

Commodity Futures Trading Commission  
CEA CASES

**NAME:** I. USISKIN AND COMPANY, INC., I. USISKIN AND COMPANY, ISADORE USISKIN,  
SIDNEY FASHENA, AND HOWARD S. FISHER

**CITATION:** 21 Agric. Dec. 212

**DOCKET NUMBER:** 101

**DATE:** MARCH 15, 1962

**DOCUMENT TYPE:** DECISION AND ORDER

(No. 7646)

*In re I. USISKIN AND COMPANY, INC., I. USISKIN AND COMPANY, ISADORE USISKIN,  
SIDNEY FASHENA, AND HOWARD S. FISHER.* CEA Docket No. 101. Decided March 15,  
1962.

**Customers' Accounts -- Suspension of Registration -- Denial of Trading  
Privileges -- Consent Order**

Respondents admitted the violations charged and consented to the sanctions ordered.

*Mr. Earl L. Saunders*, for Commodity Exchange Authority. *Mr. Ben Ivan Melnicoff*,  
of Washington, D. C., for respondents.

*Decision by Thomas J. Flavin, Judicial Officer*

**PRELIMINARY STATEMENT**

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. § 1 et seq.), hereinafter referred to as the Act. It is alleged in the complaint that the corporate respondent, I. Usiskin and Company, Inc., improperly handled customers' funds, failed to maintain adequate segregation records, and failed to keep books and records in the form and manner required by the Act and the regulations issued pursuant to the Act. The complaint further alleges that the acts and transactions of the corporate respondent were carried out under the direction of respondent Howard S. Fisher in his capacity as vice president of the respondent corporation and manager of its Chicago office, and that such acts and transactions were at all times subject to the supervision and control of respondents Isadore Usiskin and Sidney Fashena, the principal stockholders and president and secretary-treasurer, respectively, of the respondent corporation and the sole partners in the respondent partnership, I. Usiskin and Company. In conclusion, it is alleged that the respondents willfully violated sections 4d(2) and 4g of the Act (7 U.S.C. 6d(2) and 6g) and sections 1.20, 1.21, 1.22, 1.32, 1.35, and 1.36 of the regulations (17 CFR 1.20, 1.21, 1.22, 1.32, 1.35, and 1.36).

No hearing has been held. The respondents have filed a document, under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they admit the facts alleged in the complaint, waive hearing, and consent to entry of the order hereinafter set forth.

**FINDINGS OF FACT**

1. Respondent I. Usiskin and Company, Inc., is an Illinois corporation with its principal office and place of business at Room 1045, 141 West Jackson Boulevard, Chicago 4, Illinois. The said corporation is now and was at all times mentioned in the complaint a clearing member of the Chicago Board of Trade and a registered futures commission merchant under the Commodity Exchange Act.

2. Respondents Isadore Usiskin and Sidney Fashena, individuals, are now and were at all times mentioned in the complaint the president and the secretary-treasurer, respectively, of the aforesaid I. Usiskin and Company, Inc., and the sole partners in a New York partnership doing business under the firm name of I. Usiskin and Company, with offices and a place of business at 11 Broadway, New York 4, New York. The said partnership

is now and was at all times material herein a registered futures commission merchant under the Commodity Exchange Act. At all times material herein up to April 1961, respondents Isadore Usiskin and Sidney Fashena were the only shareholders of the aforesaid corporation, each of the said individual respondents holding 50 percent of its capital stock, and at all times thereafter each of the said individual respondents has owned and held 33 1/3 percent of such capital stock. Each of the said individual respondents is now and was at all times material herein a member of the New York Produce Exchange and a registered floor broker under the Commodity Exchange Act, and at all such times respondent Sidney Fashena was also a member of the Chicago Board of Trade.

3. Respondent Howard S. Fisher, an individual whose business address is Room 1045, 141 West Jackson Boulevard, Chicago 4, Illinois, is now and was at all times material herein a vice president of the respondent corporation, the manager of its Chicago office, a member of the Chicago Board of Trade, and a registered floor broker under the Commodity Exchange Act. In April 1961, respondent Howard S. Fisher acquired 33 1/3 percent of the capital stock of respondent I. Usiskin and Company, Inc., and has owned and held the same since that time.

4. The acts and transactions hereinafter described were carried out under the direction of respondent Howard S. Fisher in his capacity as vice president of the respondent corporation and manager of its Chicago office, and such acts and transactions were at all times subject to the supervision and control of respondents Isadore Usiskin and Sidney Fashena.

5. The Chicago Board of Trade (Board of Trade of the City of Chicago) and the New York Produce Exchange are now and were at all times mentioned in the complaint duly designated contract markets under the Commodity Exchange Act.

