

Commodity Futures Trading Commission
CEA CASES

NAME: MURLAS BROTHERS COMMODITIES, INC., MURLAS BROTHERS COMPANY, GEORGE J. MURLAS, NICHOLAS J. MURLAS, AND HENRY C. GATLIN

CITATION: 17 Agric. Dec. 859

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(No. 5607)

In re MURLAS BROTHERS COMMODITIES, INC., MURLAS BROTHERS COMPANY, GEORGE J. MURLAS, NICHOLAS J. MURLAS, AND HENRY C. GATLIN. CEA Docket No. 78. Decided September 22, 1958.

Manipulation of Prices of Potato Futures -- Suspension of Registrations -- Denial of Trading Privileges -- Consent Order

Respondents admitted the jurisdictional facts and consented to an order suspending the registrations of George J. Murlas and Henry C. Gatlin as floor brokers for 30 days and directing all contract markets to refuse all respondents trading privileges for 30 days.

Mr. Benj. M. Holstein, for Commodity Exchange Authority. *Foley & Foley*, of Chicago, Illinois, for respondents.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C., 1952 ed., Chapter 1), instituted by a

complaint and notice of hearing under section 6(b) of the act (7 U.S.C., 1952 ed., § 9), by the Assistant Secretary of Agriculture on January 27, 1958.

There are five respondents, consisting of two corporations and three individuals who are officers of one or both of the corporations. Respondent Murlas Brothers Commodities, Inc., one of the corporations, is a registered futures commission merchant under the act, and respondents George J. Murlas and Henry C. Gatlin are registered floor brokers. A more detailed description of the respondents and their relationship to each other appears in the findings of fact.

The complaint (paragraph VIII) charges that the respondents, acting pursuant to an agreement or understanding among themselves and between themselves and two customers n1 of respondent Murlas Brothers Commodities, Inc., attempted to manipulate prices of potato futures on the New York Mercantile Exchange.

n1 The customers are not respondents.

The charges are based upon allegations that during the period from April 16 through May 3, 1957, respondents Murlas Brothers Commodities, Inc., Murlas Brothers Company, and Henry C. Gatlin held short positions in May 1957 potato futures on the New York Mercantile Exchange which ranged from 160 to 200 carlots in the aggregate (Complaint, paragraph VI); that during the same period the two customers in question held short positions in the same futures ranging from 104

to 144 carlots, and 35 to 125 carlots, respectively (Complaint, paragraph VI); that on May 2 and May 3, 1957, the respondents delivered a total of 42 carlots of potatoes for the accounts of themselves and their customers in satisfaction of such short futures positions (Complaint, paragraph VII); that the said 42 carlots had been purchased by respondent Henry C. Gatlin for delivery purposes shortly prior to their delivery (Complaint, paragraph VII); and that the respondents acted for the purpose and with the intent of depressing the price of the May 1957 potato future on the New York Mercantile Exchange (Complaint, paragraph VIII).

The respondents filed a joint answer denying the charges, and at a session of the hearing in Chicago on May 21 and May 22, 1958, the complainant completed the presentation of its evidence, after which the hearing was recessed. Resumption of

the hearing has been postponed by the referee until after October 1.

The respondents have now filed a joint stipulation in which they withdraw their answer, admit the facts hereinafter set forth, waive further proceedings in the matter including further hearing or issuance of a referee's report, and consent to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondent Murlas Brothers Company, a corporation organized and existing under the laws of the State of Illinois, is engaged in the business of shipping and distributing carlots of produce. At all times material herein it owned 100 percent of the capital stock of respondent Murlas Brothers Commodities, Inc.

Respondent Murlas Brothers Commodities, Inc., a corporation organized and existing under the laws of the State of Illinois, was at all times material herein, and is now a clearing member of the New York Mercantile Exchange, and a registered futures commission merchant under the Commodity Exchange Act.

The principal office and place of business of each of the foregoing corporations is 110 North Franklin Street, Chicago, Illinois, and trading in futures for both corporations is controlled by respondents George J. Murlas and Nicholas J. Murlas.

