

Commodity Futures Trading Commission
CEA CASES

NAME: GEORGE SIROTA AND SONS, GEORGE SIROTA, NORMAN L. SIROTA, BENJAMIN SIROTA, HARRY A. ASPINWALL, AND DYKE CULLUM

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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re George Sirota and Sons, George Sirota, Norman L. Sirota, Benjamin Sirota, Harry A. Aspinwall, and Dyke Cullum, Respondents

CEA Docket No. 54

Referee's Report

Preliminary Statement

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C., Chapter I), instituted by a complaint issued under section 6(b) of the act (7 U.S.C. 9) on November 6, 1950, by Charles F. Brannan, Secretary of Agriculture, hereinafter called the complainant or the Government. There are six respondents named in the complaint: a partnership, three individual partners, an agent or employee of the partnership, and a customer of the firm. Respondent George Sirota and Sons is a New York partnership which deals in edible oils and other commodities for its own account and for the account of customers. The partnership is a member of various contract markets, including the New York Produce Exchange, and is registered as a futures commission merchant under the act. Respondent George Sirota, Norman L. Sirota, and Benjamin Sirota are partners in the firm and each is registered as a floor broker under the act. Respondent Harry A. Aspinwall is a member of the New York Mercantile Exchange and

the Chicago Mercantile Exchange; he is registered under the act as an agent to solicit commodity futures orders for the respondent George Sirota and Sons; and he is registered as a floor broker under the act. Respondent Dyke Cullum, Hibbs Building, Washington, D. C. is an individual who traded in commodity futures as a customer of respondent George Sirota and Sons.

The Complaint

The complaint charges that respondent George Sirota and Sons

(1) Wilfully failed to report market positions of customers, as required by section 4i of the act, 7 U.S.C. 6i. (Complaint, paragraph 7);

(2) Used the funds of one customer to margin or guarantee the trades of another, in violation of section 4d(2) of the act, 7 U.S.C. 6d(2). (Complaint, paragraph 8); and

(3) Wilfully failed to evidence futures contracts by a written record showing the true names of the parties, as required by section 4 of the act, 7 U.S.C. 6 (Complaint, paragraphs 9, 10)

The respondent Harry A. Aspinwall is charged with

(1) Wilful failure to evidence futures contracts by a written record showing the true names of the parties, as required by section 4 of the act, 7 U.S.C. 6 (Complaint, paragraph 9)

The respondent Dyke Cullum is charged with

(1) Wilful failure to report transactions and market positions, as required by section 4i of the act, 7 U.S.C. 6i. (Complaint, paragraph 6)

The charges of failure of the respondent George Sirota and Sons and of the respondent Dyke Cullum to report, pursuant to section 4i

of the act, as mentioned above, are based upon the allegation (see Complaint, paragraphs 6, 7) that

On June 23, 1950, respondent Dyke Cullum purchased five contracts of soybean oil futures for his own account through the respondent George Sirota and Sons under an arrangement with the latter whereby, for purposes of concealment, these contracts were entered in accounts carried in the names of Jessica K. Jones and Kiki Cullum; that these five contracts, when added to respondent Dyke Cullum's existing position, placed him in reporting status and also subjected the respondent George Sirota and Sons to the requirement that it file reports; and that neither of these respondents filed such reports.

The charge of misuse of customer's funds by the respondent George Sirota and Sons is based upon the allegation that

On May 22, 1950, respondent Dyke Cullum deposited \$ 10,500 to margin his account and that the respondent partnership, without authority, credited \$ 3,500 of the said sum to the account of Jessica K. Jones (Complaint, paragraph 8)

The charge of failure of the respondent partnership and of respondent Harry A. Aspinwall to keep written records showing the true parties to futures contracts are based upon the allegation (See Complaint, paragraph 9) that

These respondents opened an account on the firm's books in the name of Jessica K. Jones without her authority or consent, and thereafter entered various trades in such account which were actually executed for the account and benefit of another person.

An additional charge of failure of the respondent partnership to keep written records showing the true parties to futures contracts is based also upon the allegation (See Complaint, paragraph 10) that

On or about June 23, 1950, in connection with the purchase of five contracts of soybean oil futures for Dyke Cullum, adverted to above, such contracts were entered in the accounts of Kiki Cullum and Jessica K. Jones for the purpose of concealing ownership thereof by Dyke Cullum.

The complaint also alleges that

All the respondents agreed and planned with each other to operate and they did operate the three above accounts in a manner calculated to conceal open contract positions and evade the reporting requirements of the Commodity Exchange Act. (Complaint, paragraph 5)

The Answers

On November 28, 1950, an answer was filed on behalf of respondents George Sirota and Sons, George Sirota, Norman L. Sirota and Benjamin Sirota. The answer admits the jurisdictional allegations of the complaint, including the allegation that Harry A. Aspinwall was an authorized agent of the firm and that the firm carried accounts in the names of Dyke Cullum, Kiki Cullum, and Jessica K. Jones on the dates and in the quantities claimed, but denies failure to report or failure to maintain proper written records.

Respondent Harry A. Aspinwall filed a separate answer in which he denied the allegation that he was authorized to act as an agent for the respondent partnership in the acceptance of commodity futures orders, and denied the charge of failure to evidence futures contracts by a proper written record.

Respondent Dyke Cullum also filed a separate answer in which he denied failure to report as charged, such denial being based upon an affirmative defense which will be subsequently discussed.

Hearing

John J. Curry, Office of Hearing Examiners, United States Department of Agriculture, was assigned as referee and presided at the hearing.

