

Commodity Futures Trading Commission
CEA CASES

NAME: EUGENE T. MUELLER, ROBERT J. MURPHY, AND JAMES W. KOZINSKI

CITATION: 30 Agric. Dec. 1423

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(No. 14,212)

In re EUGENE T. MUELLER, ROBERT J. MURPHY, and JAMES W. KOZINSKI. CEA Docket No. 183. Decided October 14, 1971.

Wash sales -- 10-day suspension of registrations -- Consent order

Respondents' activities involving "wash sales" and transactions that are not open and competitive are violations of the act for which respondents are ordered to cease and desist from such violations and are suspended as registrants under the act for 10 days and are denied all trading privileges on the contract markets for a like period.

Earl L. Saunders for Commodity Exchange Authority.

Respondents *pro se*.

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.), instituted by a complaint and notice of hearing issued on September 2, 1971. The respondents are charged with violating section 4c of the Act (7 U.S.C. 6c) and section 1.38 of the regulations thereunder (17 CFR 1.38).

No hearing has been held in this proceeding. The respondents have filed a stipulation under section 0.4 (b) of the rules of practice (17 CFR 0.4(b)) in which they admit the facts hereinafter set forth in paragraphs one through three of the Findings of Fact, (2) admit, for the purposes of this proceeding and for such purposes only, the facts hereinafter set forth in paragraphs four and five of the Finding of Fact, (3) waive the report of the

Hearing Examiner, and (4) consent to the entry of the order contained herein.

FINDINGS OF FACT

1. The respondents, Eugene T. Mueller, Robert J. Murphy and James W. Kozinski, are now, and were at all times material herein, registered floor brokers under the Commodity Exchange Act and members of the Chicago Mercantile Exchange, hereinafter referred to as the exchange.

2. The exchange is now, and was at all times material herein, a duly designated contract market under the Commodity Exchange Act.

3. The transactions referred to herein relate to the purchase and sale of pork belly futures contracts on the exchange. Such contracts could have been used for hedging transactions in interstate commerce in pork bellies or the products or by-products thereof, or for determining the price basis of transactions in interstate commerce in pork bellies, or for delivering pork bellies sold, shipped, or received in interstate commerce.

4. Respondents Mueller and Kozinski, on December 30, 1968, entered into the transactions specified in the tabulation below, which transactions were wash sales or were of the character of wash sales. In entering into the said transactions the said respondents acted pursuant to, and in accordance with, an understanding or arrangement that reciprocal and offsetting purchases and sales would be made at little or no price advantage or disadvantage to the said respondents.

(1969)	Respondent	Quantity	Price (Cents per pound)	Respondent
Future	Buying	(No. of contracts)		Selling
February	Mueller	50	32.00	Kozinski
March	Kozinski	50	31.92 1/2	Mueller
February	Kozinski	50	32.62 1/2	Mueller
March	Mueller	50	32.55	Kozinski

5. Respondents Mueller and Murphy, on December 30, 1968, December 31, 1968 and January 2, 1969, entered into the transactions specified in the tabulation below, which transactions were wash sales or were of the character of wash sales. In entering into the said transactions the said respondents acted pursuant to, and in accordance with, an understanding or arrangement that reciprocal and offsetting purchases and sales would be made at little or no price advantage or disadvantage to the said respondents.

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(1969)	Respondent	Quantity (No. of contracts)	Price (Cents per pound)	Respondent
				Selling
Date	Future	Buying		
12/30/68	February	Mueller	50 32.02 1/2	Murphy
12/30/68	March	Murphy	50 31.92 1/2	Mueller
1/2/68	February	Murphy	50 32.00	Mueller
1/2/69	March	Mueller	50 31.92 1/2	Murphy
12/31/68	March	Murphy	100 32.52 1/2	Mueller
12/31/68	August	Mueller	100 32.05	Murphy
12/31/68	March	Mueller	100 32.52 1/2	Murphy
12/31/68	August	Murphy	100 32.05	Mueller

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that, as charged in the complaint, the respondents: (1) entered into transactions which were, or were of the character of, wash sales or fictitious sales, in wilful violation of section 4c of the Commodity Exchange Act (7 U.S.C. 6c); and (2) executed purchases and sales of commodities for future delivery in a manner which was not open and competitive, in wilful violation of section 1.38 of the regulations (17 CFR 1.38). The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation submitted by the respondents. The administrative officials believe that the prompt entry of the proposed order would constitute a satisfactory disposition of this case, serve the public interest and effectuate the purposes of the Act. The complainant recommends, therefore, that the stipulation be accepted and the proposed order be issued. It is concluded that the complainant's recommendation should be adopted.

ORDER

Effective upon the date of service of this order upon the respondents, they shall cease and desist from: (1) entering into, or offering to enter into, any futures transaction subject to the Commodity Exchange Act if such transaction is, is of the character of, or is commonly known to the trade as, a "wash sale"; and (2) executing any futures transaction subject to the Commodity Exchange Act if such transaction is not executed openly and competitively in accordance with section 1.38 of the regulations issued under the Commodity Exchange Act (17 CFR 1.38).

Effective on the twentieth day after the date of issuance of this order, (1) the registrations of the respondents as floor

brokers under the Commodity Exchange Act are suspended for a period of ten (10) days, and (2) the respondents are prohibited from trading on or subject to the rules of any contract market for a period of ten (10) days, and all contract markets shall refuse all trading privileges to the respondents during this period, such prohibition and refusal to apply to all trading done and all positions held by the respondents, directly or indirectly.

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

LOAD-DATE: June 10, 2008

