business days in December 1952 did not exceed, respectively, 120, 114, 109, 103, 97, 84, 84, 81, 80, 80, and 79 carlot equivalents.

The carlots owned by respondents on these days, respectively, were 23, 23, 20, 22, 34, 60, 77, 68, 70, 79, and 78. This gave respondents the following percentages of such deliverable eggs on these days, respectively: 19.5, 20.5, 18.5, 21.6, 35.4, 72.1, 91.5, 83.6, 87.3, 98.7, and 98.7.

46. On December 31, 1952, there were 47,000 cases of storage eggs held in Illinois. There were 6,000 each in Kansas and Ohio, and only 4,000 altogether in Indiana, Michigan, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, and Nebraska, for a total of 63,000 in the 12 States. Respondents held about 70% of the deliverable part of these eggs.

47. On the last 4 days of trading, December 18, 19, 22, and 23, the combined long futures contracts and deliverable refrigerator eggs held in Chicago by respondents exceeded such combined totals for all others by 2, 96, 171, and 102 cars, respectively.

48. At the close of December 16, 1952, Miller and Company held 4 carlots of refrigerator eggs theretofore received on delivery for its own account, all of which it held before December 1, and none for other respondents. It sold 3 of these 4 on December 18, 1 of them to another respondent. On December 19, 22, and 23, it received 47 lots on delivery for itself and other respondents. Respondents made no sales of cash deliverable eggs on these three days. During the period December 24-31, respondents received 45 additional deliveries, some of these being redeliveries of lots previously delivered. The only sales

by respondents during this period of eggs received on delivery were either to other respondents, for shipment out of Chicago, or the 14 lots mentioned in Finding 37. Of the remaining 60, 31 were sold on January 2, 5, 6, and 9, 1953, at prices ranging from 40.25 (on January 2) to 44.50 (on January 9), and 29 were delivered on January 19-22, 1953, to satisfy 26 January 1953 futures sold on December 22, 23, and 24, 1952, at prices ranging from 39.85 to 40.10, and 3 January futures sold on January 9 at 42.25 and 42.30.

49. If a short egg futures contract is not offset by the purchase of a long contract in the same future before the close on the last day of trading, nor satisfied by the delivery of cash eggs by the last business day in the delivery month, the contract is in default. Holders of 21 short contracts in December 1952 defaulted. This was about 32 percent of the 66 contracts remaining open at the close on the last day of trading. Defaults are uncommon, and indicate high prices and difficulty in obtaining deliverable eggs.

50. While refrigerator eggs stored outside of Chicago and fresh eggs could have been delivered under conditions specified in the rules in December 1952, deliveries usually made under such rules were refrigerator eggs stored in Chicago. Fresh eggs were not delivered in December 1952, and the trade considered Chicago refrigerated eggs as the only available supply for the delivery as early, at least, as December 26.

51. On December 15 and 16, 1952, 3 lots of eggs which had been received on delivery on December 12 and 15 by Saul Stone & Company were sold at 38.25, 38.40, and 39.75. The December future ranged from 38.50 to 39.50 on December 15 and 16. On December 19, a carlot of cash eggs were offered at 35.50 on the Exchange, one bid of 29.50 was recorded, but the lot was not sold. Except that one case was a half pound below the minimum weight allowed, this lot would have been deliverable with an allowance of about five cents (5.00) per dozen. The December future ranged from 42 to 43.75 that day.

52. On December 31, 1952, a Fair Market Value Committee appointed by the Exchange in connection with the 21 defaults in the December future reported 47.5 cents as what they considered the fair market value of deliverable eggs. The Clearing House Committee did not accept this, but voted a price of 42.5 cents. The Penalty Committee recommended a penalty of 4 cents, but the Clearing House Committee voted to make this 5 cents. The Clearing House Committee's action was then reported to the Board of Governors, which declared the settling price to be 43.5 cents, with a 5 cent penalty. This meant that the settlement price for the defaulted contracts was 48.50, being 43.50 plus 5. On the same day Miller and Company sold 1 lot, received on delivery for itself on December 30, to Heifer-King, Inc., New York, at 41.25, and sold 1 lot, received on delivery on December 29 for Refrigerated Products, at 41. On that day the January 1953 future closed at 40.45-40.50.

53. On December 1, 1952, the December 1952 future closed at 41.72, which was 1.42 higher than the 40.30 close of the January 1953 future. The difference, or spread, between the two futures narrowed to 0 on December 9, both futures closing at 38.27. For the next 10 trading days, the last days of trading in the December future, the spread of December over January was, respectively, .27, .60, .70, .92, .85, 1.55, 3.15, 4.40, 5.90, and 8.05. This increase in spread of 7.78, 6.50 of which occurred during the last 5 days, is unusual, and is more than twice as large as for any other between these months for the years 1946-1953.

