

Commodity Futures Trading Commission
CEA CASES

NAME: WINN & LOVETT GROCERY COMPANY, POTATO DISTRIBUTORS, INC., KWIK CHECK WAREHOUSE CORPORATION, WADACA PLANTATION, HILLSBOROUGH WAREHOUSE CORPORATION, JAYDEE CORPORATION, JAMES E. DAVIS, A. DARIUS DAVIS, TINE W. DAVIS, BERT L. THOMAS, M. AUSTIN DAVIS, FRANCIS C. RUEDIGER

CITATION: 14 Agric. Dec. 561

DOCKET NUMBER: 68

DATE: JULY 14, 1955

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(No. 4315)

In re WINN & LOVETT GROCERY COMPANY, POTATO DISTRIBUTORS, INC., KWIK CHECK WAREHOUSE CORPORATION, WADACA PLANTATION, HILLSBOROUGH WAREHOUSE CORPORATION, JAYDEE CORPORATION, JAMES E. DAVIS, A. DARIUS DAVIS, TINE W. DAVIS, BERT L. THOMAS, M. AUSTIN DAVIS, FRANCIS C. RUEDIGER. CEA Docket No. 68. Decided July 14, 1955.

Denial of Trading Privileges -- Stipulations by Respondents -- Jurisdiction of Secretary -- Consent Order

Upon respondents' admission of jurisdictional facts, consent to entry of the order herein, and stipulation, trading privileges of all contract markets are denied to each of said respondents with the exception of Winn &

Lovett Grocery Company, effective 30 days after date of this order, until further order of the Secretary of Agriculture.

Mr. Benjamin M. Holstein for Commodity Exchange Authority. *Mr. Theodore R. FINDER* of *Beekman & Bogue*, of New York, New York, for respondents

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a quasi-judicial proceeding under the Commodity Exchange Act (7 U.S.C. 1952 ed. Chapter 1) instituted by a complaint and notice of hearing issued under section 6(b) of the act (7 U.S.C. 1952 ed. § 9) on June 3, 1955, by the acting Secretary of Agriculture, hereinafter called the complainant.

The complaint names as respondents six corporations and six individuals. These individuals are, variously, officials or shareholders of the corporations, or both.

The complaint charges that the respondents attempted to manipulate the price of potatoes and potato futures, and delivered for transmission in interstate commerce false or misleading reports tending to affect the price of potatoes, in violation of sections 6(b) and 9 of the act (7 U.S.C. 1952 ed. §§ 9, 13). These charges are based upon allegations that the respondents, trading through accounts carried in the names of the six individual respondents and five of the corporate respondents, developed and maintained a large short speculative position in May 1955 potato futures on the New York Mercantile Exchange, for the purpose and with the intent of depressing May 1955 futures prices; that, in furtherance of such purpose and intent, they made economically unjustified deliveries in large quantities against such short position; and that they made statements to their brokers and inquiries of the United States Department of

Agriculture which indicated that they planned to deliver additional large quantities of potatoes against their short position, which statements and inquiries were not made in good faith but for the purpose of threatening delivery and thus causing lower prices.

No hearing has been held. On July 6, 1955, prior to the date set for filing the answer, the respondents submitted a joint stipulation under section 0.4(b) of the rules of practice under the act (17 CFR 0.4(b)), in which they admit the facts contained herein under "Findings of Fact," and consent to the entry of the order hereinafter set forth. The document also contains a recital that

it is submitted with the understanding that, if accepted, the order to be issued will constitute the entire administrative sanction in connection with all transactions described in the complaint, unless the proceeding is subsequently reopened for failure to comply with the terms of such order.

FINDINGS OF FACT

1. Respondent Winn & Lovett Grocery Company is a corporation with offices at 5050 Edgewood Court, Jacksonville, Florida. The said corporation is now and was at all times specified herein engaged in business as the operator of a chain of retail grocery stores.

2. Respondents James E. Davis, A. Darius Davis, Tine W. Davis, and M. Austin Davis, hereinafter called the Davis respondents, are now and were at all times specified herein, the chairman of the board of directors, the president, a vice president, and the executive vice president, respectively, of respondent Winn & Lovett Grocery Company. At all such times the said respondents constituted a majority of the board of directors of respondent Winn & Lovett Grocery Company, and, together with affiliates, constituted the largest group of stockholders of the said corporation.

