

Commodity Futures Trading Commission
CEA CASES

NAME: MYLES J. KERRIGAN, THOMPSON B. SANDERS, AND O'CONNOR GRAIN CO.

CITATION: 28 Agric. Dec. 1239

DOCKET NUMBER: 162

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(No. 12,755)

In re MYLES J. KERRIGAN, THOMPSON B. SANDERS, and O'CONNOR GRAIN CO. CEA Docket No. 162. Decided October 23, 1969.

Trading in excess of limits -- Denial of trading privileges -- Suspension of registration -- Stipulation

The activities of respondent Kerrigan in trading in corn futures in excess of the trading limits, resulting in false entries being made on the trading card of respondent Sanders and in the records of the partnership respondent for the purpose of concealing such excess trading, are violations of the act for which suspension of registration and denial of trading privileges on all the contract markets are ordered against respondent Kerrigan for 30 days and against respondent Sanders for 10 days. Suspension of registration and denial of trading privileges are also ordered against the partnership respondent for a period of five days, but these sanctions against the partnership shall be held in abeyance.

Earl L. Saunders for Commodity Exchange Authority.

John J. Enright, of Arvey, Hodes & Mantynband, Chicago, Ill., and *Mitchell Edelson, Sr.*, of Chicago, Ill., for respondents.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), instituted by a complaint and notice of hearing on June 19, 1969, by the Assistant Secretary of Agriculture. Respondent Myles J. Kerrigan is charged with violating sections 4a and 4i of the act (7 U.S.C. 6a, 6i), sections 15.01, 15.02, 15.03, 18.00, and 18.05 of the regulations issued thereunder (17 CFR 15.01, 15.02, 15.03, 18.00, 18.05), and the order of the Commodity Exchange Commission establishing limits on positions and trading in corn futures (17 CFR 150.1),

and all of the respondents are charged with violating sections 4, 4b, 4c, and 4g of the act (7 U.S.C. 6, 6b, 6c, 6g), and section 1.35 of the regulations (17 CFR 1.35).

An oral hearing was held in Chicago, Illinois, on October 15 and 16, 1969, before Jack W. Bain, Hearing Examiner, Office of Hearing Examiners, United States Department of Agriculture. On October 17, 1969, the respondents filed a stipulation in which they admit the jurisdictional facts alleged in paragraphs I through V of the complaint, admit, for the purposes of this proceeding, most of the remaining factual allegations, waive the report of the Hearing Examiner, and consent to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondent Myles J. Kerrigan, an individual whose address is Room 1437, 141 West Jackson Boulevard, Chicago, Illinois 60604, is now, and was at all times material herein, a member of the Board of Trade of the City of Chicago (hereinafter called the Chicago Board of Trade) and a general partner in respondent O'Connor Grain Co. Respondent Kerrigan is now a registered floor broker under the Commodity Exchange Act (hereinafter called the act).
2. Respondent Thompson B. Sanders, an individual whose address is Room 1437, 141 West Jackson Boulevard, Chicago, Illinois 60604, is now, and was at all times material herein, a registered floor broker under the act, a member of the Chicago Board of Trade, and an employee of respondent O'Connor Grain Co.
3. Respondent O'Connor Grain Co. is a partnership whose address is Room 1437, 141 West Jackson Boulevard, Chicago, Illinois 60604. The said partnership is now, and was at all times material herein, a registered futures commission merchant under the act and a clearing member of the Chicago Board of Trade.
4. The Chicago Board of Trade is now, and was at all times material herein, a duly designated contract market under the act.
5. The transactions referred to herein were in corn futures on or subject to the rules of the Chicago Board of Trade and were capable of being used for hedging transactions in interstate commerce in corn or the products or by-products thereof, or determining the price basis of transactions in interstate commerce

in corn, or delivering corn sold, shipped, or received in interstate commerce. All such transactions made for the account of respondent Myles J. Kerrigan were speculative and were carried by respondent O'Connor Grain Co.

