

Commodity Futures Trading Commission
CEA CASES

NAME: RODGER HARRIS

CITATION: 29 Agric. Dec. 1330

DOCKET NUMBER: 170

DATE: DECEMBER 15, 1970

DOCUMENT TYPE: DECISION AND ORDER

(No. 13,541)

In re RODGER HARRIS. CEA Docket No. 170. Decided December 15, 1970.

Cheating or defrauding -- Denial of trading privileges -- Default

Respondent, who defaulted in the filing of an answer to the complaint in this proceeding charging him with cheating or defrauding a customer by placing potato future transactions in the customer's account without the customer's knowledge and consent, is prohibited from trading on all the contract markets for a period of 60 days and all contract markets shall refuse all trading privileges to him during such period.

Earl L. Saunders for Commodity Exchange Authority.

John G. Liebert, Referee.

Decision by Thomas J. Flavin, Judicial Officer

DECISION AND ORDER

In this administrative proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1, 1964 ed., as amended, Supp. IV, 1969), respondent failed to file an answer to the complaint and did not file exceptions to the referee's (hearing examiner's) recommended decision and proposed order.

In view of the foregoing and upon consideration of the entire record, the recommended decision and order of the hearing examiner are adopted as the final decision and order herein except for the cease and desist provisions since the statutory authority therefor was not effective at the time of the violations. The period of the denial of trading privileges to the respondent shall become

effective on the 30th day after the date of entry of this order. A copy of this Decision and Order shall be served on the parties and on each contract market.

REFEREE'S RECOMMENDED DECISION AND ORDER

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1, 1964 ed., as amended, Supp. IV, 1969), hereinafter referred to as the "Act", instituted by a complaint filed on March 12, 1970, by the Assistant Secretary of Agriculture. The complaint alleges that the respondent, the manager of a commodity brokerage company which was a registered commission merchant under the Act and a member of the Chicago Mercantile Exchange and the New York Mercantile Exchange, violated Section 4 b of the Act by reason of the activities set forth therein.

Copies of the complaint and the Rules of Practice were served on respondent by certified mail on March 16, 1970. Respondent was notified in writing that, in accordance with the applicable Regulations, an answer should be filed within

20 days following receipt of the complaint, and that failure to file an answer denying the specific allegations in the complaint and requesting an oral hearing would constitute admission of such allegations and waiver of an oral hearing.

Respondent did not file an answer within the 20-day period and the tentatively scheduled hearing was cancelled. On April 30, 1970, after a telephone conversation with this Referee, respondent filed a letter requesting a copy of the complaint and a rescheduling of the hearing. In response to this request for an additional opportunity to enter a defense in the matter, the Referee, by Order dated May 1, 1970, caused the complaint to be re-served on respondent and rescheduled the matter for oral hearing. Respondent was again notified in writing by the Hearing Clerk that, in accordance with the Rules of Practice enclosed, failure to file an answer within 20 days following receipt of the second copy of the complaint would constitute waiver of an oral hearing by respondent and admission of the allegations in the complaint. Notwithstanding this second notice, respondent again failed to file an answer or make any other communication. Subsequently, the second scheduled hearing was cancelled by the Referee's Order dated June 4, 1970.

Complainant filed suggested findings of fact, conclusions and order on June 11, 1970, which were served on respondent. In addition, complainant recommended that the Referee proceed in accordance with Section 0.9(c) of the Rules of Practice (17 CFR 0.9 (c)) which provides as follows:

"(c) *Procedure upon admission of facts.* The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission of facts, the referee, without further investigation or hearing, shall prepare his report, in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint."

Respondent has still failed to file an answer or other responsive pleading in this matter. Accordingly, this Recommended Decision is entered pursuant to Section 0.9 (c) of the Rules of Practice and the Proposed Findings of Fact are the material allegations set forth in the complaint.

PROPOSED FINDINGS OF FACT

1. The respondent, Rodger Harris, an individual whose business address is 110 North Franklin Street, Chicago, Illinois 60606, was at all times material herein employed as the manager of the New Orleans, Louisiana, office of The Siegel Trading Co., Inc., a commodity brokerage firm. The said firm was, at all times material herein, a registered futures commission merchant under the Commodity Exchange Act, and a member of the Chicago Mercantile Exchange and the New York Mercantile Exchange, both duly designated contract markets under the Commodity Exchange Act.

2. At all times material herein, Mrs. Wilodyne Hooper maintained a commodity futures account at The Siegel Trading Co., Inc., and at all such times the respondent personally handled the trading in such account.

3. The futures transactions, referred to in this complaint, 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 by-products 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. Acting without the knowledge or consent of Mrs. Wilodyne Hooper, the respondent: (1) on April 23 and 25, 1968, placed in her account at The Siegel

Trading Co., Inc., a total of four May 1968 potato futures contracts, which established a new long position in such futures for such account; and (2) on May 1, 1968, liquidated such long position at prices which resulted in a net loss of approximately \$ 1,500.00 to Mrs. Wilodyne Hooper's account.

PROPOSED CONCLUSIONS

The failure of respondent to file an answer in this matter constitutes a waiver of an oral hearing and an admission of the material allegations of fact in the complaint.

By reason of the Findings of Fact set forth above, respondent attempted to cheat and defraud and did cheat and defraud a person in or in connection with the making of contracts of sale of commodities for future delivery on or subject to the rules of a contract market in wilful violation of Section 4 b of the Act. See, e.g., *In re Khalil Haddad*, 22 Agric. Dec. 137 (22 A.D. 137) (1963). In view of the serious, flagrant and deliberate nature of these violations, it is concluded that the respondent should be prohibited from trading on all contract markets for a period of 60 days, ordered to cease and desist from these violations, and that all contract markets should be directed to refuse all trading privileges to respondent for 60 days as recommended by complainant.

PROPOSED ORDER

(a) The respondent, Rodger Harris, shall cease and desist from placing, or causing to be placed, in any customer's account any futures transaction, without the prior knowledge and consent of such customer.

(b) The respondent, Rodger Harris, is prohibited from trading on or subject to the rules of any contract market for a period of 60 days, and all contract markets shall refuse all trading privileges to him during this period, such prohibition and refusal to apply to all trading done and all positions held by him, directly or indirectly.

The cease and desist provisions of this order, set forth in paragraph (a) above, shall become effective upon the date of

service of this order upon the respondent. The period of the denial of trading privileges to the respondent, specified in paragraph (b) above, shall become effective on the thirtieth day after the date of entry of this order.

A copy of this Decision and Order shall be served on each of the parties and on each contract market.

LOAD-DATE: June 10, 2008

