

Commodity Futures Trading Commission
CEA CASES

NAME: RUBIN EHRLICH

CITATION: 24 Agric. Dec. 1292

DOCKET NUMBER: 126

DATE: OCTOBER 21, 1965

DOCUMENT TYPE: DECISION AND ORDER

(No. 10,153)

In re RUBIN EHRLICH. CEA Docket No. 126. Decided October 21, 1965.

Denial of trading privileges -- Default

The contract markets are ordered to refuse all trading privileges to respondent for 90 days for his violation of section 4b of the act by allocating to his advantage potato futures contracts between himself and his customers.

Mr. Earl L. Saunders for Commodity Exchange Authority.

Mr. Melvin H. Gellman, New York, N. Y., for respondent.

Mr. Jack W. Bain, Hearing Examiner.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), instituted by a complaint filed March 26, 1965, by an Assistant Secretary of Agriculture. The respondent is Rubin Ehrlich, New York, New York, a member of the New York Mercantile Exchange and, at the time of the transactions involved in this proceeding, a registered floor broker under the act and president of All State Commodity Traders, Inc., a registered futures commission merchant under the act. Respondent is charged with making potato futures contracts on the New York Mercantile Exchange, a contract market, and allocating them as between himself and customers in an attempt to deceive, cheat and defraud such customers and with deceiving, cheating and defrauding the customers, in violation of section 4b of the act (7 U.S.C.6b).

On April 15, 1965, respondent filed an answer denying the material allegations of the complaint. On September 7, 1965, respondent filed a request that his answer be withdrawn and that the matter be handled as a default proceeding. Accordingly, the matter was referred to Jack W. Bain, Hearing Examiner, Office of Hearing Examiners, United States Department of Agriculture, for the preparation of a report without further investigation or hearing pursuant to section 0.9 (c) of the rules of practice (17 CFR 0.9 (c)). On September 23, 1965, the hearing examiner filed a report recommending that respondent be found to have violated the act as charged and that an order be issued directing all contract markets to refuse all trading privileges to respondent for a period of 90 days. No exceptions to the hearing examiner's report were filed.

FINDINGS OF FACT

1. Respondent, Rubin Ehrlich, is an individual whose address is 3616 Henry Hudson Parkway, New York, New York. Respondent is now and was at all times material herein a member of the New York Mercantile Exchange and during the period March 13 through April 28, 1964, he was a registered floor broker under

the act and president of All State Commodity Traders, Inc., a registered futures commission merchant under the act. Respondent is not presently a registrant under the act.

2. The New York Mercantile Exchange is now and was at all times material herein a duly designated contract market under the act.

3. The futures transactions referred to herein relate to the purchase and sale of Maine-grown Irish potato futures contracts on the New York Mercantile Exchange, each of which contracts calls for the delivery of 50,000 pounds of such potatoes. Such contracts could have been used for (a) hedging transactions in interstate commerce in potatoes or the products or byproducts thereof, (b) determining the price basis of transactions in interstate commerce in potatoes, and (c) delivering potatoes sold, shipped, or received in interstate commerce for the fulfillment of such futures contracts.

4. During the period March 13 through April 28, 1964, the respondent, in his capacity as floor broker, executed trades in potato futures on the New York Mercantile Exchange. During such period, respondent allocated certain of such trades between his own account and those customers' accounts which the respondent personally handled and traded on a discretionary basis.

5. During the period March 13 through April 28, 1964, respondent, in allocating between himself and his customers the trades referred to in Finding of Fact 4, followed the practice of usually allocating to himself contracts purchased at prices lower than the average price of all purchases which he allocated between himself and his customers on the date of such purchases, and usually allocating to himself contracts sold at prices higher than the average price of all sales which he allocated between himself and his customers on the date of such sales.

CONCLUSIONS

By reason of the facts set forth in Finding of Fact 5, respondent willfully violated section 4b of the act (7 U.S.C. 6b). Cf., e.g., *In re Becker Brokerage Co., et al.*, 23 Agric. Dec. 290 (23 A.D. 290) (1964). These violations are serious and justify a substantial sanction. As respondent is not presently registered under the act, complainant and the hearing examiner recommended a denial of respondent's trading privileges on contract markets for a period of 90 days. It is concluded that this recommendation should be adopted.

ORDER

Effective November 22, 1965, all contract markets shall refuse all trading privileges to the respondent, Rubin Ehrlich, for a period of 90 days, such refusal to apply to all trading done and all positions held by such respondent, directly or indirectly.

A copy of this decision and order shall be served upon respondent and on each contract market.

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