6. (a) On June 29, 1966, respondent Myles J. Kerrigan, acting for his own account, purchased 1,920,000 bushels and sold 1,970,000 bushels of corn futures, and reported such purchases and sales to the Commodity Exchange Authority. In addition, respondent Kerrigan, on the same date, purchased 1,000,000 bushels of March 1967 corn futures from another floor trader, John L. Georgas, not a respondent herein, at \$ 1.40 per bushel, and sold 1,000,000 bushels of May 1967 corn futures to the said John L. Georgas at \$ 1.42 per bushel. Respondent Kerrigan did not enter such purchase or sale on his trading card, or report them to the Commodity Exchange Authority. Respondent Kerrigan requested respondent Thompson B. Sanders to record such purchase and sale on his trading card as though they had been made by respondent Sanders. In compliance with such request, respondent Sanders entered on one of his trading cards a purchase of 1,000,000 bushels of March 1967 corn futures at \$ 1.40 per bushel and a sale of the same quantity of May 1967 corn futures at \$ 1.42 per bushel, and turned in such card to respondent O'Connor Grain Co. as a result of which the records of respondent O'Connor Grain Co. showed that such purchase and sale were made for the account of, and that the resulting positions were held by, respondent Sanders. In truth and in fact and as the respondents knew, the entire purchase of the 1,000,000 bushels of March 1967 corn futures and the entire sale of the 1,000,000 bushels of May 1967 corn futures were made by respondent Kerrigan for his own use and benefit and were owned and controlled by him. The false entries on the trading card of respondent Sanders and in the records of respondent O'Connor Grain Co. were intended and made for the purpose of concealing from the Commodity Exchange Authority the fact that on June 29, 1966, respondent Kerrigan had made sales and had made purchases in corn futures, in amounts in excess of the maximum limit of 2,000,000 bushels established by the Commodity Exchange Commission (17 CFR 150.1).

(b) On June 30, July 6 and July 8, 1966, respondent Kerrigan entered on his trading cards sales of 500,000 bushels and 200,000 bushels and 300,000 bushels, respectively, of May 1967 corn futures to respondent Sanders, and purchase of the same

quantities of March 1967 corn futures from respondent Sanders. Respondent Sanders entered the opposite sides of these transactions on his trading cards and entries were made by respondent O'Connor Grain Co. in its records showing such transactions. In truth and in fact and as the respondents knew, the above transactions were not *bona fide* sales and purchases but merely transfers from respondent Sanders' account to respondent Kerrigan's account of the sale of 1,000,000 bushels of May 1967 corn futures and the purchase of 1,000,000 bushels of March 1967 corn futures that had been made by respondent Kerrigan for his own use and benefit but placed in respondent Sanders' account, as described above.

7. On June 30, 1966, respondent Myles J. Kerrigan, acting for his own account, made transactions in corn futures in an amount in excess of the maximum limit of 2,000,000 bushels established by the Commodity Exchange Commission (17 CFR 150.1). In an effort to conceal such fact from the Commodity Exchange Authority, respondent Kerrigan:

(a) Included in his report to the Commodity Exchange Authority for June 30, 1966, purchases of only 1,940,000 bushels and sales of only 1,980,000 bushels, but did not include therein additional purchases of 50,000 bushels and additional sales of 50,000 bushels made by respondent Kerrigan in the December 1966 corn future at \$ 1.38 3/4 on June 30, 1966; and

(b) Deleted the entries relating to such purchases and sales in the December 1966 corn future from the fraction sheet maintained by respondent O'Connor Grain Co., for respondent Kerrigan's account.

8. On July 7, 1966, respondent Myles J. Kerrigan, acting for his own account, made transactions in corn futures in an amount in excess of the maximum limit of 2,000,000 bushels established by the Commodity Exchange Commission (17 CFR 150.1). In an effort to conceal such fact from the Commodity Exchange Authority, respondent Kerrigan:

(a) Included in his report to the Commodity Exchange Authority for July 7, 1966, purchases of only 1,925,000 bushels and sales of only 1,945,000 bushels, but did not include therein additional purchases of 50,000 bushels and additional sales of 50,000 bushels made by respondent Kerrigan in the September 1966 corn future on July 7, 1966. Nor did respondent Kerrigan include

in such report additional purchases of 100,000 bushels and additional sales of 100,000 bushels made by him in the December 1966 corn future at \$ 1.37 3/4 per bushel on July 7, 1966:

(b) Changed the fraction sheet maintained by respondent O'Connor Grain Co. for respondent Kerrigan's account for July 7, 1966, by decreasing the entry showing the total purchases in the September 1966 corn future by 50,000 bushels and decreasing the entry showing the total sales in such future by a like amount; and

(c) Deleted the entry relating to 100,000 bushels purchased at \$ 1.37 3/4, in the December 1966 corn future and the entry relating to sales of the same quantity of the same future at the same price from the fraction sheet maintained by respondent O'Connor Grain Company for respondent Kerrigan's account for July 7, 1966.

