

Commodity Futures Trading Commission  
CEA CASES

**NAME:** EMIL VOJTEK

**CITATION:** 22 Agric. Dec. 778

**DOCKET NUMBER:** 99

**DATE:** JULY 31, 1963

**DOCUMENT TYPE:** DECISION AND ORDER

(No. 8517)

*In re* EMIL VOJTEK. CEA Docket No. 99. Decided July 31, 1963.

**Fictitious Trades -- Denial of Trading Privileges**

The trades recorded and reported were fictitious in violation of the act. All contract markets are ordered to refuse all trading privileges to respondent for a 60-day period.

*Mr. Gilbert A. Horn*, for Commodity Exchange Authority. Respondent *pro se*. *Mr. Jack W. Bain*, Hearing Examiner.

*Decision by Thomas J. Flavin, Judicial Officer*

**PRELIMINARY STATEMENT**

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1), instituted by a complaint filed

by an Assistant Secretary of Agriculture June 28, 1961. Emil Vojtek, the respondent, of Chicago, Illinois, was charged with recording and reporting fictitious trades in wheat and other commodity futures on the Chicago Open Board of Trade. A copy of the complaint and a copy of the applicable rules of practice were served on respondent by registered mail June 29, 1961.

Respondent filed an answer July 31, 1961, in which he admitted all the alleged trades except one, but stated that they were legally executed and not fictitious. Complainant moved to amend the complaint, stating that it had mistakenly alleged that the reported trade denied by respondent was a reported sale to Greene and Collins, whereas it was actually a reported sale to Miller and Lamb. Over respondent's objection, complainant was allowed to correct the mistake by amending the complaint.

Charles J. Vojtek, respondent's brother, filed a motion to intervene, alleging that he worked together with respondent in trading, and that he wanted to be a party respondent so that the whole issue could be shown, not just a one sided presentation. Complainant objected, stating that Charles J. Vojtek could bring out as many facts as a witness for respondent as he could as an intervenor. Intervention was denied on the ground that it would not enable the Vojteks to present anything they could not present by calling Charles J. Vojtek as a witness.

Sessions of the oral hearing were held in Chicago, Illinois, December 18 and 19, 1961, and March 8, 1962, before Hearing Examiner Jack W. Bain of the Department of Agriculture as Referee. Gilbert A. Horn of the Chicago office, Office of the General Counsel, Department of Agriculture, appeared for the Commodity Exchange Authority, the complainant. The respondent, an attorney

admitted to practice in the State of Illinois, appeared for himself. Complainant called four witnesses and introduced 16 exhibits and respondent presented twelve witnesses and 4 exhibits.

After the hearing, complainant filed suggested findings, etc., May 29, 1962, proposing that respondent be found to have violated the act as charged, except for one of the transactions alleged, and be denied trading privileges on contract markets for 60 days. Respondent filed a brief July 30, 1962, stating that all his trades were legal. Some of respondent's arguments will be mentioned below in the Conclusions. Complainant filed a reply

brief August 29, 1962. Respondent's request to file an answer to complainant's reply brief was granted, and the answer was filed January 7, 1963. The hearing examiner issued a recommended decision January 21, 1963, to the effect that respondent had violated the act as charged. Respondent filed exceptions to the recommended decision and also a motion to reopen the hearing to offer evidence that respondent's brother, Charles J. Vojtek, made some of the trades charged by complainant to have been made by respondent. Complainant did not object to the granting of the motion and a hearing session was held April 23, 1963, in Chicago, Illinois. Following this hearing the parties filed briefs and on June 11, 1963, the hearing examiner filed a supplemental recommended decision affirming his recommended decision. Respondent filed exceptions thereto.

#### **FINDINGS OF FACT**

1. The Chicago Open Board of Trade is now and was at all times material herein a duly designated contract market under the Commodity Exchange Act.

2. Transactions in wheat, rye, and soybean futures on the Chicago Open Board of Trade could be used for hedging transactions in interstate commerce in such commodities or the products or by-products thereof, or for determining the price basis of transactions in interstate commerce in such commodities, or for delivering such commodities sold, shipped, or received in interstate commerce.

