

Commodity Futures Trading Commission
CEA CASES

NAME: SECRETARY OF AGRICULTURE V. ORVILLE K. RICHARDS AND HENRY J. NOVOTNY

DOCKET NUMBER: 24

DATE: FEBRUARY 28, 1941

DOCUMENT TYPE: DECISION AND ORDER

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

CE-A Docket No. 24

Secretary of Agriculture, Complainant, v. Orville K. Richards and Henry J. Novotny, Respondents,

Proceedings, Findings of Fact, Conclusions, and Order.

PROCEEDINGS

On November 5, 1940, complaint was issued by the Under Secretary of Agriculture, pursuant to the provisions of the Commodity Exchange Act (7 U. S. C. and Supp. V, §§ 1-17a), against Orville K. Richards and Henry J. Novotny, the respondents, partners trading as O. K. Richards and Company, at Chicago. It was alleged that the partnership and Richards were registered as futures commission merchants; that the respondents, members of the Chicago Open Board of Trade, a contract market, engaged as futures commission

merchants without segregating their customers' funds, as required; and that they kept inaccurate and false records. Notice was given that a hearing would be held in Chicago on November 19, 1940. The complaint was served on both respondents by registered mail on November 7, 1940.

The hearing was held at the appointed time and place before Jack W. Bain, the referee designated by the Under Secretary. Charles W. Bucy, Office of the Solicitor, Department of Agriculture, appeared for the Government, and the respondents appeared in person, not represented by counsel. Judicial notice was taken that the Chicago Open Board of Trade was a contract market. The applications for registration of the partnership for 1939 and 1940, showing that the partnership was dissolved August 24, 1940, and the application for registration of Orville K. Richards, filed August 26, 1940, were received in evidence. Both respondents said they were members of the Chicago Open Board of Trade during the time covered by the complaint.

Irving Wool, called as a witness by the Government, testified that he, a futures commission merchant, carried a grain futures account for Dr. Karpas with O. K. Richards and Company. On August 6, 1940, Mr. Novotny said he had taken money from the Karpas account and put it into general funds of the company, and asked the witness to sign a receipt for \$ 495.50. The witness signed the receipt, but received no money.

Meyer Levine, called as a witness by the Government, testified that he had a grain commission account with O. K. Richards and Company from January 2 to August 21, 1940. He did not trade in grain futures in it, nor authorize anyone else to do so. Grain futures trades are charged to the account, as shown on Government's Exhibit No. 4, but were not made by him nor on his order. On August 19, Mr. Novotny phoned the witness and asked for a check for \$ 300 to cover a deficit in the account. He consulted officials of the Chicago Open

Board of Trade, who advised him not to exchange a check for cash. On the next morning, he went to see Mr. Novotny, who gave him \$ 300 in cash, which he, the witness, laid on the cashier's desk, saying nothing. These were the circumstances under which the deposit of \$ 300 in the account of the witness was made.

Albert W. Kibby, called as a witness by the Government, testified that, as an auditor for the Commodity Exchange Administration, he had examined the records of O. K. Richards and Company. He identified and explained the various parts of his report of this examination which were introduced in evidence. The Karpas account and the petty cash account recorded a currency withdrawal of \$ 495.50 on August 5, and deposit of a like amount on August 15. The Levine account showed a deposit of \$ 300 on August 21, and trades in wheat futures on the Chicago Open Board of Trade, which

the witness said were Mr. Novotny's trades. On August 7, \$ 21,391.82 should have been segregated as customers' funds, but there was only \$ 20,302.85 in bank account and with the clearing house for such purpose, leaving a shortage of \$ 1,088.97. This shortage would have been \$ 495.50 greater if the Karpas account had not shown a withdrawal of that amount for the customer on August 5. August 24 was the last day of business for the company. Customers' accounts were either closed or transferred to other houses. After partnership furniture was sold and all customers paid, a balance of \$ 144.64 remained.