6. At the times hereinafter stated, respondent I. Usiskin and Company, Inc., in the regular course of its business, carried accounts of customers who traded in commodity futures subject to the provisions of the Commodity Exchange Act and regulations. At all such times, respondent I. Usiskin and Company, Inc., had to its credit with a bank, the Chicago Board of Trade Clearing Corporation, or other depository, money and securities in varying amounts, held in segregated accounts and identified as customers' funds, representing deposits of margin by and trading profits accruing to such customers.

7. On twelve business days between February 13, 1961, and June 12, 1961, to wit, February 13, February 14, February 15, May 22, May 23, May 24, May 25, May 26, May 29, May 31, June 9, and June 12, respondent I. Usiskin and Company, Inc., was under-segregated in amounts ranging from \$ 5,336 on May 31 to \$ 98,533 on June 12 -- that is, the total amount in customers' funds held in segregation as described in paragraph 6 was insufficient, by the aforesaid sums, to pay all credits and equities due to such customers.

8. On December 1, 1960, and December 12, 1960, and on June 1, June 2, June 5, June 6, June 7, and June 8, 1961, respondent I. Usiskin and Company, Inc., failed to make any computation or permanent record, as of the close of the market on each of the said business days, of the amount of money, securities, and property required to be held in segregated account in order to pay all credits and equities due to its customers. On twenty-three additional business days in December 1960 and January 1961, the daily computation and record of funds to be held in segregation was incomplete and inaccurate to an extent which

made it impossible to determine whether the funds so held were in fact sufficient to pay all credits and equities due to customers.

9. During the period from November 16, 1960, through May 21, 1961, respondent I. Usiskin and Company, Inc., received securities to margin, guarantee, and secure the commodity trades and contracts of its customers, but the said respondent failed to prepare and maintain any record of such securities, including a description thereof, the name and address of the customer from whom received, and the dates when the same were received from and when returned to such customer, or otherwise disposed of, together with the facts and circumstances of such other disposition.

10. During the period from November 16, 1960, through May 31, 1961, respondent I. Usiskin and Company, Inc., failed to prepare and keep a record showing, separately for each account carried on its books, all commodity futures transactions executed for such account, including the date, price, quantity, market, commodity, and future.

11. Early in 1960 and prior to the acts and omissions described above, an examination of the books and records of respondent I. Usiskin and Company, Inc., by the Commodity Exchange Authority disclosed that the said respondent was not

properly preparing a daily permanent record of customers' funds required to be in segregation, that it was not maintaining a record of securities received from its customers to margin and guarantee the trades and contracts of such customers, and that it was not maintaining a record showing all commodity futures transactions executed for each account carried on its books, including the details of such transactions. Representatives of the Commodity Exchange Authority called these matters to the attention of respondents Howard S. Fisher and Sidney Fashena in March 1960, and requested them to correct the deficiencies in question in order that the records of the respondent corporation would comply with the provisions of the Commodity Exchange Act and regulations, and the said individual respondents promised that this would be done.

#### **CONCLUSIONS**

The respondents have admitted the factual allegations of the complaint, and these have been adopted as the findings of fact in this proceeding.

Section 4d(2) of the Act requires each futures commission merchant to treat and deal with the funds of a customer "as belonging to such customer" and to account separately for such funds, and prohibits the commingling of such funds with funds of the futures commission merchant, or the use of such funds "to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held." Sections 1.20, 1.21, and 1.22 of the regulations contain additional detailed requirements with respect to customers' funds. Section 1.32 of the regulations requires that each futures commission merchant make a daily computation, based upon his accounting records, of the amount of money which must be in segregated account in order to comply with the provisions of the Act. Section 1.36 of the regulations requires that each futures commission merchant keep, in permanent and readily accessible form, a record of all securities and property received from customers in lieu of money to margin, guarantee, or secure the commodity trades and contracts of such customers, including a description of the securities and property received from each customer, the name and address of such customer, the dates when such securities and property were received from and when returned to such customer, or otherwise disposed of, together with the facts and circumstances of such other disposition.

Section 1.35 of the regulations requires that each futures commission merchant prepare regularly and promptly, and keep systematically and in permanent form, a record of transactions showing, separately for each account,

all commodity futures transactions executed for such account, including the date, price, quantity, market, commodity, and future.

Section 4g of the Act provides for the suspension or revocation of the registration of any futures commission merchant or floor broker who violates any of the provisions of the Act, or any of the rules or regulations of the Secretary thereunder, or who fails or refuses to keep the books and records pertaining to his transactions or those of his customers in the form and manner required by the Secretary.

