

Commodity Futures Trading Commission
CEA CASES

NAME: HENRY S. SICINSKI

DOCKET NUMBER: 131

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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: Henry S. Sicinski, Respondent

CEA Docket No. 131

Recommended Decision

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 21, 1965, by the Assistant Secretary of Agriculture against Henry S. Sicinski, an individual.

The complaint alleges in substance that the respondent, while engaged in handling the trading in commodity futures of a business trust known as Commodity Trading Trust A, deceived such trust by transmitting to it statements falsely showing the execution of transactions in futures, and that the respondent transmitted certain of such statements through the mails. The complaint charges that, by reason of the facts stated therein, the respondent wilfully violated the prohibitions contained in sections 4, 4b, 4c, and 4h of the Commodity Exchange Act (7 U.S.C. 6, 6b, 6c, 6h).

The respondent filed an answer to the complaint on October 11, 1965. In such answer, the respondent admits that he rendered untrue

statements to Commodity Trading Trust A, but states that "[the] implication that this deception allowed the respondent profit at the expense of the trust members is not true" (emphasis supplied). By way of explaining his conduct in this respect, the respondent states in his answer that "[the] monies belonging to the trust had been lost in futures transactions" and that "he decided not to report the loss but rather wait until after attempting trading on the Chicago Board of Trade to determine if the money lost could be recovered."

On November 2, 1965, the referee granted the respondent's request that the oral hearing be held in Chicago, Illinois instead of Ann Arbor, Michigan, as designated in the complaint. The oral hearing was held in Chicago on December 1, 1965. John J. Curry, Office of Hearing Examiners, United States Department of Agriculture, was assigned as referee and presided at the hearing. Earl L. Saunders, Office of the General Counsel of the Department, appeared for the complainant. The respondent did not appear in person at the hearing and there was no appearance on his behalf. Immediately prior to the commencement of the hearing, the respondent informed the attorney for the complainant over the telephone that the respondent "stated in his answer everything he could say" and that he would not appear at the hearing (Tr. 3-4). No evidence was adduced on behalf of the respondent by deposition or otherwise. Three witnesses testified for the complainant and 13 exhibits were received in evidence on behalf of the complainant. After the hearing, the complainant filed suggested

findings of facts, conclusions, and order based upon the evidence adduced at the hearing. In view of that fact and the fact that no such document was filed by the respondent, the aforesaid findings of fact, conclusions, and order are adopted in this recommended decision.

Proposed Findings of Fact

1. The respondent, Henry S. Sicinski, is an individual whose address is 790 Barton Shore Drive, Ann Arbor, Michigan. At all times during the period between November 17, 1960, and November 27, 1963, the respondent was a member of the Chicago Open Board of Trade. At all times during the period between November 12, 1963, and February 1, 1965, the respondent was a partner in the firm of Soltés & Company, a registered futures commission merchant under the Commodity Exchange Act with membership privileges on the Chicago Board of Trade (Comp. ex. 9, 10, 11, 12; Tr. 28-30).

2. The Chicago Board of Trade and the Chicago Open Board of Trade were at all times material herein boards of trade duly designated as contract markets under the Commodity Exchange Act. At all such times the commodities in which trading was conducted on the Chicago Board of Trade and the Chicago Open Board of Trade were regulated under the Commodity Exchange Act, and all contracts of sale for future delivery on such boards of trade could have been used for hedging transactions in interstate commerce, or for determining the price basis of transactions in interstate commerce, or for delivering commodities sold, shipped or received in interstate commerce (Respondent's answer, P. 1).

3. At all times material herein, the respondent acted as the account manager of a business trust known as Commodity Trading Trust A, hereinafter referred to as the trust. In such capacity the respondent was authorized to make transactions in commodity futures for the account of the trust and to direct and control the trading of the trust in commodity futures. As compensation for his services in such capacity, the respondent was entitled to share in the profits resulting from the trades which he made for the trust. On or about July 18, 1963, the trust delivered approximately \$ 45,500 to the respondent to margin and secure the trades of the trust (Comp. ex. 1; Tr. 6, 13-15, 20).

4. During the period July 31, 1963, through on or about October 31, 1963, the respondent delivered to the trust four separate statements, each of which purported to show the execution of numerous transactions in futures on the Chicago Open Board of Trade for the account of the trust. Each such statement showed with respect to each transaction reported thereon, the date, commodity, quantity, future and price. The members of the trust accepted such statements as confirming that the transactions reported thereon had been made by the respondent for the trust. In truth and in fact, a substantial number of the purported transactions shown on each of these statements had not been executed (Comp. ex. 2, 3, 4, 13; Tr. 6-28, 33-36).

