

Commodity Futures Trading Commission
CEA CASES

NAME: M. RICHTER SONS, ISADORE RICHTER AND FRED RICHTER

CITATION: 8 Agric. Dec. 872

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(A. D. 2180)

In re M. RICHTER SONS, ISADORE RICHTER AND FRED RICHTER. CEA Doc. No. 51.
Decided August 8, 1949.

**Disciplinary Proceeding -- Violation of Act -- Futures Commission Merchant --
Denial of Trading Privileges on Contract Markets -- Consent Order**

Where respondents were charged in the complaint with violations of the act by failing to maintain written records showing the true parties to a futures contract, commingling customers' funds with their own funds, and reporting customers' transactions and positions as belonging to respondent partnership, and where respondents consented to the issuance of an order, based upon such charges, imposing sanctions, it is held, that the violations in question warrant suspension of the registration of M. Richter Sons as a futures commission merchant for a period of 15 days, and a concurrent denial of trading privileges on contract markets to all the respondents for a like period, these periods to begin to run within 5 days after issuance of this order. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Violation of Act and Regulations Thereunder -- Failure to Indicate True Parties on Books and Records

Failure of a futures commission merchant to indicate the true parties to a futures contract on his books and records constitutes a violation of the act and regulations thereunder as shown herein. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Violation of Act -- Commingling of Customer's Funds With Funds of Futures Commission Merchant

Permitting customer's profits to remain in the firm's account with the clearing house constitutes a commingling of the firm's funds with those of the customer and a failure to treat and deal with the latter's money as required by the section of the act as indicated herein. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Violation of Act and Regulations Thereunder -- Making False Reports

The acts of respondents in reporting the trades of A. F. as their own necessarily constitute false reports with respect to their own transactions and positions, as well as a failure to report correctly with respect to the transactions and positions of a customer, in violation of the section of the act and the sections of the rules and regulations thereunder as indicated herein. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Violation of Act -- Failure to Observe Obligations Imposed by Act Upon Respondents as Traders and as Futures Commission Merchants

Since the evidence disclosed in the record shows that respondents violated the obligations imposed upon them as traders, as well as those which they were required to observe in their capacities as futures commission merchants, a suspension of respondents' registration as futures commission merchants and a denial of their trading privileges are warranted. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Mr. Benj. M. Holstein for complainant. Mr. Lee A. Freeman, of Chicago, Illinois, for respondents.

Decision by Thomas J. Flavin, Judicial Officer

DECISION AND ORDER

This is a disciplinary proceeding under the Commodity Exchange Act (7 U. S. C., Chapter 1), initiated by a complaint issued by the Secretary of Agriculture on July 21, 1949, charging the respondents with failure to maintain written records showing the true parties to a futures contract, commingling customers' funds with their own funds, and reporting customers' transactions and positions as belonging to the respondent partnership. The complaint alleged that trades executed by the respondents for the account of a customer were entered and shown on the books of the firm as transactions for the account of the respondent partnership, that profits accruing to the customer as a result of these trades were caused to be carried on the books of the clearing house as funds belonging to the respondents, and that, on four separate occasions, the respondents reported such transactions and positions to the Commodity Exchange Authority as having been made for the account of the respondent partnership.

Service of the complaint was made on July 25, 1949. The hearing date set forth in the complaint was August 19, 1949. On August 2

and 3, 1949, respectively, the respondents, by their attorney, filed an original and amended "Waiver of Hearing and Consent to Entry of Order." The amended waiver and consent recites that the respondents "hereby waive the filing of an answer, waive the right to hearings in the above proceeding and consent to the issuance of an order, based upon the allegations of the complaint, imposing sanctions in the form of the suspension of the registration of M. Richter Sons as a futures commission merchant for a period of not more than fifteen days and suspension of the respondents from all trading privileges for a period of not more than fifteen days, provided, that these sanctions are imposed within five (5) days of the date of the Secretary's order imposing such sanctions." The document further recites that in the event the Secretary or the Judicial Officer shall be unwilling to enter such an order, the waiver and consent shall be considered withdrawn.

