

Commodity Futures Trading Commission
CEA CASES

NAME: GEORGE SIROTA AND SONS, GEORGE SIROTA, NORMAN L. SIROTA, BENJAMIN SIROTA, HARRY A. ASPINWALL, AND DYKE CULLUM

CITATION: 14 Agric. Dec. 643

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(No. 4339)

In re GEORGE SIROTA AND SONS, GEORGE SIROTA, NORMAN L. SIROTA, BENJAMIN SIROTA, HARRY A. ASPINWALL, AND DYKE CULLUM. CEA Docket No. 54. Decided August 29, 1955.

Suspension of Registration Held in Abeyance -- Jurisdiction of Secretary -- Separate Legal Entity

Where an order was entered suspending the registration of a partnership and the registrations of the individual partners but, subsequent to the entry of the order, complainant filed a motion requesting that the order also apply to a new partnership composed of the same partners and formed after issuance of the referee's report, and the effective date of the suspension was postponed pending consideration of the motion, *held* the issuance of a final order did not deprive the Secretary of jurisdiction over the proceeding because the order had not become effective by its terms when the motion was filed and when the sanction order was postponed, and the defense that the new partnership is a separate legal entity is of no avail as the record shows that the two partnerships are comprised of the same partners and have the same office and a common payroll and the order cannot be defeated by the same partners setting up another partnership, and the suspension of registration should apply to both partnerships, such suspension to be held in abeyance and not become effective unless, after notice and hearing, respondents should be found to have violated the act or regulations thereunder within two years.

Mr. Benjamin M. Holstein for Commodity Exchange Authority. *Mr. Ben I. Melnicoff*, of Washington, D. C., for respondents. *Mr. John Curry*, Referee.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

On July 31, 1953, an order was entered in this proceeding suspending the registration of the respondent partnership George Sirota and Sons as a futures commission merchant and the registrations of the respondents Norman L. Sirota, Benjamin Sirota and Harry A. Aspinwall as floor brokers, and directing the denial of trading privileges to Dyke Cullum, all sanctions to run for a period of ten days. Subsequent to the entry of the order, the complainant filed a motion requesting that the Judicial Officer issue a supplemental order stating that the order of suspension of the registration of George Sirota and Sons which was to become effective September 1, 1953, would also apply to Sirota and Company, a new partnership formed and registered as a futures commission merchant after issuance of the referee's report. It was alleged that this new partnership consisted of the same four individuals who were partners of George Sirota and Sons. On

August 26, 1953, the Judicial Officer postponed the effective date of the suspension of George Sirota and Sons as a futures commission merchant pending action on this motion. The suspensions of the registrations of respondents Norman L. Sirota, Benjamin Sirota and Harry A. Aspinwall as floor brokers and the order denying trading privileges to Dyke Cullom became effective September 1, 1953, and expired ten days later.

The Sirota respondents filed a memorandum in opposition to the complainant's motion and an order was entered on January 14, 1954, referring the proceeding back to the Office of Hearing Examiners for the purpose of putting into the record, by hearing or stipulation, or both, evidence "as to whether the sanction ordered against George Sirota and Sons should apply to Sirota and Company." The referee, John Curry, Office of Hearing Examiners, issued a notice reopening the hearing for this purpose, and the matter was duly heard in New York, New York, on February 8, 1954. Benjamin M. Holstein appeared as attorney for the complainant. Ben I. Melnicoff, Attorney at Law, Washington, D. C., appeared for the Sirota respondents. At the hearing the complainant introduced exhibits consisting of applications for registration as futures commission merchants filed by George Sirota and Sons and Sirota and Company. These exhibits show the composition of the two firms. Benjamin Sirota testified on direct examination as to the reasons why and the circumstances under which Sirota and Company was organized. This witness testified on cross-examination that Sirota and Company consisted of his father George Sirota, his brother Norman L. Sirota, his brother-in-law Laurence H. Taylor, and himself, and that these four individuals comprised the firm of George Sirota and Sons, the only difference being that George Sirota was a general partner in George Sirota and Sons and a limited partner in Sirota and Company. He also testified that both firms used the same office and that Sirota and Company paid the salaries of all persons connected with both firms.

FINDINGS OF FACT

1. At the time of the institution of this proceeding, respondent partnership George Sirota and Sons consisted of respondents George Sirota and his two sons, Norman L. Sirota and Benjamin Sirota. Effective January 1, 1952, Laurence H. Taylor, not a respondent herein, became a partner in respondent George Sirota and Sons.

2. The referee's report in this proceeding was filed March 12, 1952. The referee recommended in his report that an order be issued requiring the contract markets to refuse all trading privileges to the respondents for a period of ten days. On March 24, 1952, prior to the issuance of the Judicial Officer's decision and order, a firm designated as Sirota and Company applied for registration and was registered as a futures commission merchant under the Commodity Exchange Act for the balance of the calendar year 1952. Sirota and Company was shown to be a partnership composed of the aforesaid Norman L. Sirota, the aforesaid Benjamin Sirota, the aforesaid Laurence H. Taylor, and one Carl E. Preston, all general partners, and the aforesaid George Sirota, a limited partner. The firm was organized on April 1, 1952. The registration of Sirota and Company as a futures commission merchant was renewed for the calendar year of 1953, the composition of the firm remaining unchanged until June 10, 1953, when Sirota and Company notified the Commodity Exchange Authority that Carl E. Preston had severed his connection with the firm. The registration of George Sirota and Sons was also renewed for 1953. Subsequently, Sirota and Company renewed its registration for the calendar year 1954, the application showing the firm to consist of the aforesaid Benjamin Sirota, the aforesaid Norman L. Sirota, the aforesaid Laurence H. Taylor, all general partners, and the aforesaid George Sirota, a limited partner. George Sirota and Sons also renewed its registration for 1954 showing the same individuals as partners except that George Sirota is shown as a general partner. At the time of the entry of the decision and order on July 31, 1953, and at the time of the reopened hearing, the firm of Sirota and Company and the firm of George Sirota and Sons consisted of these four individuals as partners.