Respondents George Sirota and Sons, George Sirota, Norman L. Sirota and Benjamin Sirota were represented by Donald Marks of Baer & Marks, New York, New York, and Ben I. Melnicoff of Washington, D. C. Respondent Harry A. Aspinwall was represented by Thomas A. Sully, New York, New York. Respondent Dyke Cullum was represented by Roy St. Lewis, Washington, D. C. Benjamin M. Holstein, Office of the Solicitor, Washington, D. C., represented the complainant. The hearing began in New York, New York, on January 30, 1951, and continued intermittently thereafter with sessions in New York and Washington, D. C. until March 16, 1951. In a document filed on March 22, 1951, the referee declared the record closed. Two witnesses testified for the complainant and 8 for the respondents. 2058 pages of testimony were taken. 39 exhibits were received in evidence on behalf of the complainant and 83 on behalf of the respondents. Suggested findings of fact, conclusions and orders, and briefs in support thereof, were filed by all parties to the proceeding.

Filing of the Complaint

On May 5, 1950, Dyke Cullum entered into an agreement with George Sirota and Sons to enter into a joint venture for the purchase and sale of 20 tank cars of cottonseed oil from the United States Department of Agriculture. George Sirota and Sons agreed to furnish a bank letter of credit for the transaction, amounting to \$ 183,000, and Dyke Cullum deposited with George Sirota and Sons the sum of \$ 90,000 as a credit to his commodity account, said sum to be returned

to him upon completion of the transaction plus half of the profits or less half of the losses. Said transaction was liquidated on July 18, 1950 by payment to Cullum of the sum of \$ 90,000 plus the sum of \$ 3236.06 profits, plus other minor adjustments. (Transcript pp. 553, 559, 570). Prior to the liquidation of the account and payment of said sums to Dyke Cullum, George Sirota and Sons had transferred from the Dyke Cullum unregulated account to the Dyke Cullum regulated account and to the regulated Kiki Cullum and J. K. Jones accounts, to cover margin requirements, portions of the funds credited to the Dyke Cullum unregulated accounts; but such transfers were reversed upon demand of Dyke Cullum and the unregulated account was closed out by payment of the full amount of the credits therein to Dyke Cullum upon the liquidation of the spot oil transaction on July 18, 1950. (Transcript pp. 570-573). In addition to the controversy engendered by the above spot oil transaction, the respondent Cullum and the respondent partnership were in strong disagreement over the accountings rendered by the firm in connection with respondent Cullum's trades in his regulated account. Respondent Cullum testified that he repeatedly threatened "to go to the Commodity Exchange Authority." (T. p. 559). On July 19, 1950, the respondent partnership informed the New York branch office of the Commodity Exchange Authority of the facts regarding the open positions in the Dyke Cullum, Kiki Cullum, and Jessica K. Jones accounts and that it was the firm's opinion that Dyke Cullum had oral authority to trade in the Kiki Cullum and J. K. Jones accounts (Tr. pp. 1233, 1323-1324). The

testimony of Charles E. Robinson, the Commodity Exchange Authority employee in New York to whom Benjamin Sirota talked, was that Benjamin Sirota advised him that the firm felt that the positions in the three accounts should have been combined and reported but that the firm had overlooked it because of a labor shortage in the office. The reports were subsequently filed. (Tr. pp. 350, 359, 366, 367). Respondent Cullum went to the offices of the Commodity Exchange Authority in Washington on July 31, 1950 (Tr. p. 8) and filed an oral complaint against the respondent firm in which he accused the firm and Aspinwall of engaging in questionable practices under the act.

Based upon the above disclosures, further investigation, and other information in the form of written documents, the Commodity Exchange Authority filed the complaint herein.

Although it has no significant bearing upon the ultimate issues in this proceeding, it may be mentioned in passing that prior to the hearing of this case there was pending in the District Court of the District of Columbia a civil suit filed by respondent Cullum against the respondent partnership and respondent Aspinwall involving the same accounts and transactions which are the subject of this proceeding.

For convenience, the Jessica K. Jones account will be hereinafter referred to as the J. K. Jones account. The firm of George Sirota and Sons will be referred to as the partnership, the firm, or the Sirotas.

Evidence Concerning Failure to Report (Paragraphs 6 and 7 of the Complaint)

As indicated in the above paragraphs, the sale and purchase on which this charge is based took place on June 23, 1950. Respondent Cullum testified that on the same date he addressed a letter to the respondent partnership at its request confirming the trades (Govt. Exhibit 1; T., pp. 534-536) n1 He also testified that he was coerced into the arrangement by the Sirotas and described the conditions and circumstances under which the trades or switch were made. (T. 533-539). The substance of this testimony was that he did not want to get into a reporting status and relied upon Aspinwall's assurance that Aspinwall would make all arrangements to obtain authority from Kiki Cullum

and J. K. Jones that were necessary (T. pp. 535-536)). n2 Further, that the Sirotas and he were engaged in a controversy regarding his non-regulated account in which he deposited \$ 90,000 (T. p. 536). George Sirota testified that there was no coercion, that respondent Cullum consulted him and he advised Cullum that he could switch his

five long July contracts n3 into five long Septembers, or that in the alternative he could take delivery of the five Julys on the delivery date. He testified further that, at Cullum's request, the switch was made, with George Sirota and Sons taking the other side of the trades at thirty points difference, and that the letter of June 23, 1950, was requested because the firm needed written authority from Dyke Cullum to take the other side of the trades (T. pp. 902-903, 913-921, 961-965).

n1 The letter reads as follows:

6/23/1960

George Sirota & Sons
60 Bearer St.
New York 4, N. Y.

Dear Sir:

This serves as your authorization, confirming our telephone conversation, whereby you may transfer five car loads of July Soy bean oil from my account to your account, also transfer five car loads of September soy bean oil from your account to the following accounts:

3 -- Kiki Cullum

2 -- J. K. Jones

Respectfully,

/s/ Dyke Cullum

n2 Respondent Cullum's Exhibit 1 is a letter from respondent Aspinwall to respondent Cullum:

George Sirota & Sons
New York Cotton Exchange Building
60 Beaver Street
New York 4, N.Y.
June 26, 1950

Mr. Dyke Cullum
Hibba Building
15th Street, N. W.
Washington, D. C.

