

Commodity Futures Trading Commission
CEA CASES

NAME: MARVIN SPERLING

CITATION: 31 Agric. Dec. 377

DOCKET NUMBER: 177

DATE: MARCH 6, 1972

DOCUMENT TYPE: DECISION AND ORDER

(No. 14,454)

In re MARVIN SPERLING. CEA Docket No. 177. Decided March 6, 1972.

Misuse of customers' funds -- Denial of trading privileges for 3 years

Respondent is ordered to cease and desist from using customers' funds for unauthorized purposes and is prohibited from trading on all the contract markets for a period of 3 years.

John Broadley for Commodity Exchange Authority.

Respondent *pro se*.

Jack W. Bain, Chief Hearing Examiner.

Decision by Donald A. Campbell, Judicial Officer

DECISION AND ORDER

This is a proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1, 1970 ed.).

The complaint in this case was served on the respondent's attorney, in accordance with a telephone request from the respondent. The respondent's attorney filed an answer, but subsequently advised the complainant that "the respondent herein has informed this firm that he will not retain our services in connection with the above entitled proceeding."

Subsequent documents were served on the respondent by mailing a copy to him at his last known address, by certified or registered mail, but they were returned "Unclaimed," or "Moved, left no address."

The respondent did not appear at the hearing and filed no exceptions to the Hearing Examiner's report. The Hearing Examiner's report was mailed to the respondent at his last known address, by registered mail, but was returned marked "Moved, left no address." The rules of practice provide for various forms of service of documents in connection with disciplinary proceedings, including service "by registering and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office, place of business, or residence" (17 CFR § 0.22(b)).

In view of the foregoing, and after consideration of the entire record, the recommended decision and proposed order of the Hearing Examiner are adopted as the final decision and order herein. The order shall become effective on the 30th day after the date of this order.

A copy of this decision and order shall be served on each contract market, and on the respondent, by sending a copy to him at his last known address, registered mail.

CHIEF HEARING EXAMINER'S RECOMMENDED DECISION AND ORDER

PRELIMINARY STATEMENT

This is a proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1), hereinafter called the Act. It was instituted by a complaint and notice of hearing filed on August 10, 1971, by an Assistant Secretary of Agriculture. The Respondent was charged with converting customers' funds to his own use, in violation of the Act and the regulations thereunder. Respondent filed an answer denying violation of the Act and requesting an oral hearing.

An oral hearing was held in Washington, D.C., on December 1, 1971, before Chief Hearing Examiner Jack W. Bain, Office of Hearing Examiners, United States Department of Agriculture. John Broadley, Office of the General Counsel of the Department, appeared for Complainant. Although duly notified of the time

and place of the hearing, Respondent did not appear, and no evidence was presented on his behalf. Complainant called two witnesses and introduced five exhibits in evidence.

After the hearing, Complainant filed suggested findings of fact, etc., which substantially are proposed below.

PROPOSED FINDINGS OF FACT

1. The Respondent, Marvin Sperling, an individual whose last known address was 12334 Rosseridge, St. Louis, Missouri 63141, was at all times material herein a member of the New York Mercantile Exchange and an employee of Jacobson Commodities, Inc., a registered futures commission merchant under the Commodity Exchange Act.

2. The New York Mercantile Exchange is now and was at all times material herein a duly designated contract market under the Commodity Exchange Act.

3. On or about December 27, 1968, Respondent converted to his own use \$ 600.00, which he had received and accepted from William Dalton to margin, guarantee, and secure transactions in commodities for future delivery to be executed on the New York Mercantile Exchange for Dalton's account, which was carried with Jacobson Commodities, Inc.

4. On or about January 16, 1969, Respondent converted to his own use \$ 600.00 which he had received and accepted from Raymond Geisler to margin, guarantee, and secure transactions in commodities for future delivery to be executed on the New York Mercantile Exchange for an account to be opened in the name of Geisler with Jacobson Commodities, Inc.

5. The aforesaid transactions in commodities for future delivery could have been used for hedging transactions in interstate commerce in such commodities, or for delivering such commodities sold, shipped, or received in interstate commerce.

PROPOSED CONCLUSIONS

The Complainant's suggested findings of fact are plainly established by the evidence. These findings clearly demonstrate that, as charged in the complaint, the Respondent violated sections 4b, 4d and 9 of the Commodity Exchange Act (7 U.S.C. 6b, 6d and 13), and section 1.20 of the regulations made pursuant thereto (17 CFR 1.20). See, e.g., *In re Jack C. Flora*, 29 Agric. Dec. 1015 (29 A.D. 1015)

(1970); *In re Sterling Securities, Inc. et al.*, 28 Agric. Dec. 115 (28 A.D. 115) (1969); *In re Douglas Steen*, 21 Agric. Dec. 1076 (21 A.D. 1076) (1962).

The offenses by the Respondent were deliberate, serious and flagrant. They violated basic provisions of the Commodity Exchange Act designed for the

protection of customers of futures commission merchants. Upon a consideration of all the facts and circumstances of this case, we agree with the testimony of the Director of the Compliance Division of the Commodity Exchange Authority that in order to effectuate the purposes of the Commodity Exchange Act, it is necessary to deny to the Respondent all trading privileges on contract markets for a period of three years and to enter a cease and desist order against him.

PROPOSED ORDER

1. The Respondent, Marvin Sperling, shall cease and desist from (a) converting to his own use or the use of another, any funds received by the Respondent as futures commission merchant or as the employee or agent of a futures commission merchant to margin, secure or guarantee the trades or contracts of any customer of the Respondent or of such other futures commission merchant or accruing to such customer as the result of such trades or contracts, and (b) using any funds held by any futures commission merchant for any customer, as belonging to any person other than the customer for whom such funds are held.

2. The Respondent, Marvin Sperling, is prohibited from trading on or subject to the rules of any contract market for a period of three years, and all contract markets shall refuse all trading privileges to the Respondent during this period, such prohibition and refusal to apply to all trading done and all positions held by the Respondent, directly or indirectly.

The cease and desist provisions of this order 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 2 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 upon each contract market.

LOAD-DATE: June 9, 2008

