

Commodity Futures Trading Commission
CEA CASES

NAME: PENNSYLVANIA CO-OPERATIVE POTATO GROWERS, INC., AND OWEN L. BARKLEY

DOCKET NUMBER: 103

DATE: SEPTEMBER 13, 1961

DOCUMENT TYPE: COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: Pennsylvania Co-operative Potato Growers, Inc., and Owen L. Barkley,
Respondents

CEA Docket No. 103

Complaint and Notice of Hearing Under Section 6(b) of the Commodity Exchange Act

There is reason to believe that the respondents, Pennsylvania Co-operative Potato Growers, Inc., and Owen L. Barkley, have violated the Commodity Exchange Act (7 U.S.C. 1958 ed., Chapter 1) and the regulations made pursuant thereto (17 CFR, Part I), and in accordance with the provisions of section 6(b) of the said act (7 U.S.C. § 9), this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

Respondent Pennsylvania Co-operative Potato Growers, Inc., is a Pennsylvania corporation with its principal office and place of business at 5235 North Front Street, Harrisburg, Pennsylvania. The said corporation is now and was at all times material to this complaint registered as a futures commission merchant under the

Commodity Exchange Act. At all such times up to about May 7, 1961, the said corporation had membership privileges on the New York Mercantile Exchange.

II

The New York Mercantile Exchange, the Chicago Mercantile Exchange, and the Chicago Board of Trade are now and were at all times material to this complaint duly designated contract markets under the Commodity Exchange Act.

III

Respondent Owen L. Barkley, an individual whose address is 5235 North Front Street, Harrisburg, Pennsylvania, is now and was at all times material to this complaint the general manager of respondent Pennsylvania Co-operative Potato Growers, Inc. At all times material to this complaint respondent Owen L. Barkley was a member of the New York Mercantile Exchange. The acts and transactions hereinafter described were initiated and carried out by or under the direction of respondent Owen L. Barkley in his capacity as general manager of the respondent corporation and such acts and transactions were at all times subject to his control and management.

IV

At the times hereinafter stated, respondent Pennsylvania Co-operative Potato Growers, Inc., in the regular course of its business, carried accounts of

customers who traded in commodity futures on contract markets subject to the provisions of the Commodity Exchange Act and regulations. In connection therewith, the said respondent had to its credit with a bank or other depository sums of money in varying amounts, held in segregated accounts, representing deposits of margin by and trading profits accruing to such customers. During the same periods, respondent Owen L. Barkley traded in commodity futures for his personal use and benefit or for the house account of the respondent corporation, as hereinafter more particularly described.

V

Between October 14 and November 14, 1960, both inclusive, respondent Owen L. Barkley caused the making of purchases and sales of egg futures on the Chicago Mercantile Exchange for his own use and benefit and placed such trades in the customers' omnibus account of the respondent corporation carried with E. F. Hutton & Company, another registered futures commission

merchant, by reason of which the open contract positions and financial results of such trades were commingled with the open contract positions and financial results of the transactions of the customers of the respondent corporation. In connection with the aforesaid purchases and sales for the use and benefit of respondent Owen L. Barkley, the respondents failed to prepare and keep, or cause the preparation and keeping of a record showing the account for which the said transactions were executed, and the date, price, quantity, market, commodity, and future.

VI

During the period between November 2 and November 23, 1960, the segregation record of the respondent corporation showed an excess of funds in segregation ranging from approximately \$ 129 to approximately \$ 7,000, that is, such segregation record indicated that the total amount of customers' funds in segregation exceeded, by the aforesaid sums, the amount of money necessary to pay all credits and equities due to such customers. In truth and in fact, as the result of losses incurred by respondent Owen L. Barkley in connection with the transactions in egg futures executed for his own use and benefit and the commingling of such transactions with those of the

respondent corporation's customers, as described in paragraph V, the said corporation was undersegregated on fifteen business days between November 2 and November 23, 1960, in amounts ranging from approximately \$ 2,174 to approximately \$ 13,684, that is, the total amount of segregated funds was insufficient, by the aforesaid sums, to pay all credits and equities due to such customers.

VII

During the period from February 1 through April 24, 1961, respondent Owen L. Barkley caused the making of transactions in commodity futures on the New York Mercantile Exchange and the Chicago Board of Trade for the account of the respondent corporation and placed such transactions in the customers' omnibus account of the said corporation with the aforesaid E. F. Hutton & Company, by reason of which the open contract positions and financial results of such transactions were commingled with the open contract positions and financial results of the transactions of the customers of the respondent corporation. In connection with the aforesaid transactions for the account of the respondent corporation, the respondents failed to prepare and keep, or cause the preparation and keeping, of a record showing

the account for which the said transactions were executed, and the date, price, quantity, market, commodity, and future.

VIII

From February 27, 1961, through March 28, 1961, the segregation record of the respondent corporation showed an excess of funds in segregation ranging from approximately \$ 296 to approximately \$ 5,400, whereas, in truth and in fact, by reason of losses incurred in connection with the transactions described in paragraph VII and the commingling thereof with those of the respondent corporation's customers, the said corporation was undersegregated on sixteen business days within the said period in amounts ranging from approximately \$ 32 up to approximately \$ 16,000.