3. The respondent, Emil Vojtek, an individual whose business address is 343 South Dearborn Street, Chicago, Illinois, is and was at all times material herein a member of the Chicago Open Board of Trade.

4. At all times material herein, a "changer" or "changer firm" was a firm holding memberships on both the Open Board and The Board of Trade of the City of Chicago, hereinafter called the Chicago Board of Trade or the Big Board, which firm engaged in making "changer trades" between the two exchanges. Such firms had representatives on the Open Board who were authorized to execute the Open Board parts of changer trades for the firms.

5. At the times of all transactions involved herein, I. Usiskin and Company, Inc., was a changer firm as described in Finding

4, and respondent was a representative of Usiskin on the Open Board to make changer trades.

6. If a member of the Open Board desired to buy or sell a future on the Open Board and found no taker of the trade on open outcry there, he could make a noncompetitive trade on the Open Board by going to respondent, as a representative of Usiskin, a changer, and requesting respondent to make a changer trade for the desired purchase or sale. Respondent would then phone Usiskin's representative on the Big Board an order to make the trade, such representative would make the trade on the Big Board for Usiskin, phone back the information to respondent, and respondent would then record a trade for Usiskin with the requesting trader at a difference in price of not exceeding 1/8 of a cent in favor of Usiskin. The end result would be that the requesting trader on the Open Board would have a purchase from or sale to Usiskin on that Board, and

Usiskin would have an opposite trade on the Big Board at a more favorable price of not exceeding 1/8 of a cent.

7. In addition to making changer trades for a changer firm, respondent also carried commodity futures accounts in his own name and for his personal account with Greene and Collins and Miller and Lamb, two clearing members of the Open Board.

8. Charles J. Vojtek, respondent's brother, worked with respondent in trading on the Open Board at various times, but was engaged elsewhere and was not trading on the Open Board during the period in August 1960 when the futures transactions here involved were made. Charles J. Vojtek carried a personal commodity futures account with Miller and Lamb. No trades are shown in this account between June 20 and October 13, 1960. He carried an account with Greene and Collins which shows trading from May 6 to June 9, 1960, but none thereafter during 1960.

9. In August 1960, respondent entered on his trading cards the trades shown below, and reported to Greene and Collins (G & C) or Miller and Lamb (M & L) that he had entered into such transactions on the Open Board with Usiskin for respondent's personal account and reported to Usiskin that he had entered into such transactions with Greene and Collins or Miller and Lamb for Usiskin's account, thereby causing Greene and

Collins, Miller and Lamb, and Usiskin to record such trades in their records, as follows:

Date	Commodity	Future	Quantity (Bushels)	Price	Clearing Firm	
1960					Buying	Selling
Aug. 2	Soybeans	November	5,000	2.18	G & C	Usiskin
Aug. 2	Soybeans	November	5,000	2.18 1/8	G & C	Usiskin
Aug. 2	Soybeans	November	5,000	2.17 1/2	Usiskin	G & C
Aug. 2	Soybeans	November	10,000	2.18 5/8	Usiskin	G & C
Aug. 3	Soybeans	November	10,000	2.16 3/4	G & C	Usiskin
Aug. 9	Wheat	December	10,000	1.92 1/2	Usiskin	G & C
Aug. 9	Wheat	December	5,000	1.92 3/8	Usiskin	G & C
Aug. 11	Rye	September	5,000	1.17 1/8	Usiskin	G & C
Aug. 12	Soybeans	January	1,000	2.21 7/8	Usiskin	G & C
Aug. 12	Soybeans	November	5,000	2.17 3/8	M & L	Usiskin

None of such trades was executed on the Open Board, and none had its counterpart on the Big Board in the change account of Usiskin.

10. On the dates listed below, Jack P. Leo, a clearing member of the Open Board, placed orders with respondent to sell wheat futures on the Open Board for Leo's account. Respondent entered on Leo's trading cards the trades on the Open Board shown below and reported to Leo and Usiskin that such trades had been executed on the Open Board, thereby causing Leo and Usiskin to record such trades in their records, as follows:

Date	Commodity	Future	Quantity (Bushels)	Price	Buyer	Seller
1960						
Aug. 5	Wheat	December	5,000	1.92 3/8	Usiskin	Leo
Aug. 9	Wheat	December	5,000	1.92 1/8	Usiskin	Leo
Aug. 11	Wheat	March	5,000	1.96 3/8	Usiskin	Leo

None of such trades was executed on the Open Board, and none had its counterpart on the Big Board in the change account of Usiskin.