Dear Dyke:

In order that our files may be complete, have the attached form completed for Kiki and "Buck"

In connection with our request of Friday, may we have a letter confirming the acceptance of the two Sept oils from George Sirota & Sons. We should also like a similar letter from Kiki on the remaining three.

It certainly is a pleasure to work with you and please do not hesitate to call on me if there is anything I can do to help you. With my kindest and deepest regards, I am

Sincerely,

/s/ Harry

Harry Aspinwall

n3 See footnote 1, above.

Evidence Concerning Misuse of Customers' Funds

Paragraph 8 of the complaint charges that,

On or about May 22, 1950, respondent Dyke Cullum deposited with respondent George Sirota and Sons the sum of \$ 10,500 to margin, guarantee and secure trades made in the Dyke Cullum account. Respondent George Sirota and Sons, without authority from respondent Dyke Cullum, entered \$ 3,500 of the said sum to the credit of the account carried in the name of Jessica K. Jones or Joycette K. Jones, in violation of section 4d(2) of the Commodity Exchange Act and of sections 1.20 and 1.22 of the rules and regulations.

The government in its brief states that it is of the opinion that the evidence developed at the hearing shows that the Sirotas were justified in

entering \$ 3,500 of the 10,500 check to the credit of the account carried in the name of J. K. Jones, In view of this statement we must conclude that the disciplinary aspect of paragraph 8 of the complaint is no longer in issue. It may be noted, however, that respondent Cullum testified that he did not authorize the Sirotas to credit \$ 3,600 of his money to the J. K. Jones account and that he

protested this action to no avail. (T. pp. 15-16, 33-36, 38-40; 512-513, 566-577, 836-839) (Govt. Exhibit 6, 7, 8). He stated that on May 20 Aspinwall came to his office in Washington and asked him for 10,600 margin, pursuant to which he issued him a check for \$ 10,500 (Govt. Ex. 6). Cullum claimed that the margin was meant only for his own account (T. p. 613). Respondents Benjamin Sirota and Harry Aspinwall testified that the money was credited to the Jones account at the express direction of Cullum (T. pp. 1043, 1723-1724, 1795-1799, 1810-1811, 1826). The Sirota testimony is also to the effect that Aspinwall and the Sirotas' bookkeeper informed Cullum specifically by letter and statements of account that his account needed \$ 7,000 margin and the J. K. Jones account needed \$ 3,500, and that Aspinwall gave the statement of the accounts to Cullum in Washington on May 20 when he received Cullum's check for \$ 10,500. (T. pp. 1795, 1796). Sirota Exhibit 13 is a letter and memo from the Sirotas to Cullum dated May 18, 1950, showing that Cullum's account needed a margin of \$ 7,000. The record shows that on July 18, 1960, Cullum deposited with the Sirotas the sum of \$ 40,000 to cover margins in the followin: Dyke Cullum account \$ 14,806 Kiki Cullum account, \$ 14,661, and J. K. Jones account \$ 8,365 (T. pp. 567-568; Sirota Exhibits 48a, b, c).

Evidence Concerning Failure to Maintain Written Record Showing the true names of the parties (Paragraphs 9, 10 of the complaint). n4

n4 In this connection, Government Exhibits 3, 4, and 6 are transcriptions of trading transactions in the regulated accounts of Dyke Cullum, Kiki Cullum and J. K. Jones respectively.

I. Opening of, and trading in, J. K. Jones' account. (Paragraph 9).

Respondent Cullum's direct testimony is substantially as follows:

On June 17, 1950, in New York, George Sirota told Cullum that he wanted him to become a member of his "team" consisting of George Sirota, Benjamin Sirota, Norman Sirota, Harry Aspinwall, and Ralph Moore, to engage in the purchase of soybean oil; that the plan was, at that time, to control the market as Sirota thought that soybean oil could be forced up to around 20 cents a pound; that Ralph Moore was to make purchases of soybean oil when the Sirotas did and was to assist in obtaining information in Washington concerning what the ECA and the Department of Agriculture were doing and transmit that information to George Sirota (T. pp. 498-501); that George Sirota wanted Cullum to participate in the J. K. Jones account and to obtain information from the Senate Agriculture Committee; that Cullum told Sirota that he would not do such a thing as he was already heavily involved in soybean oil and wanted to start liquidating his account. (T. pp. 501, 502, 503.)

Cullum denied that he opened the J. K. Jones account (T. 525). He testified that it was opened by Harry Aspinwall; that Harry Aspinwall and George Sirota stated they wanted to do something to help Senator Thomas in his campaign, and that the only way they could give him money "was through some manipulation in the market, either by opening an account in his own name, . . . or have someone else open an account" (T. p. 525). Cullum testified that he told Aspinwall that he would not open such an account because if he (Cullum) wanted to help Senator Thomas

he would give him cash instead. He testified that Aspinwall was trying to get employed on the Senate Agriculture Committee (T. p. 526); that Aspinwall suggested that he, Cullum, open up an account in the name of Joycette K. Jones; and that Aspinwall suggested that Cullum phone Miss Jones, obtain her consent to use her name and "we will finance it" (T. p. 527). Cullum testified that on or about May 6 he told Aspinwall that it would be all right if Miss Jones gave her consent because the opening of an account was her business and that he (Cullum) had no control over that. Cullum testified that Aspinwall said that he was going to call Miss Jones on the phone and get her permission to open the account and that he (Cullum) said it was all right by him (T. p. 527). Cullum testified that on Sunday, May 7, just before leaving for Chicago, he phoned Miss Jones and told her that she would receive a phone call from Aspinwall; that on May 8 he received a phone call in Chicago from Miss Jones advising him that Aspinwall had phoned her but that she was uncertain as to exactly what he wanted but that he did seem to want her permanent address that he (Cullum) told her to give him her permanent address but also to be sure and find out what he wanted. (T. p. 527). Cullum also testified that on the following Saturday Aspinwall came to his office and told him he had opened the account; that he (Cullum) didn't know how it was done; that he (Cullum) didn't put any money in the account; and that he was therefore not responsible for the account. (T. p. 527-528).