IX

Between March 1 and March 6, 1961, both inclusive, respondent Owen L. Barkley caused the making of purchases of potato futures on the New York Mercantile Exchange for the account of the respondent corporation, and placed such purchases in the customers' omnibus account of the respondent corporation with the aforesaid E. F. Hutton & Company, by reason of which the open contract positions and financial results of such purchases were commingled with the open contract positions and financial results of the transactions

of the customers of the respondent corporation. The contracts resulting from the above-described purchases showed a loss, and respondent Owen L. Barkley informed representatives of the estate of one Hugh McPherson, deceased president of Maple Lawn Farms, Inc., which corporation had a commodity futures trading account with respondent Pennsylvania Co-operative Potato Growers, Inc., that the said purchases had been ordered by the said Hugh McPherson, whereupon the representatives of the said estate ordered the aforesaid contracts to be sold and such sale resulted in a net loss of approximately \$ 15,000, which loss respondent Owen L. Barkley charged to the Maple Lawn Farms, Inc., account. Respondent Owen L. Barkley destroyed certain records pertaining to the said account, altered other records of respondent Pennsylvania Co-operative Potato Growers, Inc., and made entries in the Maple Lawn Farms, Inc., account which purported to show that the said purchases had been made for the said account. In truth and in fact, the said purchases had not been ordered by the said Hugh McPherson for the Maple Lawn Farms, Inc., account but had been initiated and carried out by respondent Owen L. Barkley, acting in his capacity as general manager of respondent Pennsylvania Co-operative Potato Growers, Inc.

The contracts resulting from such purchases and sales were capable of being used for hedging a transaction in interstate commerce in potatoes or the products or by-products thereof, or for determining the price basis of a transaction in interstate commerce in potatoes, or for delivering potatoes sold, shipped, or received in interstate commerce.

X

(A) By reason of the acts and omissions described in paragraphs IV-IX, inclusive, respondents Pennsylvania Co-operative Potato Growers, Inc., and Owen L. Barkley failed to treat and deal with customers' funds as belonging to such customers, failed to segregate and account separately for such funds, commingled such funds with funds of the respondent corporation, used such funds to margin and guarantee the trades and secure and extend the credit of persons other than those for whom the same were held, and failed to prepare and maintain a true and accurate computation and record as a basis for such segregation and accounting, in knowing and wilful violation of section 4d(2) of the Commodity Exchange Act (7 U.S.C. 6d(2)) and sections 1.20, 1.21, 1.22, and 1.32 of the regulations (17 CFR 1.20, 1.21, 1.22, 1.32).

(B) By reason of the acts and omissions described in paragraphs V, VII, and IX, respondents Pennsylvania Co-operative Potato Growers, Inc., and Owen L. Barkley failed to keep the books and records pertaining to futures transactions in the form and manner required by the Secretary of Agriculture, in knowing and wilful violation of section 4g of the Commodity Exchange Act (7 U.S.C. § 6g), and section 1.35 of the regulations (17 CFR 1.35).

(C) By reason of the acts and omissions described in paragraph IX, respondents Pennsylvania Co-operative Potato Growers, Inc., and Owen L. Barkley, in connection with an order to make and the making of futures contracts on behalf of a customer, cheated or defrauded or attempted to cheat or defraud such customer, made a false report to such customer, entered a false record for such customer with respect to such transaction, and deceived or attempted to deceive such customer with respect to the execution of such contract, in knowing and wilful violation of section 4b of the Commodity Exchange Act (7 U.S.C. § 6b).

WHEREFORE, it is hereby ordered that this complaint and notice of hearing be served upon each of the said respondents. The respondents will have twenty (20) days after the receipt of this notice of hearing in which to file with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., an answer with an original and six copies, wholly and completely stating the nature of the defense and admitting or denying, specifically and in detail, each material and relevant allegation of this complaint. Allegations not answered will be deemed admitted for the purpose of this proceeding. Failure to file an answer will constitute an admission of all the material allegations of this complaint and a waiver of hearing. The respondents are hereby notified that unless hearing is waived, either expressly or by failure to file an answer and request a hearing, a hearing will be held at 10:00 a.m., local time, on the 31st day of October 1961, in Harrisburg, Pennsylvania, at a place therein to be specified later, before a referee designated to conduct such hearing. At such hearing, the respondents will have the right to appear and show cause, if any there be, why an order should not be made suspending or revoking the registration of respondent Pennsylvania Co-operative Potato Growers, Inc., as a futures

commission merchant and directing all contract markets to refuse all trading privileges to each respondent for such period of time as may be determined.

It is ordered that this complaint and notice of hearing be served on the respondents at least twenty (20) days prior to the date set for hearing.

Done at Washington, D.C.

September 13, 1961.

/s/ John P. Duncan, Jr.

John P. Duncan, Jr.

Assistant Secretary

LOAD-DATE: June 12, 2008

