

Commodity Futures Trading Commission
CEA CASES

NAME: EDWARD A. COX JR. AND GEORGE F. FREY JR.

CITATION: Comm. Fut. L. Rep. (CCH) P22,130; [1982-1984 TRANSFER BINDER]

DOCKET NUMBER: 75-16; 192

DATE: MAY 10, 1984

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NOTE: FORMERLY CEA DOCKET # 192

[P 22,130] In the Matter of Cox, et al.

Commodity Futures Trading Commission. No. 75-16. May 10, 1984. Order in full text.

Commission Review -- Motions -- Premature Orders -- Reply Briefs. -- The Commission permitted the filing of reply briefs by individuals ordered to cease and desist from manipulating prices in an initial decision, based on its careful consideration of the respondents' motions and the Division of Enforcement's opposition to those motions and on its review of the briefs themselves. The Division had claimed that the orders granting the respondents' motions for leave to file the briefs were premature. The Commission, however, found it unnecessary to reach the underlying question of the propriety of those orders.

See P 11,701, "Liabilities -- Prohibitions" division, Volume 1.

This matter comes before us on the Division of Enforcement's ("Division") motion for reconsideration of two orders dated November 8, 1983. The orders, which were entered pursuant to the Chief of the Opinions Section's ("Chief") delegated authority under 17 C.F.R. § 140.71 (1983), granted respondents' motions for leave to file reply briefs in connection with their appeal from the initial decision rendered in this proceeding. Pursuant to the November 8 orders respondents filed reply briefs on December 15, 1983.

The Division's central argument is that the Chief erred in acting upon the motions before the expiration of the Division's time to file a response thereto. n1 Thus, the Division seeks reconsideration on the ground that the orders of November 8 were premature. In addition, the Division has filed an opposition to respondents' motions, which asserts, *inter alia*, that reply briefs will not assist in clarifying the facts or issues presented in this case.

n1 Respondent Cox's motion was served by mail on November 4, 1983; respondent Frey's motion was served by mail on November 7, 1983. Under rule 10.26(b) parties are allowed ten days to respond to a motion; when, as here, service is effected by mail, rule 10.12(2) enlarges that period by three days.

Reduced to essentials, the Division's motion seeks a determination as to whether respondents' motions were "procedural," and hence governed by rule 10.26(c), 17 C.F.R. § 10.26(c) (1983), or "nonprocedural" motions governed by rule 10.26(b), 17 C.F.R. § 10.26(b) (1983). If the motions were procedural, the Chief acted within the scope of his delegated authority and was not obliged to defer action pending the Division's submission of an opposition to the motions. If, by contrast, the motions were nonprocedural, the Chief's action with respect to the motions was premature and in excess his delegated authority. n2

n2 The authority delegated to the Chief under 17 C.F.R. § 140.71 extends only rule 10.26(c) motions.

We have carefully considered respondents' motions and the Division's opposition thereto. In addition, we have reviewed the reply briefs themselves, which were submitted during the pendency of the instant motion. On the basis of this review we have determined, in the exercise of our discretion, to permit the reply briefs to be filed. This being the case, it is unnecessary for us to reach the underlying question of the propriety of the Chief's November 8 orders.

IT IS SO ORDERED.

By the Commission (Chairman PHILLIPS and Commissioners HINEMAN, WEST, and SEALE).

LOAD-DATE: August 6, 2008