11. Respondent made the trading card entries, reports, etc., involved in Findings 9 and 10 knowingly and intentionally, not by accident or mistake.

#### CONCLUSIONS

There can be no doubt that the trades described in Finding 9 (alleged in Paragraph IV of the complaint, as amended) were reported to, and appear on the records of, Greene and Collins,

Miller and Lamb, and Usiskin. Respondent in his answer "admits making the transactions as stated in paragraph 4 in the complaint except for the last item . . . of which he has no knowledge." He does not deny reporting the trades to the clearing firms, thereby causing them to record the trades in their records. As to the last trade, Greene and Collins was alleged in the complaint as the buying clearing firm. After respondent denied any knowledge of such a trade, complainant was allowed to amend the complaint by alleging that the buying clearing firm was not Greene and Collins but Miller and Lamb, with whom respondent also carried an account in his own name. The testimony and the records of the three firms show the trades as listed in Finding 9, including the last trade.

Although this is not definitely shown by the complaint and answer in themselves, the pleadings, evidence, and argument considered together leave it clear that there are only two principal issues as to these trades; (1) whether they constituted parts of changer trades and were therefore legally authorized noncompetitive trades; and (2) whether they were made competitively by open outcry in the trading pit of the Open Board.

The overwhelming weight of the evidence is that a changer trade involves purchases and sales on both the Open Board and the Big Board. Usiskin's records show no trades on the Big Board related to the Finding 9 and Finding 10 Open Board trades. Such trades were, therefore, not changer trades.

Respondent and his brother say that they were "fading changers," that such was necessary for them to make a living and keep the market fluid, as there were not many "true changer trades" as defined by complainant's witnesses. They meant by this that they would take a trade offered or bid by open outcry on the Open Board in the hope of making a profit by an opposite trade later. They say that they might cover such a trade by a subsequent opposite trade on the Big Board or on the Open Board. There is similar testimony by some other witnesses, but not one of these other witnesses, even those called by respondent, when asked the direct question, said that a trade would be a changer trade if it did not involve both Boards. Every witness other than the Vojteks who said that there could be speculative changer trades also said, if asked, that the first part of such a trade had to be made competitively by open outcry on the Open Board. While the weight of the evidence is not that a trade first

made on the Open Board is a changer trade even if a later opposite trade is made on the Big Board, it would make no difference here if the evidence did so show, as the Open Board trade would have to be made competitively.

To summarize, the trades shown in Findings 9 and 10 were not changer trades, but even if they were "speculative changer trades" as claimed by respondent, they were still required to be made competitively, and were not authorized noncompetitive trades. The question, then, is whether they were made competitively.

The records show Vojtek as making both the sale and the purchase in each of the trades, and respondent in his answer admits making the trades. In the testimony and arguments he presents, however, he claims that his brother executed at least one side of the Finding 9 trades.

Led by respondent on direct examination, Charles Vojtek testified to remembering details of executing various trades. He said he was trading every day before leaving for a job at the race track. On cross-examination, it was demonstrated that his memory was not what he pretended it to be on direct. He said that he cleared through Miller and Lamb and Greene and Collins, and that he made trades for himself during the first 12 days of August 1960.

Respondent called five other traders on the Open Board who testified that the Vojteks worked together as changers, that respondent never worked alone, and that Charles was in the pit every trading day before going to the race track. None of these could say specifically that Charles was there on any certain day. Furthermore, when they said that the Vojteks always worked together as changers, they were referring to "speculative changer trades" in the pit, which were really not changer trades at all. The Open Board part of a changer trade is made by record entries after phone calls, not by outcry in the pit. The evidence offered at the reopened hearing by respondent for the purpose of showing that Charles Vojtek was present on the Open Board at the times of the transactions involved was properly characterized by the hearing examiner as weak and unreliable.