Section 0.4 (b) of the rules of practice (17 CFR, Cum. Supp., 0.4 (b)) specifies that, prior to the hearing in any proceeding the Secretary may, in his

discretion, allow a respondent to consent to an order, provided that 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. The waiver executed by these respondents stipulates that they waive hearing and consent to the issuance of an order "based upon the allegations of the complaint" and subject to the conditions specified. Since the respondents have thus admitted the facts charged in the complaint, a hearing is unnecessary.

Through its attorney, the Commodity Exchange Authority filed suggested findings of fact, etc., and recommended that the order consented to by respondents be entered. This decision and order adopt the order consented to since we do not see any reason for not doing so.

FINDINGS OF FACT

1. M. Richter Sons is a partnership composed of Isadore Richter and Fred Richter, with its principal place of business located at 1114-1116 West Fulton Market, Chicago, Illinois. The said partnership was at all times material to these findings and is now registered as a futures commission merchant under the Commodity Exchange Act. Isadore Richter was at all times material to these findings a member of the Chicago Mercantile Exchange, a duly designated contract market under the Commodity Exchange Act, and the said partnership had membership trading privileges on the Chicago Mercantile Exchange at all such times.

2. On June 3, June 6, June 8 and June 10, 1949, pursuant to orders given by one Albert Feldstein, a customer of the respondent partnership,

the respondents purchased October 1949 egg futures on the Chicago Mercantile Exchange in the aggregate amount of 72 carlots. On June 9 and June 10, 1949, pursuant to orders given by the said Albert Feldstein, the respondents sold October 1949 egg futures on the Chicago Mercantile Exchange in the aggregate amount of 72 carlots. The aforesaid purchases and sales were for the account and risk of the said Albert Feldstein, but were entered and shown on the books and records of the respondent partnership as having been made for the account of M. Richter Sons, with nothing to indicate that the said Albert Feldstein had any interest in the said purchases or sales.

3. The respondent partnership received no money, securities or property from the said Albert Feldstein to margin, guarantee or secure the purchases and sales described in paragraph 2 above, but deposited its own funds with the clearing house of the Chicago Mercantile Exchange for that purpose, and used its own funds to settle the said transactions. Profits accruing to the said Albert Feldstein as a result of the said transactions were caused by the respondents to be shown on the books of the clearing house of the Chicago Mercantile Exchange as funds belonging to M. Richter Sons.

4. On June 6, 1949, as the result of the purchase of 14 carlots of October 1949 egg futures on the Chicago Mercantile Exchange by the respondent partnership, which purchase was in truth and in fact for the account and risk of the said Albert Feldstein, the net long position in October 1949 egg futures on the Chicago Mercantile Exchange carried by the respondents for the said Albert Feldstein reached a quantity in excess of 25 carlots and remained in excess of 25 carlots until June 10, 1949. On June 10, 1949, as the result of the sale of 42 carlots of October 1949 egg futures on the Chicago Mercantile Exchange by the respondent partnership, which sales were in truth and in fact for the account and risk of the said Albert Feldstein, the net long position in October 1949 egg futures on the Chicago Mercantile Exchange carried by the respondent partnership in its own name but actually for the account of the said Albert Feldstein was entirely liquidated. On June 8, June 9 and June 10, 1949, on each of which dates the long position in October 1949 egg futures carried by the respondents for the account of the said Albert Feldstein was in excess of 25 carlots as above described, additional purchases and sales of October 1949 egg futures were executed on the Chicago Mercantile Exchange by the respondent partnership for

the account of the said Albert Feldstein. On June 6, June 8, June 9 and June 10, 1949, the aforesaid purchases and sales and the open contracts resulting therefrom were reported to the Commodity Exchange Authority by the respondents as having been made for the account of M. Richter Sons whereas, in truth and in fact, the

said purchases and sales were made for the account of the said Albert Feldstein.

