

Commodity Futures Trading Commission
CEA CASES

NAME: BERKSHIRE FOODS, INC., HAROLD W. FOX, AND EARL E. BARNES

DOCKET NUMBER: 91

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re: Berkshire Foods, Inc., Harold W. Fox, and Earl E. Barnes Respondents
CEA Docket No. 91

Complaint and Notice of Hearing Under the Commodity Exchange Act

There is reason to believe that the respondents, Berkshire Foods Inc., Harold W. Fox, and Earl E. Barnes, attempted to manipulate and did manipulate the price of a commodity in interstate commerce and for future delivery on a board of trade, in violation of the Commodity Exchange Act (7 U.S.C., 1958 ed., §§ 9, 13), and in accordance with the provisions of section 6(b) of the said act (7 U.S.C., 1958 ed., § 9), this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

Respondent Berkshire Foods, Inc., an Illinois corporation with offices and a place of business at 4600 South Packers Avenue, Chicago 9, Illinois, hereinafter called Berkshire, is now and has been at all times material to this complaint a clearing member of the Chicago Mercantile Exchange and a registered futures commission merchant under the Commodity Exchange Act.

II

Respondent Harold W. Fox, an individual whose address is 7318 Ridge Avenue, Chicago, Illinois, is now and was at all times material to this complaint a vice-president of the respondent corporation, a member of the Chicago Mercantile Exchange, and a registered floor broker under the Commodity Exchange Act.

III

Respondent Earl E. Barnes, an individual whose address is 403 Gas and Oil Building, Oklahoma City, Oklahoma, is now and was at all times material to this complaint an associate broker for the respondent corporation and, in such capacity, solicited and accepted orders from customers for the purchase and sale of eggs for future delivery and forwarded such orders to respondent Berkshire for execution on the Chicago Mercantile Exchange.

IV

The customer transactions hereinafter described were carried out under the direction and supervision and by means of the acts of respondents Harold W. Fox and Earl E. Barnes in their capacities as officer and agent, respectively, of respondent Berkshire, and

the transactions for the house account of respondent Berkshire were initiated and carried out under the management, direction and control of respondent Harold W. Fox.

V

The Chicago Mercantile Exchange is now and was at all times material to this complaint a duly designated contract market under the Commodity Exchange Act.

VI

During November 1958, respondent Berkshire, in its capacity as a registered futures commission merchant, carried commodity futures accounts for approximately 33 customers who traded and held positions in November 1958 egg futures on the Chicago Mercantile Exchange. Such accounts included the account of respondent Barnes, the accounts of approximately 22 persons or firms who were customers of respondent Barnes, hereinafter called Barnes customers, and the accounts of approximately five persons or firms who were customers of respondent Fox. During November 1958, respondent Berkshire also traded in November 1958 egg futures on the Chicago Mercantile Exchange for its own or house account.

VII

Beginning November 10, 1958, and continuing thereafter until November 18, 1958, respondent Barnes and his customers purchased substantial quantities of November 1958 egg futures on the Chicago Mercantile Exchange through respondent Berkshire. In the course of such purchases, all short positions in the accounts of respondent Barnes and his customers were covered, and long positions were established and held for such accounts and for the accounts of other Barnes customers who, at the beginning of trading on November 10, held no position in the November 1958 egg future through respondent Berkshire. During this period, neither respondent Barnes nor any of the Barnes customers held a short position in such future. During the said period, other customers of the respondent corporation, including customers of respondent Fox, purchased November 1958 egg futures through the said firm and established or increased long positions in such future. On November 13, 1958, respondent Fox began to purchase November 1958 egg futures for the house account of respondent Berkshire, and such purchases were continued during the next two trading days until the house account reached a maximum position of 58 carlots long on November 17, 1958, which position was held through November 20, the last day for trading in the November future. During the four trading days prior to November 20, the quantity of

November 1958 egg futures held by respondent Berkshire on behalf of itself and its customers was about two and one-half times as large as total stocks of shell eggs in Chicago warehouses.

VIII

Beginning on November 12 and continuing through November 17, 1958, numerous other traders, who were related directly or indirectly to respondent Harold W. Fox and who had accounts with a registered futures commission merchant other than respondent Berkshire, entered the futures market, made substantial purchases of November 1958 egg futures on the Chicago Mercantile Exchange, and established or increased long positions in the future which were liquidated during the last two trading days at increased prices.