9. On July 14, 1966, respondent Myles J. Kerrigan, acting for his own account, made transactions in corn futures in an amount in excess of the maximum limit of 2,000,000 bushels established by the Commodity Exchange Commission (17 CFR 150.1). In an effort to conceal such fact from the Commodity Exchange Authority, respondent Kerrigan:

(a) Included in his report to the Commodity Exchange Authority for July 14, 1966, purchases of only 1,880,000 bushels and sales of only 1,770,000 bushels,

but did not include therein additional purchases of 100,000 bushels and additional sales of the same quantity made by respondent Kerrigan in the December 1966 corn future on July 14, 1966, at \$ 1.41 per bushel. Nor did respondent Kerrigan include in such report additional purchases of 100,000 bushels and additional sales of the same quantity made by him in the December 1966 corn future at \$ 1.41 1/2 per bushel on July 14, 1966; and

(b) Caused the fraction sheet maintained by respondent O'Connor Grain Company for respondent Kerrigan's account for July 14, 1966, to fail to show any entries relating to such transactions in the December 1966 corn future.

10. On July 18, 1966, respondent Myles J. Kerrigan, acting for his own account, made transactions in corn futures in an amount in excess of the maximum limit of 2,000,000 bushels established by the Commodity Exchange Commission (17 CFR 150.1). In an

effort to conceal such fact from the Commodity Exchange Authority, respondent Kerrigan:

(a) Included in his report to the Commodity Exchange Authority for July 18, 1966, purchases of only 1,570,000 bushels and sales of only 1,970,000 bushels, but did not include therein additional purchases of 625,000 bushels and additional sales of 625,000 bushels made by respondent Kerrigan in the December 1966 corn future on July 18, 1966;

(b) Prepared trading cards purporting to show that such purchases and sales made in the December 1966 corn future were for the account of another partner in respondent O'Connor Grain Co., James R. Powers, not a respondent herein, and turned in such cards to respondent O'Connor Grain Co.; and

(c) Caused the fraction sheet maintained by respondent O'Connor Grain Co. for the account of James R. Powers for July 18, 1966 to purport to show that such transactions in the December 1966 corn future had been made for the account of James R. Powers, and caused the fraction sheet maintained by respondent O'Connor Grain Co. for respondent Kerrigan's account for July 18, 1966, to fail to show any entries relating to such transactions.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that, as charged in the complaint: (1) respondent Myles J. Kerrigan violated sections 4a and 4i of the Commodity Exchange Act, sections 15.01, 15.02, 15.03, 18.00, and 18.05 of the regulations issued thereunder, and the order of the Commodity Exchange Commission establishing limits on positions and trading in corn futures (17 CFR 150.1), and (2) all of the respondents violated sections 4, 4b, 4c, and 4g of the act and section 1.35 of the regulations.

The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation and waiver submitted by the respondents. The administrative officials believe that the proposed order would be adequate and that the prompt entry of such an order would constitute a satisfactory disposition of the case. The administrative officials point out that, except for respondent Kerrigan, it appears that none of the individual members of respondent partnership

O'Connor Grain Co., had knowledge of the violations in question and, under the circumstances, the administrative officials do not believe that the imposition of an effective sanction against the respondent partnership is needed to effectuate the purposes of the act. The complainant recommends that the stipulation and waiver be accepted and the proposed order be issued. It is concluded that the complainant's recommendation should be adopted.

ORDER

Effective on the thirtieth day after the date of issuance of this order, (1) the registration of respondent Myles J. Kerrigan as a floor broker is suspended for a period of thirty (30) days, and all contract markets shall refuse all trading privileges to respondent Myles J. Kerrigan during this period, such refusal to apply to all trading done and positions held by him directly or indirectly; (2) the registration of respondent Thompson B. Sanders as a floor broker is suspended for a period of ten (10) days, and all contract markets shall refuse all trading privileges to respondent Thompson B. Sanders during this period, such refusal to apply to all trading done and positions held by him directly or indirectly; (3) the registration of respondent O'Connor Grain Co. as a futures commission merchant is suspended for a period of five (5) days, and all contract markets shall refuse all trading privileges to respondent O'Connor Grain Co. during this period, *Provided, However,* that the aforesaid suspension of the registration of respondent O'Connor Grain Co. and refusal of trading privileges to it shall not become effective unless, after complaint and hearing in accordance with established procedure, respondent O'Connor Grain Co., should be found to have violated the Commodity Exchange Act within one year from the date of entry of this order, in which event the Secretary of Agriculture may, without further notice to respondent O'Connor Grain Co., issue a supplemental order making effective forthwith the aforesaid suspension of its registration and refusal of trading privileges to it.

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

