

Commodity Futures Trading Commission
CEA CASES

NAME: IRWIN M. EISEN

CITATION: 22 Agric. Dec. 758

DOCKET NUMBER: 106

DATE: JULY 16, 1963

DOCUMENT TYPE: DECISION AND ORDER

(No. 8515)

In re IRWIN M. EISEN. CEA Docket No. 106. Decided July 16, 1963.

**Wash Sale -- Suspension of Registration -- Denial of Trading Privileges --
Consent Order**

Respondent's registration as a floor broker is suspended for 10 days and all

contract markets are ordered to refuse all trading privileges to respondent for a period of ten days.

Mr. Earl L. Saunders, for Commodity Exchange Authority. *Mr. Harold A. Fein*, of Chicago, Illinois, for respondent.

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.*), hereinafter referred to as the act, instituted by a complaint and notice of hearing issued under § 6(b) of the act (7 U.S.C. § 9) by the Assistant Secretary of Agriculture. The respondent, a registered floor broker under the act and a member of the Board of Trade of the City of Chicago, is charged with entering into a transaction which is, or is of the character of, a "wash sale" and an "accommodation trade," in violation of § 4c(A) of the act (7 U.S.C. § 6c(A)).

No hearing has been held with respect to this proceeding. The respondent has submitted a stipulation under § 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 the entry of the order contained herein.

FINDINGS OF FACT

1. The respondent, Irwin M. Eisen, an individual, whose address is Room 1214, Chicago Board of Trade, 141 West Jackson Boulevard, Chicago 4, Illinois, is now and was at all times material to the complaint a registered floor broker under the act and a member of the Board of Trade of the City of Chicago, hereinafter referred to as the Chicago Board of Trade.

2. The Chicago Board of Trade is now and was at all times material to the complaint a duly designated contract market under the act.

3. The contracts resulting from the transaction 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.

4. On December 14, 1961, Mr. Albert W. Kibby, Exchange

Supervisor in charge of the Chicago office of the Commodity Exchange Authority, at the request of the respondent, witnessed a transaction by the respondent in the wheat pit of the Chicago Board of Trade with a floor broker. The floor broker was offering to buy and sell the December 1961 wheat future at \$ 2.03 7/8. The respondent entered into a transaction with the floor broker in which the respondent simultaneously bought and sold for his own account five thousand bushels of the future at \$ 2.03 7/8. This enabled the floor broker's buying customer to buy from his selling customer.

CONCLUSIONS

Section 4c of the act (7 U.S.C. § 6c) makes it unlawful for any person to enter into any transaction "(A) if such transaction is, is of the character of, or is commonly known to the trade as, a 'wash sale' . . . or 'accommodation trade' . . ." The facts admitted by the respondent show that he entered into a transaction with another floor broker in which the respondent, for his own account, purchased 5000 bushels of the December 1961 wheat future from the broker at \$ 2.03 7/8 per bushel, and simultaneously sold the same quantity of the same future at the same price to the broker, and that this enabled the broker's buying customer to buy from his selling customer. It is clear from these facts that the respondent's purchase and sale canceled each other or "washed" each other out. Such a transaction which gives the appearance of being a purchase and sale but which avoids any actual change of ownership is a "wash sale" within the meaning of § 4c(A) of the act. Since such "wash sale" had the effect of enabling the opposite broker's buying customer to buy from his selling customer, it is of the character of an accommodation trade within the meaning of § 4c(A) of the act. It is concluded, therefore, that the respondent violated the act as charged in the complaint.

The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the proposed stipulation and order, and that they believe that the proposed sanctions are adequate and that the entry, without further proceedings, of the order to which the respondent has consented will constitute a satisfactory disposition of this case, serve the public interest, and effectuate the purposes of the act. The complainant, therefore, recommends that the stipulation and

waiver submitted by the respondent be accepted and that the proposed order be issued. It is so concluded.

ORDER

Effective October 14, 1963, the registration of the respondent, Irwin M. Eisen, as a floor broker under the act is suspended for a period of ten days, and effective on the same date all contract markets shall refuse all trading privileges to the respondent for a period of ten days, such refusal to apply to all trading done and all positions held by the respondent directly or indirectly.

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

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