

Commodity Futures Trading Commission
CEA CASES

NAME: HARRY BREECKER AND SAMUEL ALAMA

DOCKET NUMBER: 75-12; 233

DATE: DECEMBER 30, 1975

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UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

DIVISION OF ENFORCEMENT, Complainant, v. HARRY BREECKER, Honolulu, Hawaii, and SAMUEL ALAMA, Oahu, Hawaii, Respondents.

CFTC Docket No. 75-12

INITIAL DECISION UPON COMPLAINT FOR VIOLATIONS OF THE COMMODITY EXCHANGE ACT

This is a disciplinary proceeding under Sections 6(b) and 6(c) of the Commodity Exchange Act, ("the Act"), instituted by a complaint and notice of hearing filed on August 8, 1974 by the Assistant Secretary of Agriculture * alleging that respondent Harry Breecker, a person associated with a futures commission merchant, mishandled customers' accounts in willful violation of Sections 4b, 4c and 4d of the Act and that respondent Samuel Alama willfully violated the registration and accounting provisions in Section 4d of the Act.

* All authority under the Commodity Exchange Act vested in the Secretary of Agriculture and the Commodity Exchange Commission was transferred to the Commodity Futures Trading Commission by the Commodity Futures Trading Commission Act of 1974 (P.L. 93-463; 88 Stat. 1389).

Copies of the complaint were served upon respondent Samuel Alama by certified mail on August 10, 1974 and on respondent Harry Breecker by personal service on August 28, 1974. Each of the respondents was

duly notified of the substance of Section 0.9 of the Rules of Practice requiring an answer to the complaint. Notwithstanding such notice, neither respondent has filed an answer. In consequence, the material allegations of fact are taken as admitted and the right to a formal hearing is considered to have been waived. This decision is in accordance with the provisions of Section 0.9 of the Rules of Practice under the Commodity Exchange Act (17 CFR 0.9).

FINDINGS OF FACT

1. During the period from February 1, 1968 through approximately October 13, 1972, respondent Breecker was employed as an account executive with Walston & Co., Inc., ("Walston"), a futures commission merchant;

2. On approximately April 7, 1970, the respondents entered into an agreement whereby respondent Alama would place all orders for the purchase or sale of commodity futures contracts for which he was responsible with Breecker through Breecker's personal account at Walston, and transactions by Alama during the period April 7, 1970 through September 15, 1972, were placed pursuant to this agreement;

3. On approximately February 24, 1972, Alama accepted \$ 900.00 (Cashier's Check No. 01-1778686 drawn on the Aikahi Branch, Bank of Hawaii) from Edward J. Wyland for the purpose of establishing a commodity futures account with Walston in Wyland's name in respect to which Alama was given discretionary authority over all trading decisions. Wyland's check was endorsed by Alama to Breecker who then negotiated the check on February 25, 1972 by a deposit in his personal account (No. 05-2031 71-06) at the City Bank of Honolulu;

4. On approximately March 16, 1972, respondent Alama accepted from Edward J. Wyland \$ 2,200.00 (Cashier's Check No. 01-2109320 drawn on the Keneohe Branch, Bank of Hawaii) as an additional deposit to Wyland's trading account to be used to margin, guarantee, or secure Wyland's open-end order for the purchase or sale of commodity futures subject to the Commodity Exchange Act. On approximately the same date, Alama negotiated Wyland's check to his personal account (No. 27-60200-2) at the City Bank of Honolulu.

5. On approximately March 20, 1972, respondent Alama, acting as a futures commission merchant, solicited orders from Robert C. Ruegomer, and in connection therewith accepted \$ 2,000.00 (Cashier's Check No. 24258 drawn on the Montgomery Federal Savings and Loan Association,

Baltimore, Maryland) to be used to margin, guarantee, or secure such orders for the purchase or sale of commodity futures subject to the Act without having registered as a futures commission merchant under the Act. On April 17, 1972, respondent Alama negotiated the check to his personal account (No. 27-60200-2) at the City Branch, Bank of Honolulu;

6. At all material times, respondent Alama had failed either to register as a futures commission merchant as required by Section 4d(1) or to account for and segregate monies received by him as described above within the requirements of Section 4d(2) of the Commodity Exchange Act;

7. From April 7, 1970 through September 15, 1972, respondent Alama placed with respondent Breecker 176 orders for the purchase or sale of "frozen pork bellies," on or subject to the rules of one or more contract markets, all of which were subsequently reported to Alama as executed orders, when in fact Breecker bucketed all but two of the orders by knowingly, and without the prior consent of respondent Alama, becoming the seller with respect to buying orders and a buyer with respect to selling orders. Section 4b(D) of the Commodity Exchange Act prohibits such practices;

