

Commodity Futures Trading Commission  
CEA CASES

**NAME:** NOVAK & NOVAK TRADING CO., INC., JAY A. NOVAK AND IRVING OLSHEVER

**CITATION:** 31 Agric. Dec. 1131

**DOCKET NUMBER:** 186

**DATE:** SEPTEMBER 11, 1972

**DOCUMENT TYPE:** DECISION AND ORDER

(No. 14,759)

*In re* NOVAK & NOVAK TRADING CO., INC., JAY A. NOVAK and IRVING OLSHEVER. CEA Docket No. 186. Decided September 11, 1972.

**Minimum financial requirements -- Accounts and records -- Financial reports -- Stipulation -- Denial of trading privileges -- Suspension**

Where respondents Novak & Novak Trading Co., Inc. and Jay A. Novak willfully violated the Act and the regulations and have filed a stipulation and consent to the entry of the order herein, said respondents are ordered to cease and desist from such violations, are denied trading privileges and suspended as registrants under the Act as set forth in the order. The complaint as to respondent Olshever is dismissed.

*Richard W. Davis, Jr.*, for complainant.

*William T. Friedman*, New York, N.Y., for respondents Novak & Novak Trading Co. and Jay A. Novak.

*Harold R. Kalvin*, New York, N.Y., for respondent Irving Olshever.

*John A. Campbell*, Hearing Examiner.

*Decision by Donald A. Campbell, Judicial Officer.*

**DECISION AND ORDER**

**PRELIMINARY STATEMENT**

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1) instituted by a complaint

and a notice of hearing issued on September 28, 1971, under the said Act. By leave of the Referee, the complaint was amended on April 19, 1972. The complaint as amended charges that respondents Novak and Novak Trading Co., Inc., and Jay A. Novak willfully violated sections 4f and 4g of the said Act (7 U.S.C. 6f and 6g) and sections 1.17 and 1.35 of the regulations thereunder (17 CFR 1.17 and 1.35); that all respondents willfully violated section 6(b) of the said Act (7 U.S.C. 9); and that cause exists, pursuant to section 8a(3) of the said Act (7 U.S.C. 12a(3)), to find respondent Novak and Novak Trading Co., Inc., unfit to engage as futures commission merchant.

All respondents filed answers to the complaint and the amendments thereto which, in general, admitted the jurisdictional allegations and denied the substantive allegations.

A prehearing conference was held at New York, New York on January 11, 1972. An oral hearing was held at New York, New York on January 12, February 1, 2, 3, 4, 28, and 29, March 1, 2, 3, 4, and 7, 1972 before John A. Campbell Hearing Examiner, Office of Hearing Examiners, United States Department of Agriculture.

On June 9, 1972, at the request of complainant, the hearing was postponed and continued without date.

On September 8, 1972, respondents Novak and Novak Trading Co., Inc., and Jay A. Novak filed a stipulation under section 0.4(b) of the rules of practice (17 CFR 0.4(b)) in which they (1) withdraw the answers previously filed by them, (2) admit the facts hereinafter set forth in paragraphs 1 and 2 of the Findings of Fact, (3) admit, for the purposes of this hearing and for such purposes only, the remaining facts set forth in the Findings of Fact and (4) waive further hearing on the charges in the complaint and the report of the referee and consent to the entry, of the order contained herein. In such stipulation, respondent Jay A. Novak represents that he will take adequate positive steps to insure that full, complete and systematic records of transactions relating to the business of dealing in commodity futures and cash commodities will be maintained by Novak & Novak Trading Co., Inc., and any other futures commission merchant with whom he may be associated in a managerial capacity; that the books and records of Novak & Novak Trading Co., Inc., and any such other futures commission merchant will clearly and accurately reflect the transactions and financial condition of such firm; and that all reports required to be submitted to the Commodity Exchange Authority by such firm will be complete and accurate.

#### **FINDINGS OF FACT**

1. Respondent Novak & Novak Trading Co., Inc., a corporation organized and existing under the laws of the State of New York, with offices at 105 Hudson Street, New York, New York 10013, is now, and was at all times material herein, a registered futures commission merchant under the Commodity Exchange Act, engaged in trading in commodities for future delivery for the accounts of customers and holding for such customers sums of money, representing deposits of margin by, and trading profits accruing to, such customers. At all such times the respondent corporation was subject to the minimum financial requirements specified in section 1.17 of the regulations under the Commodity Exchange Act (17 CFR 1.17.)

2. Respondent Jay A. Novak, an individual whose address is 8429-153 Avenue, Howard Beach, New York, was, at all times material herein, the president and a shareholder of the respondent corporation and responsible for its management, direction and control.

3. During the period between March 31, 1969, and January 30, 1970, both inclusive, the respondent corporation engaged as a registered futures commission merchant under the Commodity Exchange Act while failing to meet the minimum financial requirements prescribed by section 1.17 of the regulations issued by the Secretary of Agriculture under the Act (17 CFR 1.17). The respondent corporation lacked approximately \$ 100, \$ 14,000, \$ 5,000 and \$ 3500, on March 31, 1969, November 28, 1969, December 31, 1969, and January 30, 1970, respectively, of having enough working capital to meet such minimum financial requirements.