Mr. Douglas B. Bagnell, Chief of the compliance and Trade Practice Division, Commodity Exchange Authority, who investigated the matters

herein on behalf of the Government, testified as to what respondent Cullum told him regarding the opening of the J. K. Jones account. In substance, Cullum advised him as follows: Aspinwall had been trying to get a job with the Senate Agriculture Committee and felt that his chances would be enhanced if he made some money in the commodity market for Senator Elmer Thomas who was Chairman of that Committee. Aspinwall suggested to Cullum that he, Aspinwall, should open an account in the name of Jessica K. Jones (the real person being Joycette K. Jones), Secretary or Clerk of the Committee. Aspinwall also suggested the use of the name Jessica to conceal the account a little better and stated that she could still endorse the checks "J. K. Jones." Cullum remonstrated, stating he doubted whether Miss Jones would stand for this, but he, Cullum, allowed Aspinwall to go ahead and work it out. On this basis the J. K. Jones' account was opened (T. p. 73, 74).

Miss J. K. Jones did not appear as a witness at the hearing. She was interviewed in Washington, D.C. by witness Bagnell and questioned as to the facts regarding the opening of the account. Mr. Bagnell's memorandum of the interview, dated September 22, 1950, was received in evidence, without objection, as Government Exhibit 16. The memorandum states:

I asked Miss Jones what she knew and what she was willing to tell me concerning the account carried in her name on the books of Sirota in New York. She said she knew nothing about it.

I then told her that on May 8, 1960, there had been a telephone call from her phone number, Atlantic 2930, at about 1 p.m. to Sirota's office and asked her what she would tell me about

that phone call. She said she was at home ill on May 8 and that the night before Dyke Cullum had told her that she would get a phone call the next day from Sirota and had told her to give her name and give her address as care of Buck Jones, Odessa, Texas. She said that the next morning Harry Aspinwall called her from New York but that she did not give him the information as she was uncertain what it was all about. She then called Dyke Cullum in Chicago and he told her to call Sirota's office and give them the name and address. She then called Sirota's office and asked for Aspinwall. She was told that he was

not in and the call was transferred to some one else whose name she did not get. She gave this person the name and address, as instructed by Dyke.

Some weeks later she was called by phone from Sirota's office and asked to put up additional margin in her account. She informed the person calling that she know nothing about any account.

She stated that at no time had she ever given any orders in this account and had never received any money or put up any money. She said that a number of statements were mailed to her at the Odessa address and that she accepted and opened them at first. She said that they were little slips of paper, apparently confirmations of trades. She said that recently she had stopped accepting this mail and that it had been returned unclaimed to Sirota.

Aspinwall's testimony regarding the opening of the J. K. Jones account is substantially as follows:

On May 8, 1950, Cullum purchased a quantity of soybean oil through the Sirotas and told Aspinwall over the phone to "Put that in the Jones account" (T. p. 1787). Later in the same day in another phone conversation Cullum assured Aspinwall that Miss Jones would call up to confirm the trades and furnish her address, whereupon Aspinwall said, "Be sure and have her call, Dyke." (T. p. 1788). Aspinwall then informed the Sirotas that a person named J. K. Jones would call from Washington and for them to take all necessary

information from her. The call was received by Bernie Rosenbaum, an employee of the Sirotas, and Miss Jones identified herself as Jessica K. Jones, c/o Buck Jones, Odessa, Texas. (T. pp. 1788, 1789). Aspinwall characterized as a fabrication Cullum's statement that the Jones account was opened to make money for Senator Thomas.

The testimony of the Sirota respondents regarding the opening of the J. K. Jones' account was substantially the same as that of Aspinwall's. They categorically denied Cullum's story that Aspinwall and the Sirotas opened the account, without his participation or approval, and that the plan was to make money for Senator Thomas. They point out, in their brief, the discrepancies in Cullum's testimony regarding his professed lack of knowledge of the J. K. Jones account. They refer to Cullum's inquiries regarding profits in that account and the Kiki Cullum account. n5 They testified that duplicate statements of accounts and adjustments in the accounts were mailed to Cullum. They point out several instances wherein Cullum furnished margins for the J. K. Jones and Kiki Cullum accounts (Government Exhibit 6; Sirota Exhibits 48a, b, c).

n5 Government Exhibit 2a is a memo from Cullum to the Sirotas, readings:

"On 6/26/50 Kiki Cullum and JKJ each bought 4 -- Dec. CSO. You failed to send duplicate statements of the profits.

DC"

II. Opening of, and trading in, the Kiki Cullum account (paragraph 10 of the Complaint).

There is no charge in this case of irregularity in the opening of this account. Under paragraph 10 it is charged, however, that the September purchases involved in the July-September switch of June 23, 1950, were improperly entered in the account (and also in the J. K. Jones account) and that in the absence of proper authorization to make the entries in such accounts, the respondent firm executed contracts without showing in the accounts the true names of the parties to the contracts.