8. Breecker caused false records to be made in connection with the execution of the aforesaid orders in support of misrepresentations that these had been executed on or subject to the rules of a contract market. The transactions in commodities for future delivery referred to herein, if executed, could have been used for (a) hedging transactions in interstate commerce in such commodities or the products or byproducts thereof, or (b) determining the price basis of transactions in interstate commerce in such commodities, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment of such futures contracts. Sections 4b(B), and 4b(C) of the Act prohibit false reports or records in connection with orders placed for the purchase or sale of commodity futures contracts on a contract market;

9. From approximately April 7, 1970 through approximately August 17, 1972 respondent Breecker accepted \$ 6,623.00 from respondent Alama which represented deposits by Alama, Edward J. Wyland and Robert C. Reugomer for use, in whole or in part, to margin, guarantee or secure orders for the purchase or sale of commodity futures subject to the Commodity Exchange Act without having registered as a futures commission merchant under the Commodity Exchange Act. Section 4d(1) prohibited such acts by persons not registered with

the Secretary of Agriculture prior to passage of the Commodity Futures Trading Commission Act of 1974. During this period Breecker returned \$ 4,350.00 to Alama, converted the balance to his own use and failed to hold in separate account the money received by him, as previously detailed, within the requirements of Section 4d(2) of the Act.

CONCLUSIONS

The foregoing facts admitted by the respondents by their failure to answer the complaint prove that respondent Alama willfully violated Section 4d of the Commodity Exchange Act and that respondent Harry Breecker willfully violated Section 4b, 4c and 4d of the Commodity Exchange Act. Accordingly, respondents are directed to cease and desist from such violations and are suspended from trading as further set forth in the accompanying order.

ORDER

1. Respondent Harry Breecker is hereby ordered as of the effective date hereof to cease and desist from:

(a) Willfully making or causing to be made any false report or statement, or willfully entering or causing to be entered any false report or statement in, or in connection with, the making of any contract of sale of any commodity in interstate commerce made or to be made on or subject to the rules of any contract market;

(b) Willfully deceiving or attempting to deceive any person by any means regarding any order or contract or the disposition or execution of any order or contract or regarding any active agency performed with respect to such order or contract in or in connection with any order to make or the making of any contract of sale of any commodity in interstate commerce made or to be made on or subject to the rules of any contract market for or on behalf of any person;

(c) Bucketing any order or filling any order by offset against the order or orders of any other person, or willfully and knowingly, without the prior consent of such person, becoming the buyer in respect to any selling order of such person or becoming the seller

in respect to any buying order of such person in or in connection with any order to make or the making of any contract of sale of any commodity in interstate commerce made or to be made on or subject to the rules of any contract for or on behalf of any such person;

(d) Engaging as a futures commission merchant in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery or involving any contracts for sale of any commodity for future delivery on or subject to the rules of any contract market without contemporaneous registration under the Commodity Exchange Act, as amended, as such futures commission merchant; and

(e) Failing to segregate and separately account for all money, securities and property received to margin, guarantee or secure the trades or contracts of commodity customers.

2. Respondent Harry Breecker is further prohibited from trading in any commodity futures on any contract market for a period of ten (10) years and all contract markets shall deny trading privileges to the respondent for that period. Such prohibition and denial shall apply to all trading done and positions held directly by the

respondent, either for his own account or as the agent or representative of any other person or firm, and to all trading done and positions indirectly through persons or firms owned or controlled by the respondent.

3. Respondent Samuel Alama is hereby ordered as of the effective date hereof to cease and desist from:

(a) Engaging as a futures commission merchant in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery or involving any contracts of sale of any commodity for future delivery on or subject to the rules of any contract market unless he concurrently is registered under the Act, as amended, as futures commission merchant; and

(b) Failing to segregate and separately account for all money, securities and property received to margin, guarantee or secure the trades or contracts of commodity customers.

4. Respondent Samuel Alama is further prohibited from trading in any commodity futures on any contract market for five (5) years and all contract markets shall deny trading privileges to the respondent for that period. Such prohibition and denial shall apply to all

trading done and all positions directly held by the respondent, either for his own account or as the agent or representative of any other person or firm, and to all trading done and positions held indirectly through persons or firms owned or controlled by the respondent.

5. Pursuant to the rules of practice governing these proceedings, this Decision and Order becomes final without further procedure thirty-five (35) days after service hereof, unless appealed to the Commission by a party to the proceeding within thirty (30) days after above said service.

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

Dated this 30th day of December, 1975

[SEE SIGNATURE IN ORIGINAL]

Eugene E. Hunt

Chief Administrative Law Judge

LOAD-DATE: August 6, 2008