2. Respondent George J. Murlas, whose address is 6634 North Minnehaha Avenue, Lincolnwood, Illinois, was at all times material herein president of Murlas Brothers Commodities, Inc., secretary of Murlas Brothers Company, and a registered floor broker under the Commodity Exchange Act.

3. Respondent Nicholas J. Murlas, whose address is 6630 North Minnehaha Avenue, Lincolnwood, Illinois, was at all times material herein president and treasurer of Murlas Brothers Company, vice president of Murlas Brothers Commodities, Inc., and a member of the New York Mercantile Exchange.

4. Respondent Henry C. Gatlin, an individual, whose address is 1102 South Seminary Avenue, Park Ridge, Illinois, was at all times material herein the secretary-treasurer of Murlas Brothers Commodities, Inc., a member of the New York Mercantile Exchange, and a registered floor broker under the Commodity Exchange Act.

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

6. During the period April 16 through May 1, 1957, Murlas Brothers Commodities, Inc., Murlas Brothers Company, and Henry C. Gatlin, traded and held positions in potato futures on the New York Mercantile Exchange, and during the said period, Vincent W. Kosuga and Roy D. Simmons, customers of Murlas Brothers Commodities, Inc., traded and held positions in potato futures on the New York Mercantile Exchange through Murlas Brothers Commodities, Inc.

7. The trades in potato futures on behalf of respondents Murlas Brothers Commodities, Inc., and Murlas Brothers Company, described above, were carried out by or under the direction and supervision of George J. Murlas, Nicholas J. Murlas, and Henry C. Gatlin, acting in their respective capacities as officers or agents of Murlas Brothers Commodities, Inc., and Murlas Brothers Company.

CONCLUSIONS

The rules of practice under the Commodity Exchange Act provide that the Secretary, in his discretion, may allow a respondent to consent to an order at any time prior to hearing, provided the respondent submits for filing in the record "a stipulation or statement in which he admits at least those facts necessary to the Secretary's jurisdiction and agrees that an order may be entered against him" (17 CFR 0.4(b)). The rules make no provision for a consent order after the hearing has begun. However, the mere absence of a specific provision in the rules of practice should not be construed as a prohibition. Since the parties have reached an agreement which appears to be reasonable, they should be permitted to terminate the proceeding on that basis. If the admission of such facts as are necessary to the Secretary's jurisdiction will justify a consent order prior to hearing, it would seem that the admission of similar facts after the hearing has commenced should have the same effect.

The facts admitted by the respondents in their stipulation have been adopted as the findings of fact in this proceeding. Such facts are sufficient to subject the respondents and each of them to the jurisdiction of the Secretary of Agriculture.

The complainant has filed a recommendation which recites that it has carefully considered the stipulation and waiver submitted by the respondents and the terms of the order to which they propose to consent. It is the opinion of the complainant that the proposed sanctions would be adequate, and that the prompt entry of such an order without further hearing or proceedings of any kind would constitute a satisfactory disposition of this matter, serve the public interest, and effectuate the purposes of the Commodity Exchange Act. The complainant, therefore, recommends that the stipulation and waiver be accepted, that the hearing be declared closed, and that the proposed order be issued terminating this proceeding. It is so concluded.

ORDER

Effective sixty (60) days from the date of entry of this order, the registrations of George J. Murlas and Henry C. Gatlin as floor brokers are suspended for a period of thirty (30) days.

Effective sixty (60) days after the date of entry of this order, all contract markets are hereby directed to refuse all trading privileges to Murlas Brothers Commodities, Inc., Murlas Brothers Company, George J. Murlas, Nicholas J. Murlas, and Henry C. Gatlin, for a period of thirty (30) days, PROVIDED, that the refusal of trading privileges to Murlas Brothers Commodities, Inc., shall not be construed to prohibit Murlas Brothers Commodities, Inc., from trading for the accounts of customers and carrying positions for the accounts of customers.

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

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