The respondents called no witnesses. Mr. Richards made a statement for the record, in which he said that, when the partnership of O. K. Richards and Company was formed, it was agreed that he would be responsible for floor trading and Mr. Novotny for the office and book work, and if either partner traded for his own account, he would margin and be responsible for his own trades. Mr. Novotny agreed that this was correct. Mr. Richards stated that he was perhaps careless in not examining the books, but he relied on Mr. Novotny; that for years he had begun his vacation on the first Friday in August, and, in 1940, he left August 2 and was away until August 21, not hearing from his partner during the whole time; and that, in 45 years as a member of the exchange, he had never been brought to court over a trade and still had a good

record along the street. In a letter submitted and made a part of the record after the hearing, he said he did not know of the Levine, Wool, and Karpas transactions, nor of the company's under-segregation, until his return from his vacation on August 21, and that all customers and bills had been paid in full.

Copies of the referee's report, containing proposed findings of fact and conclusions and a recommended order, were sent to Government counsel and to the Commodity Exchange Administration, and served by registered mail upon the respondents, and they were given 20 days in which to file exceptions and request oral argument before the Secretary. The time has elapsed. No exceptions or requests for argument have been filed, and Mr. Richards wrote that he does not care to file exceptions or have oral argument.

FINDINGS OF FACT

1. Orville K. Richards and Henry J. Novotny, the respondents, members of the Chicago Open Board of Trade, a contract market, as partners in the firm of O. K. Richards and Company, engaged as futures commission merchants in Chicago, Illinois, from December 28, 1939, until August 24, 1940, and registered with the Secretary of Agriculture, as futures commission merchants, for the year 1940. On August 26, 1940, Orville K. Richards registered with

the Secretary of Agriculture, as a futures commission merchant, for the year 1940.

2. The respondents failed to account separately for funds received from and accruing to their customers in connection with futures contracts on the Chicago Open Board of Trade, a contract market, in commodities named in the Commodity Exchange Act, in that on August 7, 1940, they should have had more than \$ 21,800 segregated for customers, but they had only \$ 20,302.85 so segregated, leaving a shortage of more than \$ 1,400.

3. About August 6, 1940, Henry J. Novotny transferred \$ 495.50 from the segregated customers' funds to the general funds of O. K. Richards and Company. By obtaining a false receipt for \$ 495.50 from the agent of a customer, he caused the records to show that this amount was withdrawn by a customer, when such was not the case.

4. Between January 2 and August 21, 1940, Henry J. Novotny carried his own trades in Chicago Open Board of Trade wheat futures in the account of Meyer Levine, with the result that the records kept of those trades were not full and complete.

5. Orville K. Richards was away from Chicago on his vacation from August 2 to August 21, 1940, He did not communicate with Henry J. Novotny between those two dates. The partnership

of the respondents was terminated on August 24, 1940. All customers of the partnership were paid their claims in full.

CONCLUSIONS

The evidence shows that the respondents failed to segregate their customers' funds and kept records which contained false and misleading entries, contrary to the requirements of the Commodity Exchange Act and the rules and regulations thereunder. These violations, for which both partners are responsible under the act, authorize revocation of registration and denial of trading privileges of each of the respondents. Since it appears, however, that all the irregularities occurred in that phase of the business over which, by agreement, Henry J. Novotny had assumed responsibility, and that Orville K. Richards did not actually know of them until later, it is concluded that the trading privileges of Novotny should be denied until further notice, but those of Richards need only be suspended for a nominal period. The registrations for 1940 having expired, they need not be suspended nor revoked.

ORDER

IT IS ORDERED that all contract markets refuse Orville K. Richards all trading privileges thereon for a period of one day, the 20th day after the date of this order.

IT IS FURTHER ORDERED that all contract markets refuse Henry J. Novotny all trading privileges thereon until further notice by the Secretary of Agriculture.

IT IS FURTHER ORDERED that a copy hereof be sent, by registered mail, to each of the respondents, and to each contract market, and that this order shall be effective 10 days after its date.

(SEAL)

Done at Washington, D. C., this 28th day of February 1941. Witness my hand and the seal of the Department of Agriculture.

/s/ Grover B. Hill

Assistant Secretary of Agriculture.