Cullum testified that Kiki Cullum opened this account herself; that she put up her own money; that she authorized the purchase of two contracts of soybean

oil; that she owned and controlled the account (T. pp. 524, 525); that she became interested in soybean oil when he (Cullum) told her he was operating in that commodity (T. p. 529); that he (Cullum) told Aspinwall that he would write Kiki Cullum a letter advising her of his going into the market; and that Aspinwall said that if she would open an account with him, he (Aspinwall) would guarantee that she could get two contracts at 11.25 cents per pound. (T. p. 530). Cullum testified further that Kiki Cullum informed him ten days later that she had bought two contracts of soybean oil through the Sirotas and that she sent a \$ 2,000 check to cover the margins. (T. p. 531). Cullum testified that on June 26 Harry Aspinwall wrote

him a letter requesting him to obtain powers of attorney from Kiki Cullum and J. K. Jones and enclosed blank forms for that purpose. (T. p. 531) n6 Cullum testified that the letter represented the first time that the Sirotas called upon him to get powers of attorney from Kiki Cullum and J. K. Jones.

n6 This letter (See footnote 2,) has reference to the July-September switch mentioned above.

Aspinwall's testimony regarding trading in the Kiki Cullum account is substantially as follows:

Some time after he had been executing contracts in various commodities for Cullum, he (Cullum) on or about April 22 gave an order for a contract which he directed was to be placed in an account for Kiki Cullum (T. pp. 1778-1779). Later, Cullum furnished the mailing address for Kiki Cullum as Houston, Texas. Cullum was repeatedly asked to furnish powers of attorney to trade in the Kiki Cullum and J. K. Jones accounts (T. p. 1782) inasmuch as Cullum was trading in such accounts. n7

n7 A memorandum from Cullum to the Sirotas (Government Exhibit 2) states:

"The two powers of attorney are sent (today) to be executed. As soon as they come back, I'll send them to you.

DC"

The Issues

The issues are:

(1) whether the purchase of June 23 entered in the J. K. Jones and Kiki Cullum accounts (Paragraphs 6, 7, and 10 of the complaint) and the other transactions entered at various times in the J. K. Jones account (Paragraph 9 of the complaint) actually belonged to and were executed for the account and benefit of those persons.

(2) whether the act of crediting \$ 3.500 to the J. K. Jones account out of funds furnished by respondent Cullum was an unauthorized use of respondent Cullum's funds. (Paragraph 8 of complaint) and

(3) whether Harry Aspinwall was an authorized agent of George Sirota and Sons (Paragraph 9 of the complaint).

Proposed Findings of Fact

1. Respondent George Sirota and Sons is a partnership consisting of George Sirota, Norman L. Sirota, and Benjamin Sirota, doing business at 60 Beaver Street, New York, New York. The firm deals in edible oils and other commodities for its own account and for the account of customers. The firm was, at all times hereinafter mentioned, and is now a registered futures commission merchant

under the Commodity Exchange Act and a member of the New York Produce Exchange, a duly designated contract market under the Commodity Exchange Act.

2. Respondents George Sirota, Norman L. Sirota, and Benjamin Sirota are members of the respondent partnership and each is a registered floor broker under the Commodity Exchange Act.

3. Respondent Harry A. Aspinwall was, at the time of the transactions hereinafter described, authorized by the respondent partnership to act as its agent and representative in the solicitation of business, including futures transactions to be executed on the New York Produce Exchange and such business was solicited by the said Harry A. Aspinwall and accepted by the respondent partnership. The said Harry A. Aspinwall is registered as a floor broker under the act.

4. Respondent Dyke Cullum, Hibbs Building, Washington, D. C. is an individual who traded in commodity futures as a customer of the respondent partnership.

5. Kiki Cullum, Houston, Texas, is the daughter of Dyke Cullum. Joycette K. (or Jessica K.) Jones is an individual who for some time previous to May 8, 1950, was Clerk of the United States Senate Agriculture and Forestry Committee.

6. At the times hereinafter mentioned, commodity futures accounts in the names of Dyke Cullum, Kiki Cullum and J. K. Jones were being carried on the books of the respondent partnership. Such accounts had open contract positions in cottonseed oil and soybean oil futures on the New York Produce Exchange on the dates and in the quantities shown on Schedule A which was attached to and made a part of the complaint.

7. On May 7, 1950, respondent Dyke Cullum informed J. K. Jones that she would receive a telephone call from George Sirota and Sons

the next day, and requested her to give the firm her name and her address as c/o Buck Jones, Odessa, Texas. On May 8, 1950, respondent Harry A. Aspinwall called Miss Jones, but she did not give him the information. Later the same day, respondent Dyke Cullum requested Miss Jones to call Aspinwall back and supply the information. Miss Jones then called George Sirota and Sons on the same day, asked for Mr. Aspinwall and when informed that he was not available spoke with Bernie Rosenbaum, an employee of the firm, and gave her name as Jessica K. Jones and her address as above described. About one-half hour prior thereto, respondent Harry A. Aspinwall had directed the said Bernie Rosenbaum to open an account on the books of George Sirota and sons in the name of J. K. Jones and to purchase five contracts of soybean oil and place the transaction in the said account. Respondent Aspinwall informed Mr. Rosenbaum that Miss Jones would telephone and supply a mailing address. In accordance with such instructions, five contracts of September soybean oil were purchased and placed in an account designated as J. K. Jones. Shortly thereafter Miss Jones made the telephone call to George Sirota and Sons described above, and the name of the account was changed to Jessica K. Jones. Miss Jones did not order the transaction of May 8, 1950. She made the telephone call and furnished the information described at the express request and direction of respondent Dyke Cullum.

8. Between May 8, 1950, and August 9, 1950, seven contracts of September soybean oil, five contracts of July cottonseed oil, and

eleven contracts of December cottonseed oil were bought and sold and the transactions entered in the Jessica K. Jones account. (Government Exhibit 5) Miss Jones had no knowledge of or interest in any of these transactions and did not authorize anyone to execute them for her.

