

Commodity Futures Trading Commission  
CEA CASES

**NAME:** EDWARD R. BYER

**CITATION:** 13 Agric. Dec. 1051

**DOCKET NUMBER:** 62

**DATE:** NOVEMBER 10, 1954

**DOCUMENT TYPE:** DECISION AND ORDER

**NOTE:** CORRECTION TO SYLLABUS IS REPORTED IN 13 AGRIC. DEC. 1144

**AGRICULTURE DECISIONS**

**BEFORE THE SECRETARY OF AGRICULTURE**

**UNITED STATES DEPARTMENT OF AGRICULTURE**

(No. 4092)

*In re* EDWARD R. BYER *et als.* CEA Docket No. 62. Decided November 10, 1954.

**Suspension of Registration -- Denial of Trading Privileges -- Violations of Act -- Trading in Futures in Excess of Limits -- Concealment of Transactions -- Submitting False Reports -- Consent Order**

Where a trader-respondent admitted that he traded in oats, wheat and corn futures in excess of limits established under the act and concealed such transactions by placing them in the accounts of others, and the other respondents, floor brokers, admitted that they aided in such concealment and submitted false reports, and upon respondents admission of jurisdictional facts, waiver of oral hearing and consent to the entry of an order, it is ordered, that, for certain specified periods, all respondents are refused trading privileges, and the registrations of the floor broker-respondents are suspended.

**Waiver of Hearing -- Stipulation of Parties -- Jurisdiction of Secretary -- Issuance of Order**

Where respondents admitted transactions in commodities for future delivery which were capable of being used for hedging or determining price basis or delivering the commodity, *held*, such facts are sufficient to subject respondents to the jurisdiction of the Secretary, and their waiver of hearing should be accepted, and the order to which respondents have consented should be issued.

*Mr. Benj. M. Holstein* for Commodity Exchange Authority. *Mr. Mitchell Edelson*, of Chicago, Illinois, and *Messrs. Clark M. Clifford and William H. Dorsey, Jr.*, of *Clifford and Miller*, of Washington, D. C., for respondent

*Edward R. Byer*. *Messrs. Johnston, Thompson, Raymond & Mayer*, of Chicago, Illinois, for respondent *Joel Starrels, James T. McKerr and Company, Mr. James T. McKerr*, and *Mr. Charles J. McKerr*, of Chicago, Illinois, respondents, *pro se*. *Mr. Arnold F. Shaw*, of *Donohue & Kaufmann*, of Washington, D. C., for respondent *Gilbert D. Mathy*. *Mr. G. Osmond Hyde*, Referee.

*Decision by Thomas J. Flavin, Judicial Officer*

**PRELIMINARY STATEMENT**

This is a quasi-judicial proceeding under the Commodity Exchange Act (7 U.S.C., Chapter 1), instituted by a complaint and notice of hearing issued under section 6 (b) of the act (7 U.S.C. 9) on April 14, 1954, by the Secretary of Agriculture. The complaint charged that respondent Edward R. Byer traded in

oats, wheat, and corn futures in quantities which exceeded the speculative trading limits established under the act, that he concealed such excess trading by placing the transactions or causing them to be placed in accounts carried in the names of other persons, and that all the respondents aided in such concealment and variously, in furtherance thereof, submitted false reports to the Commodity Exchange Authority, falsified their books and records, failed to keep required records, and executed fictitious trades, in violation of sections 4, 4a, 4b, 4c, 4g and 4i of the Commodity Exchange Act (7 U.S.C. 6, 6a, 6b, 6c, 6g, 6i). Motions were filed on behalf of all the respondents to quash the complaint and dismiss the proceeding or, in the alternative, to require the complainant to make the complaint more specific or furnish a bill of particulars. At the same time, separate motions for severance were filed on behalf of all the respondents save Edward R. Byer.

The motions to quash the complaint and dismiss the proceeding were certified to the Judicial Officer and denied by him in an order entered September 10, 1954 (13 Agric. Dec. 873 (13 A.D. 873)). The motions to make the complaint more specific or for a bill of particulars and the motions for severance were denied by the referee on September 15, 1954. All the respondents filed exceptions and statements of objection to these rulings by the Judicial Officer and the referee.

The respondents filed answers to the complaint on October 4, 1954. Each of the answers denied the material allegations of the complaint, denied any wrongdoing, realleged and reincorporated the previous motions to quash the complaint and dismiss the

proceeding together with the reasons and arguments stated in support thereof, and contended that the proceeding was illegal, unwarranted, and unauthorized by law on grounds similar to or identical with those previously urged in support of the aforesaid motions, and for various other reasons.

No hearing was held. On November 8, 1954, prior to the date finally set for hearing, each of the respondents (the McKerr respondents acting jointly) filed a document in which he withdrew the answer previously filed, admitted the facts contained herein under "Findings of Fact," waived hearing, and consented to the entry of the order hereinafter set forth.

#### **FINDINGS OF FACT**

1. The Board of Trade of the City of Chicago, hereinafter called the Chicago Board of Trade, was at all times material herein a duly designated contract market under the Commodity Exchange Act.