54. Respondents' total profits on their transactions here involved were \$ 162,695.15, the highest being \$ 43,561.28 for Refrigerated Products, and the lowest being \$ 2,224.80 for Hagen. No profits are shown for Miller, Harding, and Snowgren separate from those of their corporations.

55. Respondents obtained and retained a commanding position in the December future and in refrigerator eggs in Chicago during the latter part of December 1952. After the close of trading in the future, they held the only available supply of deliverable eggs in Chicago, and refused to sell such eggs except at a price higher than their true market value.

56. Respondents agreed, intended, and attempted to, and did, corner December 1952 egg futures and cash refrigerator eggs in Chicago,

manipulate and raise the price of such future and eggs, dominate the market in such future and eggs, force the shorts to pay excessive prices for such future and eggs, and profit thereby.

Proposed Conclusions

There are many pages in the transcript in this proceeding. There are many figures in the exhibits. There are many motions, objections, contentions, citations, etc., in the pleadings and briefs. It might be expected, then, that there are many issues to be resolved in this decision. In the larger, over-all sense, however, there are only two substantive questions to be answered, or issues to be resolved. One is, may the activities of the respondents here be considered together as a unit, as group action, or must the activities of each respondent be considered as separate from and unconnected with those of the other respondents? The other question is, if respondents are grouped together, did they manipulate or corner? Every material disagreement and contention disclosed by the record would seem to stem from or be supplemental to these two substantive questions, or to relate to the procedure to be employed in getting them answered.

If we were to consider every point of contention expressed or insinuated by counsel in the pleadings and the transcript, we could make many and detailed findings other than those set out above, on which many pages of argument and conclusions could be written. We think, however, that such detailed findings and discussion would serve

to becloud rather than clarify the main issues. No other findings we could make which could be supported by the record would materially affect the findings we have made, nor would they change any conclusions drawn from the facts found. Accordingly, all facts and conclusions requested by the parties inconsistent with this decision and not specifically mentioned herein are denied or overruled.

We pass now to a consideration of the findings of fact.

Findings 1 through 11 merely identify the respondents. There is no dispute on the facts stated.

Finding 12 is technical and jurisdictional, involving a matter of which judicial notice could be taken, and is not disputed.

The facts and figures contained in Findings 13 through 18 are established by uncontradicted testimony and exhibits. There is no basis in the record to question them. The only differences concerning them relate to what conclusions should be drawn from them. We think they clearly show that something was happening in the market that might merit investigation, and that a logical place to start might be Miller and Company, where all the long interest was held. It should not have been very surprising to anyone active in the trade, then, to find an investigation being made by representatives of the Commodity Exchange Authority, the agency responsible for administering the Commodity Exchange Act.

The investigation disclosed the facts and figures shown in Findings 19 through 41. Again, there is no basis in the record for disputing the

truth of these findings, the only reasonable basis for difference of opinion concerning them being the conclusions to be drawn. Near the close of trading in the future, traders from Iowa and Texas concentrated their trading at Miller and Company, closing out their positions with others, two of them obtaining positions of 50, three of them getting 24, two of them 9, one maintaining his 50 by purchases through another firm after Miller and Company was advised against further purchases. They increased their holdings while others were getting out, they got and held the entire long interest, their trading was different from the trading of others in many ways, they finally received all deliveries during the period involved, their only sales were at identical prices, purchasers thought their price was too high, they gave unlimited orders to brokers, and were able to predict what the price would be next day. One or two of these circumstances might be explained as coincidence, but not all of them. Respondents in their briefs point out that some respondents sold on the same day that others bought, and conclude that this shows there was no "pattern" of trading. The fact that the purchases and sales were not exactly alike, and that each did not participate to the same extent in volume, etc., does not explain away the whole accumulation of circumstances.

We think the only reasonable conclusion to be drawn from these basic findings is what we have set out in Finding 42, that respondents acted by agreement. That agreement may be proved by circumstances is settled. *United States v. Pullman Company*, 50 F. Supp. 123, 134 (D.C. Pa. 1943); *American Tobacco Company v. United States*, 328 U.S. 781 (1946).

Having concluded that respondents acted by agreement as a group, we turn to the other major issue, whether their action constituted manipulation and corner, and to findings not already discussed.

Finding 43 is the only finding herein which is based in any way upon a statement or admission by a respondent made to an investigator. The statement was made by Respondent Miller to Arthur R. Grosstephan, an investigator for the Commodity Exchange Authority, in the course of an official investigation in Chicago while trading in the December future was in progress on December 22, 1952. That Texas trades went through Harding was denied by some of the Texas respondents when they were interviewed by another investigator in Texas some three weeks later. The statement made by the broker authorized to make the trades, while the trading found agreed to above was still going on, is deemed more reliable than those of others some weeks later.

