

Commodity Futures Trading Commission
CEA CASES

NAME: JULIAN M. MARKS, STUART A. NEWMAN, MARSHALL K. SMITH, IRWIN M. EISEN, AND JAMES S. SCHONBERG

CITATION: 20 Agric. Dec. 457

DOCKET NUMBER: 98

DATE: MAY 1, 1961

DOCUMENT TYPE: DECISION AND ORDER

(No. 7149)

In re JULIAN M. MARKS, STUART A. NEWMAN, MARSHALL K. SMITH, IRWIN M. EISEN, AND JAMES S. SCHONBERG. CEA Docket No. 98. Decided May 1, 1961.

Noncompetitive Transactions -- Denial of Trading Privileges -- Consent Order

Respondent Stuart A. Newman consented to an order requiring all contract markets to refuse all trading privileges to this respondent for 30 days.

Mr. Benj. M. Holstein, for Commodity Exchange Authority. *Mr. Sherwin J. Stone*, of Chicago, Illinois, for respondent Stuart A. Newman.

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 and notice of hearing issued under section 6(b) of the act (7 U.S.C. § 9) on January 13, 1961, by the Assistant Secretary of Agriculture.

The complaint names five respondents and charges them with violating various provisions of the Commodity Exchange Act and the regulations on May 19, 1960, growing out of numerous transactions in wheat futures on the Chicago Board of Trade, on that date. Stuart A. Newman, one of the respondents, is a member of the Chicago Board of Trade and was a registered floor broker at the time of the transactions in question. He is charged with entering into accommodation trades, executing transactions noncompetitively, bucketing orders, taking the opposite side of customers' trades without prior consent, deceiving his principal, causing false records to be entered and false reports to be made concerning the execution of orders, and failing to keep full and complete records of futures transactions, in willful violation of sections 4b, 4c, and 4g of the act, and sections 1.35 and 1.38 of the regulations (7 U.S.C. §§ 6b, 6c, 6g; 17 CFR 1.35, 1.38).

No hearing has been held with respect to any of the respondents. On March 16, 1961, a consent order was issued against respondent James S. Schonberg. On April 21, 1961, respondent Stuart A. Newman withdrew his previous answer and submitted a stipulation under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which he admits the facts hereinafter set forth, waives hearing on the charges, and consents to entry of the order contained herein.

FINDINGS OF FACT

1. Respondent Stuart A. Newman was at all times material herein a registered floor broker under the Commodity Exchange Act and is now and was at all such times a member of the Chicago Board of Trade, a duly designated contract market under the Commodity Exchange Act.

2. The contracts resulting from the execution of the orders for the purchase or sale of wheat futures on the Chicago Board of Trade, hereinafter described, were capable of being used for hedging transactions in interstate commerce in wheat or

the products or by-products thereof, or for determining the price basis of transactions in interstate commerce in wheat, or for delivering wheat sold, shipped, or received in interstate commerce.

3. On May 19, 1960, respondent Stuart A. Newman, as a result of direct and noncompetitive negotiations with respondent Julian M. Marks, purchased for his own account from the said Julian M. Marks 15,000 bushels of May 1960 wheat futures at \$ 2.01 -1/2 per bushel and 10,000 bushels of such future at \$ 2.01 - 1/8 per bushel, and simultaneously sold for his own account the same quantities of the same future at the same prices to the said Julian M. Marks.

4. On May 19, 1960, respondent Stuart A. Newman, as a result of direct and noncompetitive negotiations with respondent Julian M. Marks, purchased for his own account from the said Julian M. Marks 20,000 bushels of May 1960 wheat futures at \$ 1.96-1/2 per bushel and 5,000 bushels of such future at \$ 1.97 per bushel, and simultaneously sold 25,000 bushels of such future for his own account to the said Julian M. Marks at \$ 1.97 per bushel.

5. On May 19, 1960, respondent Stuart A. Newman, having received and accepted from respondent Julian M. Marks orders to sell a total of 40,000 bushels of May 1960 wheat futures for the account of Paine, Webber, Jackson & Curtis, a registered futures commission merchant, thereupon sold 35,000 bushels of such future for the account of the said firm in execution of such orders but did not record such sales on his trading card. Respondent Stuart A. Newman did not execute the remaining 5,000 bushels of the said selling orders but took the purchase side thereof into his own account by making entries on his trading card purporting to show that he had bought 5,000 bushels of such future at \$ 1.93 per bushel from the clearing firm from whom respondent Julian M. Marks had received the said orders.