5. On January 7, 1965, the respondent transmitted through the mails to the trust nine separate documents to confirm to the trust that transactions in futures on the Chicago Board of Trade had been made by the respondent for the trust. Each such document purported to be a

statement of account rendered by a futures commission merchant showing the execution of numerous transactions in futures on the Chicago Board of Trade. Each such document showed with respect to each transaction reported thereon, the date, commodity, quantity, future and price. The members of the trust accepted such statements as confirming that the transactions reported thereon had been made by the respondent for the trust. In truth and in fact, no such transactions had been executed. The respondent merely fabricated the nine statements and mailed them to the trust in an effort to convince the members of

the trust that the respondent had made the reported transactions for the trust (Comp. ex. 5, 6, 7, 8; Tr. 10, 15-16, 25-28).

Proposed Conclusions

Section 4 of the Commodity Exchange Act (7 U.S.C. 6) declares it to be unlawful for "any person to deliver for transmission through the mails . . . any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of any commodity for future delivery on or subject to the rules of any board of trade in the United States . . . except . . . where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a 'contract market' . . . "

Section 4b of the act (7 U.S.C. 6b) declares it to be unlawful "for any member of a contract market, or for any correspondent, agent,

or employee of any member, in or in connection with any order to make, or the making of . . . any contract of sale of any commodity for future delivery made, or to be made . . . for or on behalf of any person . . . (B) wilfully to make or cause to be made to such person any false report or statement thereof . . . (C) wilfully to deceive or attempt to deceive such person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person."

Section 4c of the act (7 U.S.C. 6c) declares it to be unlawful for any person to "confirm the execution of any transaction involving any commodity . . . (A) if such transaction . . . is a fictitious sale."

Section 4h of the act (7 U.S.C. 6h) declares it to be unlawful for any person, in connection with the handling of any contract for the purchase or sale of any commodity for future delivery, falsely to represent that it has been executed on a contract market.

The complainant's suggested findings of fact are either admitted by the pleadings or plainly established by the evidence. These findings clearly demonstrate that the respondent: (1) transmitted through the mails confirmations of the execution of, and reports of the price of, contracts of sale of commodities for future delivery on or subject to the rules of a contract market, when, in fact, no such contracts had been

made by or through a member of a board of trade which had been designated by the Secretary of Agriculture as a contract market, in wilful violation of section 4 of the Commodity Exchange Act; (2) made misleading and false reports and statements in connection with the making of contracts of sale of commodities for future delivery made or to be made on or subject to the rules of a contract market, and attempted to and did deceive a person in regard to such contracts and acts of agency performed with respect thereto, in wilful violation of section 4b of the act; (3) confirmed fictitious trades, in wilful violation of section 4c of the act; and (4) in connection with the respondent's handling of the commodity futures transactions of a person, falsely represented that the respondent had made transactions in futures on contract markets for such person, in wilful violation of section 4h of the act. Cf. In re Charles B. Grady, 8 Agric. Dec. 1241 (8 A.D. 1241) (1949); In re Garnac Grain Co., 8 Agric. Dec. 244 (8 A.D. 244) (1949); In re Alvis R. Davis, 8 Agric. Dec. 669 (8 A.D. 669) (1949); In re Charles Vojtek, 7 Agric. Dec. 386 (7 A.D. 386) (1948); In re Ray E. Stuart, 1 Agric. Dec. 359 (1 A.D. 359) (1942).

The offenses by the respondent were deliberate, serious and flagrant. They violated basic provisions of the Commodity Exchange Act and involved breaches of fiduciary duty of an agent to his principal. When the respondent undertook to make transactions in commodity futures for Commodity Trading Trust A and to

direct its trading, the relationship of the respondent to such trust became one of trust and confidence calling for a high degree of care, honesty and loyalty. In re Douglas

Steen, 21 Agric. Dec. 1076 (21 A.D. 1076) (1962). Yet, the respondent demonstrated a deliberate disregard of his obligations in this respect. The statements which the respondent transmitted to Commodity Trading Trust A were falsified in a manner so blatant that his conduct in this regard can only be described as callous. The respondent's attempt in his answer to explain the offenses carries no weight in mitigation but, rather, demonstrates the gross impropriety of his conduct and the wilfulness with which he acted. It is manifest from the respondent's answer that he has no intention to change his conduct in the future. Upon a consideration of all the facts and circumstances of this case, we believe that in order to effectuate the purposes of the Commodity Exchange Act, the respondent should be denied all trading privileges on contract markets for a period of three years.

The respondent is not registered as a floor broker or as a futures commission merchant and, therefore, it is not possible to suspend or revoke any license as a result of the respondent's violations. In order to have an effective sanction in this case, it is necessary to deny to the respondent all trading privileges for a specified period of time whether for respondent's own account or for the account of other persons directly or indirectly controlled by him.

Proposed Order

Effective 20 days after receipt of this decision, all contract markets shall deny all trading privileges to Henry S. Sicinski for a

period of three (3) years, such refusal to apply to all trading done and positions held by the said Henry S. Sicinski directly or indirectly whether for his own account or for the account of other persons directly or indirectly controlled by him.

A copy of this decision and order shall be served upon said Henry S. Sicinski and upon each contract market.

JOHN CURRY

John J. Curry

Referee

February 25, 1966

LOAD-DATE: June 12, 2008