As against the testimony that Charles was there and traded during the period in question, the records of the firms through whom he cleared show no trades for him in August 1960. In an

interview with two employees of complainant in January 1961, both Vojteks said that Charles was away at the track during the entire period involved, all Vojtek trading during that period being by respondent, not by Charles.

The evidence does not support the claim that Charles Vojtek made any of the trades involved. On the entire pleading, testimony, and documentary evidence, we conclude that Finding 8 sets out the facts regarding Charles Vojtek's lack of any participation in the transactions involved. But even if Charles Vojtek was present on the floor of the Open Board of Trade on all or some of the days involved, we have a picture of two brothers each of whom has a personal trading account and each of whom was authorized apparently to trade on the Open Board in the Usiskin changer account. Respondent would have us believe that each time in this group of transactions when Usiskin appears as either the buyer or the seller the trade was made by Charles Vojtek in his capacity as changer representative for Usiskin with his brother, the respondent, operating for his personal account and that *the trades were made between the two brothers by open outcry in the pit*. Respondent has not established this defense by any believable evidence and it is obvious that shuffling trades between them in their dual capacities would require a strong demonstration of legitimacy under the circumstances.

As to the Leo trades in Finding 10, there is no claim that Charles Vojtek was involved. There was no offsetting trade on the Big Board; so these were not changer trades which could be executed noncompetitively.

Respondent was the broker on both sides of the trades involved, and one side of those in Finding 9 was for his personal account. The only way a member of the Open Board can make a trade for both sides is in accordance with Rule 406 of the Board, under which it must be made in the presence of the Secretary or a committee member of the Board, the record of the trade must be verified and initialed before such official, the Board keeps a permanent record of such trades, and the executing member has no interest in either side. There was no claim that the trades were made in accordance with Rule 406, and they were not so made.

The trades were not changer trades, were not executed by Charles Vojtek, and were not made validly, or executed, on the

Open Board. Consequently, the trades recorded and reported were fictitious, in violation of section 4c of the act.

Respondent argues that the proceeding was brought against him surreptitiously at the instigation of another changer whose monopoly was being hurt. The evidence does not so show: it is that a general survey was made of all trading on the Open Board for August 1-12, 1960, and that the trades involved were

disclosed by the general investigation. No investigation of respondent in particular was instigated.

Respondent says that there is no law or rule against the reported trades. Section 1.38 of the regulations under the act (17 CFR 1.38) requires that all purchases and sales of futures must be executed competitively unless executed under some specific rule of a contract market not disapproved by the Secretary of Agriculture. The only rules of the Open Board for noncompetitive trades are Rule 406, mentioned above, and that for changer trades. Respondent's trades came within neither of the authorized exceptions in section 1.38. Respondent seems to be confused by the fact that there is no rule that a changer may not speculate. There is no rule that a member of a contract market may not speculate, either. The changer, in speculating, is in the same position as a speculating member of the Open Board who is not a changer. The fact that respondent was authorized to make changer trades left him free to speculate for his own account in other trades, just as any other member, but did not excuse his speculative trading from any rules applicable to speculative trading in general, such as section 1.38.

Respondent argues in his brief that this proceeding must be dismissed because he was not given the written notice and opportunity to achieve compliance prescribed in Section 9 of the Administrative Procedure Act (5 U.S.C. 1008). Such provision begins, "Except in cases of willfulness . . ." As stated in Finding 11, respondent acted knowingly and intentionally. There was no claim that his actions were accidental or unknowing. Under a regulatory statute, intentionally or even negligently doing a prohibited act is "willful." *In re Crilly et al.*, 20 Agric. Dec. 178 (20 A.D. 178) (1961). *Goodman V. Benson*, 286 F. 2d 896 (7th Cir. 1961). Respondent asserts, in an answer to complainant's reply brief, that the latter decision is not in point here. On this question, the *Goodman* decision is directly in point.

For his violations, respondent's trading privileges on contract

markets should be denied for a period of 60 days, as recommended by complainant.

#### **ORDER**

Effective September 3, 1963, all contract markets shall deny all trading privileges thereon to Emil Vojtek for a period of 60 days, such refusal to apply to all trading done and positions held by him, directly or indirectly.

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

**LOAD-DATE:** June 8, 2008