4. The said respondents submitted to the Commodity Exchange Authority two financial reports on behalf of the respondent corporation, prepared by the Certified Public Accountant servicing the books of the respondent corporation, which purported to give the required financial information as of March 31, 1969 and November 30, 1969. Such reports signed by the Certified Public Accountant did not accurately reflect the financial condition of the respondent corporation, in that the report which purported to provide the information as of March 31, 1969, stated that the firm had general funds cash in banks and on hand of \$ 42,835.84, when, in fact, the actual amount of such funds was only \$ 15,-835.84, and the report which purported to provide information

as of November 30, 1969, stated that the firm had general funds cash in banks and on hand of \$ 33,987.71, when, in fact, the actual amount of such funds was only \$ 21,987.71.

5. The said respondents did not keep and maintain full, complete and systematic records of transactions relating to the business of dealing in commodity futures, in that:

a. On or about November 28, 1968, entries were made in the books and records of the respondent corporation which showed a receipt and deposit in the bank of \$ 27,000, when in fact, no such deposit was made.

b. The books and records of the respondent corporation show that a cash disbursement of \$ 15,000 was made on December 1, 1969, to Max Novak when, in fact, such disbursement was made on or before November 28, 1969.

c. At all times in 1969 and in January, 1970, the respondent corporation failed to keep and maintain a record of transactions which showed separately for each account (including house accounts) all commodity futures transactions executed for each such account.

d. At all times in 1969 and in January, 1970, the respondent corporation failed to prepare, within a reasonable time, purchase and sale statements for house accounts and to transfer profits and losses on closed trades for such accounts from the nonregulated settlement account to individual house accounts.

e. At all times from March 31, 1969 through and including January, 1970, the respondent corporation failed to maintain accounts which clearly and accurately reflected the investments of such corporations.

f. Journals and General Ledgers of the respondent corporation for 1969 and January 1970 written by the Certified Public Accountant were partially illegible to the extent that the financial condition and transaction of the corporation represented thereby could not be determined solely by an examination of such records.

#### **CONCLUSIONS**

By reason of the facts set forth in the Findings of Fact, it is concluded that respondents Novak and Novak Trading Co., Inc., and Jay A. Novak have violated sections 4f and 4g of the Commodity Exchange Act (7 U.S.C. 6f and 6g) and sections

1.17 and 1.35 of the regulations thereunder (17 CFR 1.17 and 1.35). The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation and the terms of the proposed order and they believe that the entry of such an order without further proceedings would constitute a satisfactory disposition of this case as to the stipulators, serve the public interest and effectuate the purpose of the Commodity Exchange Act. The complainant therefore recommends that the stipulation be accepted and the proposed order be issued, terminating this proceeding as to the stipulators.

The officials of the Commodity Exchange Authority further consider that, in view of all the circumstances of this matter and the recommended disposition thereof as to the stipulators, a disciplinary action against respondent Olshever should not be maintained. The complainant therefore recommends that the complaint, insofar as it pertains to respondent Irving Olshever, be dismissed, without prejudice, terminating this proceeding. It is concluded that the complainant's recommendations should be adopted.

#### **ORDER**

1. The respondents, Jay A. Novak and Novak & Novak Trading Co., Inc., are prohibited from trading on or subject to the rules of any contract market for a period of six months in any regulated commodity and all contract markets shall refuse all such trading privileges to the said respondents during this period. Such prohibition and refusal shall apply to trading done and positions held directly by the respondents or any of them, either for their own account or as the agents or representatives of any other person or firm, and also to all

trading done and positions held indirectly through persons or firms owned or controlled by the said respondents or any of them, or otherwise.

2. The registration as futures commission merchant of the respondent Novak & Novak Trading Co., Inc., is suspended for a period of six months.

3. The last four months of the period of prohibition and denial of trading privileges to Jay A. Novak and Novak & Novak Trading Co., Inc., specified in paragraph 1 of this Order, and the last four months of the suspension of registration as futures commission merchant of Novak & Novak Trading Co., Inc., specified

in paragraph 2 of this Order are suspended. However, if the above respondents, or either of them, should, after complaint and hearing in accordance with established procedure, be found to have violated the Commodity Exchange Act or regulations thereunder within three years from the date of issuance of this Order, by reason of acts other than those constituting the basis for the charges brought in this proceeding, a supplemental Order in this proceeding may be issued against the offending respondent or respondents, without further notice, making effective forthwith the portion of the sanctions applicable to such respondent or respondents suspended by this Order. Such supplemental Order shall be in addition to any sanction which may be imposed as a result of such subsequent violation.

4. Respondents Jay A. Novak and Novak & Novak Trading Co., Inc., individually and collectively, shall cease and desist from:

(a) Engaging as futures commission merchant, within the meaning of the Commodity Exchange Act, without meeting the minimum financial requirements under the Act and the regulations thereunder.

(b) Failing to keep full, complete and systematic records of transactions relating to the business of dealing in commodity futures as required by § 1.35 of the regulations under the Commodity Exchange act (17 CFR 1.35.)

(c) Submitting to the Commodity Exchange Authority financial reports purporting to represent the true financial condition of a registrant under the Act which do not accurately represent such financial condition.

(d) Willfully causing, aiding, abetting, counseling, commanding or inducing any futures commission merchant to engage in activities which if engaged in by the respondents Jay A. Novak or Novak & Novak Trading Co., Inc., would be in violation of this paragraph.

5. The period of the denial of trading privileges and suspension of registration specified in paragraphs 1, 2 and 3 of this Order, shall become effective on the twentieth day after the date of entry of this Order. The cease and desist provision specified in paragraph 4 of this Order shall become effective on the date of service of this Order upon the respondents.

6. The complaint herein, insofar as it pertains to respondent Irving Olshever, is dismissed, without prejudice.

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

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