2. Respondent Edward R. Byer, an individual whose address is Box 269, Route 2, Garland, Texas, is a trader in commodity futures. At all times material herein, the said Edward R. Byer was a non-clearing member of the Chicago Board of Trade. During the period from January 1952 to July 1953, both inclusive, the said Edward R. Byer held positions in and executed or caused the execution of transactions in commodities for future delivery on or subject to the rules of the Chicago Board of Trade. The said Edward R. Byer was not at any such time a registered futures commission merchant or registered floor broker under the Commodity Exchange Act, and all positions so held and transactions so executed were for his own account.

3. Respondent Joel Starrels, an individual whose business address is Room 1480, Board of Trade Building, 141 West Jackson Boulevard, Chicago 4, Illinois, is a trader in commodity futures. At all times material herein, the said Joel Starrels was a registered floor broker under the Commodity Exchange Act and a non-clearing member of the Chicago Board of Trade. During November and December 1952, the said Joel Starrels executed or caused the execution of transactions in commodities for future delivery on or subject to the rules of the Chicago Board of Trade.

4. Respondent James T. McKerr and Company is a partnership composed of respondents James T. McKerr and Charles J.

McKerr, and has offices at Room 1045, Board of Trade Building, 141 West Jackson Boulevard, Chicago 4, Illinois. At all times material herein, the said partnership was a registered futures commission merchant under the Commodity Exchange Act and a clearing member of the Chicago Board of Trade, and at all such times respondents James T. McKerr and Charles J. McKerr were registered floor brokers under the Commodity Exchange Act and members of the Chicago Board of Trade. During the period from January 1952 to July 1953, both inclusive, the said James T. McKerr and Company, James T. McKerr, and Charles J. McKerr executed or caused the execution of transactions in commodities for future delivery on or subject to the rules of the Chicago Board of Trade.

5. Respondent Gilbert D. Mathy, an individual whose business address is Room 1042, Board of Trade Building, 141 West Jackson Boulevard, Chicago 4, Illinois, is a trader in commodity futures. At all times material herein, the said Gilbert D. Mathy was a registered floor broker under the Commodity Exchange Act and a non-clearing member of the Chicago Board of Trade. During August 1952, the said Gilbert D. Mathy executed or caused the execution of transactions in commodities for future delivery on or subject to the rules of the Chicago Board of Trade.

6. The transactions in commodities for future delivery described in these Findings of Fact were capable of being used for (1) hedging a transaction in interstate commerce in the particular commodity or in the products or by-products thereof, or (2) determining the price basis of a transaction in interstate commerce in the particular commodity, or (3) delivering the particular commodity when sold, shipped, or received in interstate commerce.

#### **CONCLUSIONS**

Section 0.4(b) of the Rules of Practice under the Commodity Exchange Act (17 CFR 0.4(b)) provides as follows:

(b) Consent order. At any time after the issuance of the complaint and prior to the hearing in any proceeding, the Secretary, in his discretion, may allow the respondent to consent to an order. In so consenting, the respondent must submit, 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. Upon a record composed of the complaint and the stipulation or agreement consenting to the order, the Secretary may enter the order consented to by the respondent, which shall have the same force and effect as an order made after oral hearings.

The facts admitted by the respondents and set forth in the Findings of Fact are sufficient to subject them and each of them to the jurisdiction of the Secretary of Agriculture. The complainant has recommended that the waivers of hearing be accepted and that the orders to which the respondents have consented be issued. It is so concluded.

#### **ORDER**

Effective January 10, 1955, all contract markets shall refuse all trading privileges to Edward R. Byer for a period of ninety (90) days, such refusal to apply to all trading done and positions held directly by the said Edward R. Byer, and also to all trading done and positions held indirectly through persons owned or controlled by him, or otherwise.

Effective January 10, 1955, the registrations of James T. McKerr and Charles J. McKerr as floor brokers under the Commodity Exchange Act are suspended for a

period of ten (10) days. Effective on the same date and for the same period, all contract markets shall refuse to James T. McKerr and Charles J. McKerr all trading privileges, either for their own accounts or for the accounts of other persons, such refusal to apply to all trading done and positions held directly by the said James T. McKerr or Charles J. McKerr, and also to trading done and positions held indirectly through persons owned or controlled by them or either of them, or otherwise.

Effective January 10, 1955, all contract markets shall refuse to James T. McKerr and Company all trading privileges for its own or house account for a period of ten (10) days, such refusal to apply to all trading done and positions held directly by the said James T. McKerr and Company, and also to all trading done and positions held indirectly through persons owned or controlled by the said firm, or otherwise, *Provided*, that such refusal shall not be construed to prohibit the execution of *bona fide* orders received by James T. McKerr and Company in its capacity as a registered futures commission merchant under the Commodity Exchange Act.

Effective January 10, 1955, the registrations of Joel Starrels and Gilbert D. Mathy as floor brokers under the Commodity Exchange Act are suspended for a period of five (5) days. Effective on the same date and for the same period, all contract markets shall refuse to the said Joel Starrels and Gilbert D. Mathy all trading privileges, either for their own accounts or for the accounts of other persons, such refusal to apply to all trading done and positions held directly by the said Joel Starrels or Gilbert D. Mathy, and also to trading done and positions held indirectly through persons owned or controlled by the said Joel Starrels or Gilbert D. Mathy, or otherwise.

A copy of this decision and order shall be served upon the parties by registered mail or in person and upon each contract market.

**LOAD-DATE:** June 8, 2008