9. On May 8, 1950, George Sirota and Sons addressed a letter to Miss Jones in Odessa, Texas, requesting original margin for her account. George Sirota and Sons knew that Miss Jones was then living in Washington. No reply to this letter was received, and George Sirota and Sons did not attempt any contact with Miss Jones thereafter until July 20, 1950, when respondent Norman L. Sirota telephoned Miss Jones in Washington and requested margin. Miss Jones then informed respondent Norman L. Sirota that she knew nothing about the account, would have nothing to do with it, and refused to supply any margin funds.

10. Respondent George Sirota and Sons and Harry A. Aspinwall knew that the transactions entered in the Jessica K. Jones account between May 8 and August 9, 1950, as described above, were for the benefit and account of a person other than the said Jessica K. Jones. The said respondents treated and dealt with the Jessica K. Jones account as though it were the account of respondent Dyke Cullum, but there was no indication on the books and records of George Sirota and Sons that any person other than Jessica K. Jones had any interest in the said account.

11. On June 23, 1950, respondent Dyke Cullum, for the purpose of switching forward a long position in July soybean oil, directed George Sirota and Sons to sell five contracts of July soybean oil and purchase five contracts of September soybean oil for his account. Respondent George Sirota and Sons then entered the purchase of five September contracts in the account of respondent Dyke Cullum but subsequently, at the instructions of respondent Cullum, deleted such entry and entered three contracts of the said purchase in the Kiki Cullum account and two contracts in the Jessica Jones account. Prior to this purchase, respondent Dyke Cullum had bought and was holding twelve contracts of September soybean oil on the New York Produce Exchange and the additional five contracts purchased on June 23 places him in reporting status. (see Schedule A, attached to the complaint) The said respondent was aware of the reporting provisions of the act and regulations, and of the fact that he was obligated to report all reportable contracts and positions which he owned or controlled regardless of the name of the account in which carried, but the said respondent wilfully failed to report to the Commodity Exchange Authority with respect to such purchases and sales and the open contracts held or controlled by him on the said dates.

12. Respondent George Sirota and Sons was aware of the fact that the purchase of five contracts of September soybean oil on June 23, described in paragraph 11 above, represented the switching forward

of a July position held by respondent Dyke Cullum; that the respondent Cullum hold a long position of twelve contracts in September soybean oil on the New York Produce Exchange prior to such purchase; and that the additional five contracts executed for his account required the firm to report the status of such account. No reports with respect to the status of this account were filed by respondent George Sirota and Sons until after July 18, 1950, when, as the result of a controversy between Cullum and the other respondents, each party went to the Commodity Exchange Authority.

13. All the respondents agreed and planned with each other to operate and they did operate the J. K. Jones and Kiki Cullum accounts in a manner calculated to conceal open contract positions and evade the reporting and record keeping requirements of the Commodity Exchange Act.

14. On May 22, 1950, the account carried on the books of George Sirota and Sons in the name of Dyke Cullum needed approximately \$ 7,000 for margin and the account carried in the name of Jessica K. Jones needed approximately \$ 3,500 for margin. On that date, respondent Dyke Cullum delivered to respondent Harry A. Aspinwall a check for \$ 10,500. This sum was intended by respondent Dyke Cullum to cover the margin needed in both accounts and was so credited by George Sirota and Sons.

15. On July 18, 1950, after liquidation of the spot oil transaction involving 20 tank cars of cottonseed oil, the respondent Cullum paid to respondent George Sirota and Sons the sum of \$ 40,000 to cover margin requirements for the Dyke Cullum account, the Kiki Cullum

account and the J. K. Jones account, knowing at the time that the said sum was given for the purpose of margining all three accounts.

16. At all times mentioned herein, respondent Harry A. Aspinwall was an agent of the respondent partnership and was authorized by the firm to solicit business on its behalf for execution on the New York Produce Exchange. Respondent Harry A. Aspinwall acted as the agent of George Sirota and Sons in opening the Jessica K. Jones account on the books of the firm, and in the execution of orders in that account as described in paragraph 7 above.

17. The transactions described in the foregoing findings of fact could have been used for hedging transactions in interstate commerce in cottonseed oil or soybean oil or the products or by-products thereof, or determining the price bases of contracts in interstate commerce in such commodities, or for delivering such commodities in interstate commerce.

Proposed Conclusions

I

The complaint charges that respondent Dyke Cullum wilfully failed to file reports required under section 4i of the act, and sections 10.10, 10.11, and 10.21 of the rules and regulations. The provisions in question require reports from any person who holds or controls open contracts equal to or in excess of 900,000 pounds of oil (17 CFR 10.10, 10.11 and 10.21). This quantity is equal to 15

contracts or carlots of 60,000 pounds each. Prior to June 23, 1950, respondent Cullum held a long position of twelve contracts of September soybean oil, and the purchase of five additional contracts on that day brought his long position to seventeen contracts. He does not dispute the fact that he failed to file any reports nor that his failure was intentional, but takes the position that no consent was ever obtained from Jessica Jones or Kiki Cullum to place the trades in these accounts, that, for this reason, the purchase of June 23 was never consummated and the respondent was not in reporting status. This defense is wholly without merit. The purchase was made on the New York Produce Exchange with George Sirota and Sons taking the other side and was entered on the firm's books and records. Whether Kiki Cullum or Jessica Jones consented to the transactions or not is entirely immaterial. Respondent Cullum admits and the record shows that the trades were made, that they belonged to him and that they were placed in the Jessica K. Jones and Kiki Cullum accounts at his instructions and in order to avoid reporting. (Tr. pp. 534-540, 670-671, 686-689, 700-701). In fact, he himself characterized the arrangement as "shady". (Trans. pp. 705-706). Accordingly, we must conclude that he wilfully violated the act and the regulations when he failed to report this purchase and the resulting market position.