3. Sirota and Company and respondent George Sirota and Sons occupy the same quarters, and the salaries of all persons connected with both firms are paid by Sirota and Company.

CONCLUSIONS

The respondents argue first that we have no jurisdiction to entertain and act upon the complainant's motion for clarification of the order. The gist of this argument seems to be that the proceeding was finished when the order of suspension was issued and that there is no authority under the applicable rules of practice (17 CFR § 0.0 *et seq.*) or otherwise to entertain the motion for clarification. The motion was filed prior to the effective date

of the order suspending the registration of George Sirota and Sons and the suspension was postponed prior to its effective date pending action upon the motion. The motion alleged that the four partners in George Sirota and Sons were also the partners in Sirota and Company. Under these circumstances, we see no insurmountable legal barrier in reopening the proceeding to ascertain whether the sanction should apply against Sirota and Company as well as George Sirota and Sons. We think it is immaterial that the particular method for calling attention to the situation about the partnerships was a motion for clarification. In fact, we think that if the information had come to the attention of the Judicial Officer official notice of the files of the Commodity Exchange Authority would have been enough to warrant reopening of the record without the filing of any motion for clarification. At any rate the issuance of a final order did not deprive us of jurisdiction over the proceeding because the order had not become effective by its terms when the motion was filed and when the sanction ordered was postponed pending examination of the questions raised.

The respondents also maintain that the partnership George Sirota and Sons is a legal entity, that the proceeding treated it as such, that Sirota and Company is another legal entity separate from George Sirota and Sons, and that it would be unlawful to suspend the registration of the partnership Sirota and Company at least without making the legal entity Sirota and Company a respondent in the proceeding and giving it notice, opportunity for hearing, etc.

Whether or not the partnerships George Sirota and Sons and Sirota and Company may be separate legal or juristic entities for some purposes, n1 the facts are that the record shows that the two partnerships are comprised of the same four partners, have the same offices and have a common payroll. Sirota and Company was formed after the referee's report was issued recommending sanctions against George Sirota and Sons. We believe that a sanction against the partners in George Sirota and Sons, a futures commission merchant, for violations of the act cannot be defeated by the same partners setting up another partnership. True, the Commodity Exchange Authority believed that the registration of Sirota and Company had to be accepted since the only reason given in the act for refusing a registration is contained in section 3a of the act and reads as follows:

"The Secretary of Agriculture is authorized -- * * * (2) to refuse to register any person if such person has violated any of the provisions of this act or any of the rules or regulations promulgated by the Secretary of Agriculture hereunder for which the registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked; and * * *."

n1 The complaint named as respondents, in addition to George Sirota and Sons, the three Sirotas as individuals and a copy of the complaint was served upon each respondent.

Of course it would have been preferable to have had the facts as to the registration of Sirota and Company in the record prior to the issuance of the order suspending the registration of George Sirota and Sons. As we have stated

above, however, we do not believe that we are precluded from considering those facts now under the circumstances of this case. As far as the grievance that Sirota and Company has not had notice, hearing, etc., is concerned, the grievance is illusory because Sirota and Company is composed of the same individuals as George Sirota and Sons and notice, hearing and argument were given as to whether the sanction should apply to Sirota and Company. The presence of Laurence H. Taylor, brother-in-law of Benjamin Sirota, as a partner in George Sirota and Sons when he was not a partner at the time of the issuance of the complaint and as a partner in Sirota and Company does not strike us as making any material difference in our conclusions. Taylor joined George Sirota and Sons after the complaint was issued and there is no intent or attempt to reach Taylor personally and individually with a sanction.

In summary, we conclude that the suspension of the registration of George Sirota and Sons should apply also to the registration of Sirota and Company. A review of the entire proceeding, however, including the fact that Benjamin Sirota and Norman L. Sirota's registrations as floor brokers were suspended, leads us to conclude that it is unnecessary in the public interest to make the ordered suspension effective at this time. Accordingly, the suspension ordered should be held in abeyance for a period of two years.

ORDER

The order of July 31, 1953, suspending the registration of George Sirota and Sons as a futures commission merchant for a period of ten days is applicable to Sirota and Company and to respondents George Sirota, Norman L. Sirota, and Benjamin Sirota, collectively or individually, when operating as futures commission merchants under the name of George Sirota and Sons,

Sirota and Company, or any other name; provided, however, that such order shall not become effective except by supplemental order in this proceeding entered if the Sirota respondents should be found after notice and hearing to have violated the act or regulations thereunder within two years from the date of this order.

A copy of this order shall be served by registered mail upon respondents George Sirota and Sons, George Sirota, Norman L. Sirota, and Benjamin Sirota, and upon Sirota and Company, and upon each contract market under the act.

LOAD-DATE: June 8, 2008

