

Commodity Futures Trading Commission
CEA CASES

NAME: SECRETARY OF AGRICULTURE, V. B. FRANK STERLING AND HARRY V. BAKER

DOCKET NUMBER: 15

DATE: DECEMBER 14, 1939

DOCUMENT TYPE: DECISION AND ORDER

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

C. E. A. DOCKET NO. 15

Secretary of Agriculture, Complainant, v. B. Frank Sterling and Harry V. Baker, Respondents.

Proceedings, Findings of Fact, Conclusions, and Order.

PROCEEDINGS

On July 28, 1939, complaint was issued by the Acting Secretary of Agriculture, pursuant to the provisions of the Commodity Exchange Act (7 U. S. C., 1934 ed., and Supp. IV, secs. 1-17a), against B. Frank Sterling and Harry V. Baker, alleging that they were partners trading as Sterling & Baker, a registered futures commission merchant, during the year 1937. It is charged that, between June 1 and November 3 of that year, in Houston, Texas, the respondents failed to account separately for their commodity customers' funds, as required by the act, with the result that, on November 3, there was a shortage of approximately \$ 7,100 in such funds. The respondents were directed to show why the registration of their firm should not be revoked and trading privileges on contract markets denied them, at a hearing in Washington, D. C., on August 11, 1939.

The complaint was served on each of the respondents by registered mail on August 8, 1939. The referee wrote each of them that, due to the short time between the date of service and August 11, the hearing had been postponed until September 1, 1939, and that, if either of them desired to be heard at some place other than Washington, he should so request. No communication of any sort was received from either of them.

The hearing was held in Washington, D. C., before Jack W. Bain, Esquire, the referee, on September 1, 1939. Charles W. Bucy, Esquire, Office of the Solicitor, Department of Agriculture, appeared for the Government. There was no appearance for either respondent. At the request of Mr. Bucy, judicial notice was taken that the Chicago Board of Trade and the New Orleans Cotton Exchange were contract markets during 1937. Douglas B. Bagnell, in charge of the Division of Violations and Complaints, Commodity Exchange Administration, Department of Agriculture, called by the Government, was the only witness. He produced the official report, containing work papers, of an examination of Sterling & Baker's records for the period June 1 to November 3, 1937, which examination was made at his direction as a result of a routine segregation audit previously made. The report shows that the funds of customers trading in futures in commodities named in the Commodity Exchange Act were not separately accounted for, or segregated, during the period involved, and that on November 3 there was a shortage of more than \$ 7,000 in such

funds. Mr. Bagnell testified that trades in wheat and cotton, as shown in the report, could be used for hedging transactions in interstate commerce in those commodities.

After the hearing, copies of the referee's report, proposed findings of fact, conclusions, and recommended order were served upon each respondent on November 6, 1939, and a period of twenty days was given for filing exceptions and requesting oral argument before the Secretary. The time has expired, and no exceptions, briefs, or requests have been filed.

FINDINGS OF FACT

1. B. Frank Sterling and Harry V. Baker, as partners in the firm of Sterling & Baker, engaged as futures commission merchants in Houston, Texas, from June 1 to November 3, 1937, inclusive, and registered with the Secretary of Agriculture as futures commission merchants for the period ending December 31, 1937.

2. The respondents, from June 1 to November 3, 1937, failed to segregate and to account separately for funds received from and accruing to their customers in connection with sales of wheat for future delivery on the Board of Trade of the City of Chicago, a contract market, and sales of cotton for future delivery on the New Orleans Cotton Exchange, a contract market.

3. On November 3, 1937, the respondents should have had \$ 7,371.39 segregated as their commodity customers' funds, but they

had segregated only \$ 262.04, leaving a shortage of more than \$ 7,000 in such funds.

CONCLUSIONS

Since the respondents failed to treat and deal with their customers' funds as the act requires, it is concluded that their trading privileges on contract markets should be denied, but as their registration as futures commission merchants has expired, it is not necessary that it be revoked.

ORDER

IT IS ORDERED that all contract markets, until further notice by the Secretary of Agriculture, refuse all trading privileges thereon to B. Frank Sterling and to Harry V. Baker.

IT IS FURTHER ORDERED that a copy hereof be sent by registered mail to each of the respondents and to each contract market, and that this order shall be effective 10 days after the date hereof.

(SEAL)

Done at Washington, D. C., this 14th day of December 1939. Witness my hand and the seal of the Department of Agriculture.

[SEE SIGNATURE IN ORIGINAL]

Acting Secretary of Agriculture.

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NO COPY OF COMPLAINT AVAILABLE

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