II

Under the regulations, each futures commission merchant is required to report positions in a customer's account whenever such

positions equal or exceed the quantity established for that purpose (17 CFR 10.04, 10.05, 10.20). Accordingly, on June 23, 1950, George Sirota and Sons became obligated to report Dyke Cullum's long position in September soybean oil

as seventeen contracts, if the firm knew that the purchase on that date belonged to Dyke Cullum. The weight of the evidence is to the effect that George Sirota and Sons not only had such knowledge, but actually cooperated with respondent Cullum in concealing the trades. In the first place, the transactions were originally entered in respondent Cullum's account (Government Exhibit 12). The firm then accepted his instructions to transfer the trades to the Jessica Jones and Kiki Cullum accounts and this was done (Government Exhibit 1). The purchase of the September contracts represented part of a switching transaction whereby respondent Cullum shifted one future to a more distant future. The fact that he was long July soybean oil and wished to remain long was known to George Sirota. According to the latter's own testimony, respondent Cullum discussed the matter with him and he (Sirota) suggested the switching transaction and agreed that the firm would take the other side of the trades at 30 points difference. Pursuant to this agreement the firm bought the July contracts held by Cullum and sold him September contracts in an equal amount to take their place. (Tr. pp. 902-920) Respondent George Sirota therefore, according to his own testimony, was aware of the fact that the long September position which resulted from the purchase of June 23 belonged

to Dyke Cullum and merely represented the switching or shifting forward of a July position previously held by him.

Respondent Benjamin Sirota testified that the Jones and Kiki Cullum accounts were handled by the firm just as though respondent Dyke Cullum held a power of attorney to trade in the accounts (Tr. pp. 1233, 1323-1324). This theory alone would have required the accounts to be combined and reported. Section 10.04(b) of the regulations provides (17 CFR 10.04(b)):

Accounts belonging to or controlled by the same person. For the purpose of reporting on form 1001, all accounts which belong to or are controlled by the same person shall be considered one account. All accounts required to be reported on Form 1001 shall be known as "special accounts" and the report thereon shall show the net position, as of the close of the market on the day covered by the report, of each such account in each future in which there are open contracts equal to or in excess of such specified amount.

Section 1.3j of the regulations provides (17 CFR 1.3j):

Controlled account. An account shall be deemed to be controlled by a person if such person by power of attorney or otherwise actually directs trading for such account.

Not only was the firm fully aware of the situation, but it also recognized its obligation to report. Mr. Robinson testified that on July 19, 1950, respondent Benjamin Sirota visited the Commodity Exchange Authority offices and stated that the firm should have reported but had overlooked doing so. This testimony was not denied by respondent Benjamin Sirota. Furthermore, it is significant that the visit to the Commodity Exchange Authority offices by respondent

Benjamin Sirota took place one day after a controversy had arisen between the firm and respondent Cullum. In view of all the facts, the only possible conclusion is that respondent George Sirota and Sons wilfully failed to report the transaction of June 23.

III

Section 4 of the act (7 U.S.C. 6) declares it to be unlawful for any person to execute a futures contract unless "such contract is evidenced by a record in writing which shows . . . the parties to such contract. . . ."

Section 1.37 of the regulations provides (17 CFR 1.37):

Each futures commission merchant and each member of a contract market shall keep a record in permanent form which shall show for each commodity futures account carried by him the true name and address of the person for whom such account is carried and the principal occupation or business of such person as well as the name of any other person guaranteeing such account or exercising any trading control with respect to such account.

The complaint charges that respondent Harry A. Aspinwall and George Sirota and Sons violated these provisions by virtue of executing and entering in the J. K. Jones account transactions actually made for the account and benefit of a person other than Miss Jones (Complaint, paragraph 9).

The evidence in this case shows clearly that Miss Jones was not the owner of the J. K. Jones account, that respondents Aspinwall and George Sirota and Sons had knowledge of that fact, and that they

considered the account as belonging to respondent Cullum. Miss Jones' own statement, as contained in Mr. Bagnell's memorandum which was received in evidence without objection, denied any knowledge of the account, and it is admitted that she placed no orders and furnished no funds. While Cullum's version as to how the account was opened differs from that of Aspinwall, neither version implicates Miss Jones as a party in interest. According to Cullum's testimony, she merely followed his instructions to supply her name and address. Aspinwall's testimony on the point is conclusive of the fact that he knew that she had nothing to do with the account. He testified that he first heard of the account on May 8, when Dyke Cullum called him, ordered the execution of a trade and stated: "Put that in the Jones account." His testimony then goes on to describe how he (Aspinwall) "was a little bit disturbed about it", how he remonstrated with respondent Cullum and warned him about the Commodity Exchange Authority, and how Cullum replied that Miss Jones would call and leave her address, to which Aspinwall answered: "Be sure and have her call, Dyke" (T. pp. 1787-1789). Under these circumstances, Aspinwall transmitted the order for execution and instructed that it be placed in an account in the name of J. K. Jones. He also testified that all subsequent orders placed in the account came from Dyke Cullum. He admitted having serviced the account, but made no attempt to obtain margin from Miss Jones at any time. His only requests for margin were directed to Dyke Cullum. Respondent Aspinwall's actions in connection with

the opening of this account and the carrying of these trades in the name of Jones, when he looked only to Cullum for trading directions and for financing, is imputable to the firm since he was their agent and his acts must be considered as the acts of George Sirota and Sons (7 U.S.C. 4).