IX

As a result of the purchases described in paragraph VII, the long open contract position of respondent Berkshire in the November 1958 egg future for itself and its customers, including respondent Barnes, increased from 16 carlots prior to the opening of trading on November 10, 1958, to 424 carlots at the close of trading on November 16, 1958, or from less than one percent to about 43.5 percent of the total open interest in the future. During the same period,

the short open contract position of respondent Berkshire in such future for all accounts decreased from 26 carlots to zero. Between November 11 and November 20, the price of the November 1958 egg future increased by about four cents. During the last two trading days, November 19 and November 20, 1958, respondent Berkshire sold for liquidation approximately 290 carlots of futures at such increased prices and received 44 carlots of eggs on delivery, closing out all long positions in the November future on its books other than those in its house account, the account of respondent Barnes, and the account of a customer of respondent Barnes, and after the termination of trading on November 20, the long open contract position of the respondent corporation in such future was 90 carlots, held for the three accounts described above, or about 78 percent of the remaining open interest. The said 90 carlots were thereafter satisfied by the delivery and receipt of cash eggs. Out of a total of 125 carlots of final deliveries received during November in satisfaction of November 1958 egg futures on the Chicago Mercantile Exchange, respondent Berkshire received 101 carlots.

X

Eggs received on delivery by respondent Berkshire in connection with the transactions described in paragraph IX were thereupon sold

to other traders who held short positions in the future and who required such eggs for delivery against such positions. In making such sales, respondent Berkshire demanded and received prices in excess of the true market value of such eggs. Other eggs received on delivery in connection with the above-described transactions were disposed of by redelivery against short November futures positions, by sales of December 1958 futures and deliveries in December 1958 against such sales, or by sales as cash eggs in merchandising channels during December 1958. Such deliveries against short December futures positions and such sales in merchandising channels were made at a loss.

XI

The respondents carried out the transactions described above for the purpose and with the intent of raising the prices of November 1958 egg futures and deliverable cash eggs in Chicago by means of a squeeze, which was intended to be and was in fact brought about by developing a concentrated position in the November 1958 egg future near the close of trading in the future sufficient to constitute a substantial part of the open interest in such future and to exceed supplies of refrigerator eggs available for delivery in satisfaction thereof. The respondents acted with the intent and expectation that their customers would be influenced by the respondents' example, suggestions, advice

and recommendations, and would follow the respondents lead in the hope of profiting financially, and such customers were in fact so influenced and did in fact follow the respondents' lead. The respondents further intended and expected that certain other traders in egg futures who were related to respondent Harold W. Fox would be similarly influenced to enter the market on the long side, and such other traders were in fact so influenced, thus aiding in the consummation of the squeeze.

XII

The acts of the respondents brought about a squeeze and caused prices of the November 1958 egg future on the Chicago Mercantile Exchange and prices of cash eggs in Chicago to be at artificial and manipulated levels during November 1958. By reason thereof, the respondents attempted to and did in fact manipulate the price of eggs in interstate commerce and for future delivery on or subject to the rules of a board of trade, in wilful violation of sections 6(b) and 9 of the Commodity Exchange Act (7 U.S.C., 1958 ed., §§ 9, 13).

Wherefore, it is hereby ordered that this complaint and notice of hearing be served upon each of the said respondents. The respondents will have twenty (20) days after the receipt of this notice of

hearing in which to file with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., an answer with an original and seven copies, fully and completely stating the nature of the defense and admitting or denying, specifically and in detail, each material and relevant allegation of this complaint. Allegations not answered will be deemed admitted for the purpose of this proceeding. Failure to file an answer will constitute an admission of all the material allegations of this complaint and a waiver of hearing. The respondents are hereby notified that unless hearing is waived either expressly or by failure to file an answer, a hearing will be held at 10:00 a.m., local time, on the 26th day of January 1960, in Room 1200, Board of Trade Building, 141 West Jackson Boulevard, Chicago, Illinois, before a referee designated to conduct such hearing. At such hearing the respondents will have the right to appear and show cause, if any there be, why an order should not be made suspending or revoking the registration of respondent Berkshire Foods, Inc., as a futures commission merchant and the registration of respondent Harold W. Fox as a floor broker, and directing that all contract markets refuse all trading privileges to all the respondents for such period of time as may be determined.

It is ordered that this complaint and notice of hearing be served on the respondents at least twenty (20) days prior to the date set for hearing.

Done at Washington, D. C.

Nov. 27, 1959

/s/ Clarence L. Miller

Clarence L. Miller

Assistant Secretary

LOAD-DATE: June 12, 2008