The facts admitted by the respondents show that on twelve business days between February 13, 1961, and June 12, 1961, the corporate respondent, I. Usiskin and Company, Inc., was in an undersegregated condition; that the deficits were substantial, reaching a maximum of more than \$ 98,000; that on 31 business days between December 1, 1960, and June 8, 1961, the corporate respondent's segregation record was either nonexistent or incomplete and inaccurate to an extent which made it impossible to determine therefrom the sufficiency of the funds held in segregated account; and that the corporate respondent, during the period November 16, 1960, through May 31, 1961, failed to prepare and maintain a record of securities that it received from its customers or a record showing, separately for each account carried on its books, the commodity futures transactions executed for such account. These acts and omissions were clear violations of the provisions of the Act and the regulations.

The frequency and the continuing nature of the infractions, and the fact that many of them occurred after similar infractions had been called to the attention of respondents Fisher and Fashena and they had been informed of the necessity for corrective action, justify the conclusion that the violations were willful as alleged in the complaint.

The complainant states that it has carefully considered the proposed order. It is of the opinion that the proposed sanctions are sufficient, and that the prompt entry of such an order without further proceedings would serve the public interest and effectuate the purposes of the Act. The complainant recommends, therefore, that the respondents' waiver and consent be accepted and that the proposed order be issued. It is so concluded.

#### **ORDER**

The registration of respondent I. Usiskin & Company, Inc., as a futures commission merchant is hereby suspended for a period of 90 days, effective on the 30th day after the date of entry of this order, and all contract markets are hereby directed to refuse all trading privileges to the said I. Usiskin & Company, Inc., for said period of 90 days, such refusal to apply to all trading done and positions held by the said I. Usiskin & Company, Inc., directly or indirectly. *Provided, However,* that only the first 30 days of said period of suspension of registration and refusal of trading privileges shall become effective as of the said effective date, and that the final 60 days of the said period of suspension of registration and refusal of trading privileges shall not become effective unless, after complaint, notice, and hearing in accordance with established procedure, respondent I. Usiskin & Company, Inc., should be found to have violated the Commodity Exchange Act within one year from the date of entry of this order, in which event the Secretary of Agriculture may, without further notice to respondent I. Usiskin & Company, Inc., issue a supplemental order making effective forthwith the 60-day remainder of the said period of suspension of registration and refusal of trading privileges.

The registration of respondent Isadore Usiskin as a floor broker is hereby suspended for a period of 10 days, effective on the 30th day after the date of entry of this order, and all contract markets are hereby directed to refuse all trading privileges to the said Isadore Usiskin for the said period of 10 days, such refusal to apply to all trading done and positions held by the said Isadore Usiskin, directly or indirectly. *Provided, However,* that the aforesaid suspension of registration and refusal of trading privileges shall not become

effective unless, after complaint, notice, and hearing in accordance with established procedure, respondent Isadore Usiskin should be found to have violated the Commodity Exchange Act within one year of the date of this order, or directly or through the partnership respondent or any other device to have in any way continued all or any part of the business of the corporate respondent as a futures commission merchant under said act during the period of the effective suspension of the corporation's registration as a futures commission merchant, in either of which events the Secretary of Agriculture may, without further notice to respondent Isadore

Usiskin, issue a supplemental order making effective forthwith the suspension of registration and refusal of trading privileges.

The registration of respondent Sidney Fashena as a floor broker is hereby suspended for a period of 10 days, effective on the 30th day after the date of entry of this order, and all contract markets are hereby directed to refuse all trading privileges to the said Sidney Fashena for the said period of 10 days, such refusal to apply to all trading done and positions held by the said Sidney Fashena, directly or indirectly, *Provided, However,* that the aforesaid suspension of registration and refusal of trading privileges shall not become effective unless, after complaint, notice and hearing in accordance with established procedure, respondent Sidney Fashena should be found to have violated the Commodity Exchange Act within one year of the date of this order, or directly or through the partnership respondent or any other device to have in any way continued all or any part of the business of the corporate respondent as a futures commission merchant under said act during the period of the effective suspension of the corporation's registration as a futures commission merchant, in either of which events the Secretary of Agriculture may, without further notice to respondent Sidney Fashena, issue a supplemental order making effective forthwith the suspension of registration and refusal of trading privileges.

The registration of respondent Howard S. Fisher as a floor broker is hereby suspended for a period of 90 days, effective on the 30th day after the date of entry of this order, and all contract markets are hereby directed to refuse all trading privileges to the said Howard S. Fisher for the said period of 90 days, such refusal to apply to all trading done and positions held by the said Howard S. Fisher, directly or indirectly.

**LOAD-DATE:** June 8, 2008