In this connection, the answer filed by respondent Aspinwall denies "that he was or is authorized to act as agent in the acceptance of commodity futures orders and in the name of George Sirota and Sons" (Aspinwall Answer, paragraph 2). The evidence indicates otherwise. The answer filed on behalf of George Sirota and Sons admits the allegation in the complaint that respondent Aspinwall was so authorized. George Sirota's testimony expressly confirmed that admission (T. p. 956). In the application of George Sirota and Sons for registration as a futures commission merchant for the year 1950, Harry A. Aspinwall's name appears under the item entitled "Agents . . . authorized by applicant to solicit and accept commodity futures orders for, and in the name of, applicant. . . ." (Government Exhibit 15). If more evidence is needed it exists in the admitted fact that the accounts and the transactions which form the basis of this proceeding were solicited and brought in by Harry Aspinwall and accepted without question by the firm.

The evidence discloses that George Sirota and Sons was directly aware of the fact that Miss Jones did not own the account. It also indicates clearly that the firm regarded Cullum as the owner. No

representative of the firm ever made any serious attempt to obtain margin from Miss Jones. The first letter containing such a request was addressed to her on May 8, 1950, at Odessa, Texas, despite the fact that on the same day she had called George Sirota and Sons from Washington and it was known that she was in Washington and not in Odessa, Texas. This letter, then, was merely a gesture. Although no reply to this letter was ever received by the firm, no further effort was made to contact Miss Jones until Norman L. Sirota's telephone call to her in Washington on July 20. In the meantime, on May 22, the firm called on respondent Cullum to margin the Jones account, and after receiving \$ 10,500 from him, credited \$ 3,500 of this sum as margin for the Jones account. On July 18, 1950, the firm received \$ 40,000 from Dyke Cullum, part of which, according to the testimony of George Sirota, was accepted as margin for the Jones account (T. pp. 908-911, 932). George Sirota and Sons had nothing in writing to show that Dyke Cullum had agreed to be financially responsible for the Jones account, but it is obvious that the firm proceeded on the theory that the account was in fact his, and that he was responsible for it, since the firm accepted Cullum's money to margin the account.

The complaint charges further that respondents George Sirota and Sons violated Section 4 of the act and section 1.37 of the regulations by virtue of the transaction of June 23, 1950. (paragraph 10 of the complaint) The circumstances under which these trades were

made and reported are fully described in II above and need not be repeated here. Aside from any knowledge that George Sirota and Sons had as to the status of the Jones account, the evidence shows beyond any doubt that on June 23, 1950, the firm knowingly bought futures for Dyke Cullum and entered the purchases in accounts carried in the name of Jessica K. Jones and Kiki Cullum. By doing so it wilfully violated the above cited section of the act and regulations.

The failure of the Sirotas to indicate by a writing or notation on the ledger accounts of J. K. Jones and Kiki Cullum that Dyke Cullum was trading and furnishing margins in the two accounts made the firm liable for the consequences of such failure. The use of the names of J. K. Jones and Kiki Cullum, under the circumstances, constituted false entries under the act. *Irving Weis & Co. v. Brannan*, 171 F 2d 232, 234 (C.C.A.2, 1948).

IV.

As stated above, the disciplinary aspect of paragraph 8 of the complaint is not an issue in this case. However, the facts developed at the hearing regarding margins put up by Cullum prevent any conclusion that the Sirotas were not justified in using his funds to margin the J. K. Jones account. On May 22 Cullum's account required approximately \$ 7,000 for margin and the Jones account required approximately \$ 3,500 for that purpose. Cullum delivered a check to Harry Aspinwall for \$ 10,500, the exact amount needed to cover margins in both accounts. Again, on July 18, 1950, he delivered a check for \$ 40,000 to the firm, but despite the fact that this was the approximate amount required to

margin his account and the Kiki Cullum and Jonas accounts, he contends that the sum was delivered only for the purpose of supplying margin to cover his own account. There is no merit to this contention. The evidence shows that he played an important role in the opening of the Jones account and requested statements as to transactions and profits that account (Government Exhibit 2A). In connection with the switching transaction of June 23, he admits that he authorized the firm to place his trades in the Jones account (Government Exhibit 1). The evidence plainly shows that it was only after losses resulted in the

Jones and Kiki Cullum accounts that Cullum and the Sirotas came to the final parting of the ways.

Rulings on Suggested Findings of Fact and Conclusions Filed by the Parties

Each of the parties filed briefs and arguments, as permitted by the rules of practice under the act. Also, the complainant filed fourteen suggested findings of fact; the Sirotas filed eighteen suggested findings of fact; the respondent Cullum filed nine suggested findings of fact; and the respondent Aspinwall requested that the findings of fact suggested by the Sirotas be made applicable to him. In this record of over 2,000 pages practically all of the testimony is conflicting. The testimony of the government is adverse to all of the respondents and, in addition, the testimony offered in behalf of the Sirotas and Aspinwall is squarely in conflict with that offered by the respondent Cullum. In like manner the findings of fact suggested by the parties are, for the most part, diverse and conflicting.

The examiner, in the Conclusions of this report, has assigned reasons for adopting the findings of fact therein which, in his opinion, finds support in the evidence of record. The discussion of the evidence, the findings of fact, and the conclusions contained in the report give appropriate weight to the contentions and proposals filed by the parties, including all suggested findings of fact, and it is therefore unnecessary to rule seriatim herein on each group of findings proposed by the parties.

Sanctions

The violations of all respondents were characterized by the motive of concealment and evasion. They were therefore, wilful and require an effective sanction. The proposed order is based upon a careful consideration of the various factors involved and the fact that all respondents participated practically in the same degree in the acts which constituted violations of the act.

Proposed Order

Effective on the 30th day after the date of this order, all contract markets shall deny all trading privileges to respondents George Sirota and Sons, George Sirota, Benjamin Sirota, Norman L. Sirota, Harry A. Aspinwall, and Dyke Cullum for a period of 15 days.

A copy of this decision and order shall be sent by registered mail to each of the respondents and to each contract market under the act.

/s/ John J. Curry

John J. Curry

LOAD-DATE: June 16, 2008