5. The transactions in commodity futures described in paragraphs 2, 3 and 4 were capable of being used for hedging transactions in interstate commerce in eggs or the products or by-products thereof, or for determining the price basis of transactions in interstate commerce in eggs, or for delivering eggs sold, shipped or received in interstate commerce.

CONCLUSIONS

Section 4 of the act declares it to be unlawful for any person to make or execute a contract of sale of any commodity for future delivery on or subject to the rules of any board of trade unless such contract is evidenced by a record in writing which shows, among other things, the parties to the contract. Section 1.37 of the rules and regulations (17 CFR 1.37) requires each futures commission merchant to "keep a record in permanent form which shall show for each commodity futures account carried by him the true name and address of the person for whom such account is carried * * *." The respondents made entries in their books which showed a customer's trades as trades belonging to the firm. The failure of a futures commission merchant to indicate the true parties to a futures contract on his books and records constitutes a violation of the above provisions. *In re Irving Weis & Company et al.*, 7 Agric. Dec. 180 (7 A. D. 180); *Irving Weis & Company et al. v. Charles F. Brannan*, 171 F. (2d) 232 (C. C. A. 2nd, 1948).

Section 4d (2) declares it to be unlawful for any futures commission merchant to solicit or accept orders for futures contracts to be made on a contract market unless he treats and deals with all funds accruing to a customer as funds belong to such customer, and prohibits the commingling of such funds with funds of the futures commission merchant. Since the trades in question were actually for the account of Albert Feldstein, the profits which accrued necessarily belonged to him. Permitting such profits to remain in the firm's account with the clearing house constituted a commingling of the firm's funds with those of Albert Feldstein, and a failure to treat and deal with the latter's money as required by section 4d (2).

Section 4i declares it to be unlawful for any person to make or execute futures contracts on or subject to the rules of a contract market unless he shall report, in accordance with the rules and regulations of the Secretary, whenever contracts made by him with respect to any commodity or future during any one day equal or exceed such amount as may be fixed by the Secretary, or whenever his long or short position in any commodity or future equals or exceeds an amount fixed by the

Secretary. Sections 5.04, 5.05, 5.06, 5.07, 5.20 of the rules and regulations (17 CFR, 5.04, 5.05, 5.06, 5.07, 5.20), in effect, require each futures commission merchant to report to the Commodity Exchange Authority whenever any account carried by him for a customer shows open contracts in any one egg future equal to or in excess of 25 carlots. Sections 5.10, 5.11, 5.12 and 5.21 of the rules and regulations (17 CFR, 5.10, 5.11, 5.12, 5.21) require each trader to furnish similar information with respect to his own account. The acts of the respondents in reporting the trades of Albert Feldstein as their own necessarily constituted false reports with respect to their own transactions and positions, as well as a failure to report correctly with respect to the transactions and positions of a customer. Such acts were, therefore, in violation of section 4i of the act and the above cited sections of the rules and regulations.

Section 4g of the act provides for suspension of the registration of any futures commission merchant who violates any provision of the act or who fails or refuses to keep books and records pertaining to futures transactions in the form and manner required by the Secretary. The respondents violated the obligations imposed upon them as traders, as well as those which they were required to observe in their capacity as futures commission merchants. We are of the opinion that the violations in question warrant suspension of the registration of M. Richter Sons as a futures commission merchant for a period of fifteen days, and a concurrent denial of trading privileges on contract markets to all the respondents for a like period. It is recommended that these periods begin to run within five days after issuance of the order.

ORDER

Effective on the fifth day after the date of this order, the registration of M. Richter Sons as a futures commission merchant is suspended for a period of fifteen (15) days.

Effective on the fifth day after the date of this order, all contract markets shall refuse all trading privileges thereon to M. Richter Sons, Isadore Richter and Fred Richter for a period of fifteen (15) days.

A copy of this decision and order shall be sent by registered mail to each respondent and to each contract market under the act.

LOAD-DATE: March 12, 2008