6. On May 19, 1960, respondent Stuart A. Newman received and accepted from respondent Julian M. Marks an order to buy 5,000 bushels of May 1960 wheat futures for the account of the aforesaid Paine, Webber, Jackson & Curtis. Respondent Newman did not execute the said order but took the sale side thereof into his own account at \$ 2.01 per bushel, and subsequently,

upon complaint by the customer of the said clearing firm, respondent Newman and respondent Marks adjusted the price of the purported transaction to \$ 1.98 per bushel.

CONCLUSIONS

The requirement that orders be executed openly and competitively is inherent in the provisions of the Commodity Exchange Act and is set forth specifically in section 1.38 of the regulations (17 CFR 1.38). This regulation requires that all futures transactions "be executed openly and competitively as to price by open outcry or posting of bids and offers or by other equally open and competitive methods," In the transactions described in Findings of Fact 3 and 4, respondent Newman bought from and simultaneously sold to respondent Marks by means of direct and noncompetitive negotiations with Marks. Newman, therefore, willfully violated the requirement imposed by section 1.38 of the regulations.

In each of these transactions, the purchase by Newman from Marks and the simultaneous sale by Newman to Marks involved the same quantity of the same future. In the transactions described in Finding 3, each purchase by Newman and its corresponding sale by him were at the same prices. In transactions

described in Finding 4, the price was the same with respect to 5,000 bushels, but with respect to the remaining 20,000 bushels Newman's sale to Marks was at one-half cent more than his purchase from Marks. In each of these transactions, Newman was "accommodating" Marks, that is, helping Marks to execute his orders. In some of the transactions, the accommodation was gratis. In the transaction last described, Newman was compensated in the amount of \$ 100 by being given a profit of one-half cent per bushel on 20,000 bushels. This in no wise affects the character of the transaction. Section 4c(A) of the act (7 U.S.C. § 6c(A)), prohibits accommodation trades, and Newman willfully violated this prohibition in all of these transactions.

Respondent Newman failed to record on his trading card the 35,000 bushel sale of May wheat futures which he had made for the account of Paine, Webber, Jackson & Curtis, in fulfillment of its orders to sell 40,000 bushels. He failed to execute the balance of the orders, but instead recorded a nonexistent transaction in which he showed himself as the purchaser of 5,000

bushels sold for the account of this firm at \$ 1.93 per bushel (Finding of Fact 5). He also received an order to buy 5,000 bushels for Paine Webber, which he did not execute but merely took the sale side into his own account at \$ 2.01 per bushel, later adjusted to \$ 1.98 when the customer complained (Finding of Fact 6). By reason of these acts, respondent Newman deceived Paine, Webber, Jackson & Curtis, caused false reports to be made and false records to be entered concerning the orders and transactions of such firm, bucketed its orders, took the opposite side of customers' orders without their prior consent, and failed to keep full and complete records of futures transactions.

Section 4b of the act (7 U.S.C. § 6b) makes it unlawful for any member of a contract market willfully to deceive or attempt to deceive any person with respect to the disposition or execution of such person's orders, or willfully to cause false reports to be made or false records to be entered with respect to such orders, or to bucket such orders, or willfully and knowingly to take the opposite side of such orders without such person's prior consent. Section 4g of the act (7 U.S.C. § 6g)' requires a registered floor broker to keep records of customers' transactions in the form and manner specified by the Secretary. Section 1.35 of the regulations (17 CFR 1.35) sets forth certain details with respect to the keeping of records by members of contract markets and others. It provides, in pertinent part, that "each member of a contract market shall keep full, complete, and systematic records of all commodity futures transactions . . . made by or through him, on or subject to the rules of a board of trade." We conclude that respondent Newman violated all of these requirements by virtue of the transactions described in Findings 5 and 6, and that such violations were knowing and willful.

The complainant states that it has carefully considered the proposed stipulation and order, and it believes that the proposed sanction would be adequate, and that the prompt entry without further proceedings of the order to which respondent Newman has consented would constitute a satisfactory disposition of this case as against the said respondent, serve the public interest, and effectuate the purposes of the act. The complainant, therefore, recommends that the stipulation and waiver submitted by respondent Newman be accepted and that the proposed order be issued. It is so concluded.

ORDER

Effective June 5, 1961, all contract markets shall refuse all trading privileges to Stuart A. Newman for a period of thirty (30) days, such refusal to apply to all trading done and positions held by the said Stuart A. Newman, directly or indirectly.

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

LOAD-DATE: June 8, 2008