The facts and figures in Findings 44 through 54 are supported by uncontradicted evidence. Here again, there is no basis in the record for attack upon them, the only reasonable ground for argument on them being what they prove, or what should be concluded from them. Taken in connection with earlier findings, they show that, the latter part of December, acting by agreement, respondents bought heavily, got and retained the entire long future interest, took all the eggs delivered, pushed the price up above what the eggs themselves were worth except for delivery, got all the supply available for delivery, refused to sell for less than their price, and profited thereby. We think the

findings and the entire record not only authorize, but require the conclusions of fact and law set out in the last two findings, 55 and 56.

Respondents argue that the facts in the record do not show that there was a corner. They deny that the price was artificial, that respondents held any control, or withheld. The record does not support these arguments and denials. Respondents point to some details of other corners, and contend that because such details are absent or different here, this was no corner. We do not think every corner has to be exactly like every other corner, or that any list of characteristics of past manipulative operations could be said to contain

"elements" of a corner which would prevent some later operation from being a corner because one of these "elements" was lacking. We do not believe it necessary or desirable to discuss here the history and meaning of a term so well understood as corner. If such a discussion is desired, we think the decision in *In re Great Western Distributors, Inc., et al.*, 10 Agric. Dec. 783 (10 A.D. 783) (1951), is adequate, and reference is made thereto. That decision was affirmed by 201 F. 2d 476, cited above in the Preliminary Statement. The evidence and the authorities show that respondents here not only attempted to corner, but were successful.

Respondents say in their brief that procedural due process was denied them by the bias of the referee. It is not definitely stated how bias was demonstrated or employed, but refusal to hear oral argument on motions to dismiss and rulings on cross examination are mentioned in the same paragraph, and we suppose they are related.

The referee had heard the testimony that had gone in, both on direct and cross examination, and all the arguments made through motions, questions, objections, statements of counsel, etc. When he was then confronted with motions claiming that there was no evidence of agreement or manipulation, we do not think he was required by due process to hear oral argument in support of those claims.

Many times during cross examination, counsel for respondents asked witnesses questions which were objected to as not related to their direct testimony. When the referee did not think the question was within the scope of the direct examination, he sustained the objection. Instances of this may be found on pages 1143-1146 and 1214-1223 of the transcript. On pages 531, 542, and 922, Mr. Freeman appeared to recognize the rule that cross examination is limited to the scope of the direct, but on page 758 Mr. Smith contended that there should be no limit at all. On pages 829-831, the referee suggested that, to cross examine an expert on the basis of facts not yet in the record, the witness be asked "supposing that was the situation." Mr. Freeman complied. It does not appear that any proper cross examination was denied or unduly limited.

By participating in the manipulation and corner, respondents willfully violated section 9 of the Commodity Exchange Act. For their violations, the sanctions set out below should be invoked, as recommended by the Commodity Exchange Authority. The differences

in the periods of suspension are due to the different degrees of participation in the plan by the different respondents.

Proposed Order

Effective 1956, the registration of G. H. Miller and Company as a futures commission merchant, and the registration of Gilbert H. Miller as a floor broker, are revoked.

Effective 1956, all contract markets shall refuse all trading privileges to G. H. Miller and Company, Gilbert H. Miller, Howard Randolph, Randolph and Company, Refrigerated Products, Inc., and J. W. Harding for a period of one year.

Effective 1956, all contract markets shall refuse all trading privileges to Central Iowa Poultry and Egg Company, John H. Snowgren, Allen Headlee, Headlee Produce Company, A. L. Myrick, Market Produce Company, Lewis R. Van Sant, Roy Rountree, and Dated Egg Company, for a period of six months.

Effective 1956, all contract markets shall refuse all trading privileges to E. E. Hummel, K. Hummel, Hummel Produce Company, Albert Schirm, Schirm Produce Company, and Leo Hagen, for a period of sixty days.

Copies hereof shall be served on the parties or their counsel of record, and upon each contract market.

Note: The foregoing is the referee's report, or recommended decision. It is not a final order. The final order will be issued by the Judicial Officer after the parties have had opportunity to file exceptions, etc., as provided by the rules of practice.

Note: I have made and initialed in the original transcript the corrections listed in a stipulation by the parties filed on November 18, 1955. These and the changes listed in my letter of November 9, 1955, are the only alterations I have made in the transcript.

/s/Jack W. Bain

Jack W. Bain

Hearing Examiner, Referee

December 1, 1955

LOAD-DATE: June 12, 2008