3. Respondents Winn & Lovett Grocery Company is now and was at all times specified herein under the management and control of the Davis respondents to the extent that, at all such times, the said respondents held the above-described positions as officers and members of the board of directors of the said corporation, constituted a majority of the board of directors thereof, together with affiliates, constituted the largest group of stockholders thereof.

4. Respondent Potato Distributors, Inc., 5050 Edgewood Court, Jacksonville, Florida, is now and was at all times specified herein a wholly owned subsidiary of respondent Winn & Lovett Grocery Company, and is now and was at all such times under the general direction and control of the Davis respondents.

5. Respondents Kwik Check Warehouse Corporation, Wadaca Plantation, Hillsborough Warehouse Corporation, and Jaydee Corporation, all located at 5050 Edgewood Court, Jacksonville, Florida, are now and were at all times specified herein corporations

variously owned, directed, and controlled by the Davis respondents.

6. Respondent Bert L. Thomas is now and was at all times specified herein an officer, or a member of the board of directors, of respondent Winn & Lovett Grocery Company.

7. Respondent Francis C. Ruediger is now and was at all times specified herein a vice president of respondent Potato Distributors, Inc.

8. During the period from March 23, 1955 to May 31, 1955 respondents Potato Distributors, Inc., Kwik Check Warehouse Corporation, Wadaca Plantation, Hillsborough Warehouse Corporation, Jaydee Corporation, James E. Davis, A. Darius Davis, Tine W. Davis, Bert L. Thomas, M. Austin Davis, and Francis C. Ruediger, purchased, sold, and/or held speculative positions in, potato futures

on the New York Mercantile Exchange in accounts carried in the names of the said respondents.

9. The New York Mercantile Exchange is now and was at all times specified herein a board of trade duly designated as a contract market under the Commodity Exchange Act.

CONCLUSIONS

Section 0.4(b) of the rules of practice under the Commodity Exchange Act (17 CFR 0.4 (b)) provides as follows:

(b) Consent order. At any time after the issuance of the complaint and prior to the hearing in any proceeding, the Secretary, in his discretion, may allow the respondent to consent to an order. In so consenting, the respondent must submit, for filing in the record, a stipulation or statement in which he admits at least those facts necessary to the Secretary's jurisdiction and agrees that an order may be entered against him. Upon a record composed of the complaint and the stipulation or agreement consenting to the order, the Secretary may enter the order consented to by the respondent, which shall have the same force and effect as an order made after oral hearings.

The facts admitted by the respondent and set forth in the Findings of Fact are sufficient to subject them and each of them to the jurisdiction of the Secretary of Agriculture.

The complainant has filed a recommendation which recites that it has carefully considered the stipulation and the terms of the order to which the respondents propose to consent; that the investigation which the complainant made did not disclose any trading in May 1955 potato futures for the account of Winn & Lovett Grocery Company during the period covered by the complaint, but that the said corporation was included as a respondent because of the parent-subsidiary relationship between it and Potato Distributors, Inc.; that there is no reason to question the assertion by Winn & Lovett Grocery Company that it did not trade or hold any position in potato futures during such period; and that because of this fact and other circumstances, and in view of the restrictions which would be imposed upon the other respondents under the order to which they have consented, a separate or additional sanction against Winn & Lovett Grocery Company is not required. The complainant states further that it has been assured by representatives of the respondents that they will comply with these restrictions, and that the entry of such an order would constitute a satisfactory disposition of this administrative proceeding, serve the public interest, and effectuate the purposes of the Commodity Exchange Act. For these reasons, the complainant recommends that the waiver and consent be accepted and that the proposed order be issued. It is so concluded.

ORDER

Effective on the 30th day after the date of this order, all contract markets shall refuse all trading privileges to Potato Distributors, Inc., Kwik Check Warehouse Corporation, Wadaca Plantation, Hillsborough Warehouse Corporation, Jaydee Corporation, James E. Davis, A. Darius Davis, Tine W. Davis, Bert L. Thomas, M. Austin Davis, and Francis C. Ruediger until further order of the Secretary of Agriculture. Such refusal shall apply to all trading done and positions held directly by the said respondents or any of them, either for their own accounts or as the agents or representatives of any other person or firm, and also to all trading done and positions held indirectly through persons or firms owned or controlled by the said respondents or any of them, or otherwise.

A copy of this decision and order shall be served upon each of the parties by registered mail or in person and upon each contract market.

LOAD-DATE: June 8, 2008

