

Commodity Futures Trading Commission
CEA CASES

NAME: SECRETARY OF AGRICULTURE V. H. W. ARMSTRONG & COMPANY, JOSEPH BUCHHALTER, CATHERINE L. DURANT, WILLIAM C. DURANT, ALEXANDER EISEMANN, ALEXANDER EISEMANN & COMPANY, AND CLEMENT B. JOHNSON

DOCKET NUMBER: 12

DATE: MARCH 10, 1939

DOCUMENT TYPE: COMPLAINT

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

C.E.A. DOCKET NO. 12

Secretary of Agriculture, Complainant, v. H. W. Armstrong & Company, Joseph Buchhalter, Catherine L. Durant, William C. Durant, Alexander Eisemann, Alexander Eisemann & Company, and Clement B. Johnson, Respondents.

Complaint and Notice of Hearing Under the Commodity Exchange Act.

There being reason to believe that the respondents hereinafter named have violated and are violating the Commodity Exchange Act (7 U.S.C., 1934 ed., and Supp. IV, Secs. 1-17a) and the rules and regulations promulgated pursuant thereto, this complaint is issued alleging the following:

1.

H. W. Armstrong & Company is a corporation whose business address is 230 Park Avenue, New York, New York. Prior to about November, 1938, it was a partnership composed of respondents Clement B. Johnson and Catherine L. Durant.

Joseph Buchhalter is an individual whose business address is 42 Broadway, New York, New York.

Catherine L. Durant, wife of respondent William C. Durant, is an individual whose business address is 230 Park Avenue, New York, New York.

William C. Durant, husband of respondent Catherine L. Durant, is an individual whose business address is 230 Park Avenue, New York, New York.

Alexander Eisemann is an individual whose business address is 42 Broadway, New York, New York.

Alexander Eisemann & Company is a partnership, of which respondent Alexander Eisemann is a partner, and its business address is 42 Broadway, New York, New York.

Clement B. Johnson is an individual whose business address is 230 Park Avenue, New York, New York.

2.

H. W. Armstrong & Company and Alexander Eisemann & Company registered with the Secretary of Agriculture as futures commission merchants for the period ending December 31, 1939.

Alexander Eisemann is a member of the Chicago Board of Trade, a contract market. His membership is registered for Alexander Eisemann & Company.

Clement B. Johnson is a member of the Chicago Board of Trade, a contract market. His membership is registered for H. W. Armstrong & Company.

3.

Respondents, and each of them, members of a contract market or correspondents, agents, or employees of members, in connection with orders to make and the making of futures contracts for commodities named in the Commodity Exchange Act, on contract markets, which contracts may be used for hedging, or determining the price basis of, transactions in interstate commerce in the commodities involved, during 1937 and thereafter, attempted to and did cheat and defraud the persons for whom such contracts were made, willfully made and caused to be made misleading and false reports and statements concerning such contracts to such persons, and willfully attempted to and did deceive such persons in regard to such contracts and acts of agency performed with respect to such contracts, by the manner in which they promoted and operated a scheme sometimes called the Buchhalter Plan, which is described in general in the following paragraph.

4.

A power of attorney is taken from the customer whereunder respondents make the futures contracts for him. He is led to believe that respondents are experts in futures trading, that the plan is infallible, that he is put into a balanced position which makes losses very unlikely if not impossible, and that a regular weekly or monthly income will result from his "investment", the

size of which income will depend entirely upon the amount "invested". Under the usual application of the plan, the customer, at the beginning, is put into a spread position, such as one job lot contract long in the May wheat future and one short in the July. When the price moves one cent per bushel, that contract wherein a profit is shown is closed out, resulting in a realized profit. At the same time a new contract is made in the same amount and future on the same side of the market, leaving the position the same as if the prior contract had not been offset. That contract wherein a loss is shown is not closed out, leaving the loss open and unrealized, and another similar contract is made at the now price. Commissions of \$ 4.75 are charged for each job lot purchase and sale, or "round turn", as compared with the usual commission of 43.50. Statements are rendered to the customer showing the realized profits, but not clearly showing the unrealized loss, in the account. Sometimes a check is sent for the profits realized on closed trades while the account as a whole shows a loss.

5.

Those familiar with trading in futures could properly figure their chances for profit or loss under the plan, but others are deceived into believing that the special knowledge and experience of respondents will, under the plan, lead them to certain profits and no losses. The closing out of trades showing a profit, and simultaneously reestablishing the position just liquidated, merely enable

respondents to extract an additional \$ 4.75 commission charge and to send a statement showing a realized profit while the whole account shows a loss. These repeated commission items rapidly deplete the amounts originally "invested". Many customers receiving these statements are led to believe that they are making money, as their larger losses on the other side of the market are not called to their attention.

6.

Very few, if any, of the accounts handled by respondents under their plan have proved profitable to customers. Of 48 accounts examined as of June 30, 1938, all but six showed profits in closed trades, but every one showed unrealized losses on open trades exceeding such profits. The total net profits on closed trades amounted to \$ 18,253, while the losses in open trades

aggragated \$ 45,218.75. Commissions charged on closed trades accounted for \$ 11,816 of the net loss of \$ 26,965.75.

Therefore, each of the respondents is hereby notified to be and appear before Jack W. Bain, who is hereby designated referee to conduct the hearing herein, at 10 o'clock a.m., on March 29, 1939, in Room 800 at 15 William Street, New York, New York, or at such other times and places as may be determined by the referee, and then and there show cause, if any there be, why an order should not be made revoking the registrations of respondents who have

registered as futures commission merchants, and directing that all contract markets until further notice of the Secretary of Agriculture refuse all trading privileges to each of the respondents, respectively.

IT IS ORDERED that this complaint and notice of hearing be served on each of the named respondents, by delivery of a true copy hereof to each of them, by an employee of the Department of Agriculture or by registered mail, at least three days prior to the date herein set for hearing.

Done at Washington, D. C., this 10th day of March, 1939. Witness my hand and the seal of the Department of Agriculture.

(SEAL)

(Signed) Harry L. Brown

Acting Secretary of Agriculture.

LOAD-DATE: June 11, 2008

