

Commodity Futures Trading Commission
CEA CASES

NAME: CARGILL, INCORPORATED, AND ERWIN E. KELM

CITATION: 13 Agric. Dec. 483

DOCKET NUMBER: 58

DATE: MAY 4, 1954

DOCUMENT TYPE: DECISION AND ORDER

(No. 3884)

In re CARGILL, INCORPORATED, AND ERWIN E. KELM. CEA Docket No. 58. Decided May 4, 1954.

Denial of Trading Privileges -- Violations of Act -- Manipulation of Market Price of Oats -- Engaging in Unauthorized Speculative Trading in Oats Futures -- Submitting False Reports to Commodity Exchange Authority -- Consent Order

Where complainant charged that respondent attempted to manipulate and did manipulate the market price of oats from June 1951 to June 1952 in violation of the act, that the respondent carried on speculative trading in oats futures in excess of the maximum quantities permitted, and that respondent submitted false reports to the Commodity Exchange Authority, and where respondent consented to the entry of an order, it is ordered that all contract markets shall refuse to Cargill, Incorporated all trading privileges in oats futures for its own account, and the complaint against Erwin E. Kelm should be dismissed.

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

The facts admitted by respondent as set forth in the Findings of Facts herein, *held*, are sufficient to subject respondent to the jurisdiction of the Secretary, and his waiver of hearing should be accepted and the order to which respondent has consented should be issued.

Mr. Benj. W. Holstein for Commodity Exchange Authority. *Mr. James E. Dorsey* of *Dorsey, Colman, Barker, Scott & Barber*, of Minneapolis, Minnesota, *Mr. Leo F. Tierney* of *Mayer, Meyer, Austrian & Platt*, of Chicago, Illinois, and *Mr. Weston B. Grimes*, of Washington, D. C., for respondent *Cargill, Incorporated*. *Mr. Philip Neville* of *Neville, Hachey & Johnson*, of Minneapolis, Minnesota, for respondent *Erwin E. Kelm*. *Mr. John Curry*, Referee.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1) instituted by a complaint issued under section 6(b) of the act (7 U.S.C. 9) on June 11, 1953, by the Acting Secretary of Agriculture.

The respondents filed answers denying the material allegations of the complaint and denying that there was any violation of or intent to violate the act, or the rules, regulations, or orders issued thereunder.

On May 3, 1954, Cargill, Incorporated, filed a document entitled "Waiver of Hearing, Consent to Entry of Order, and Stipulation," in which said respondent admitted the facts hereinafter set forth under "Findings of Fact," and stipulated as follows:

"2. Cargill, Incorporated, waives hearing on the charges in the complaint and consents to the entry of an order directing all contract markets to refuse all trading privileges in oats futures to Cargill, Incorporated, for its own account, for the period beginning on the tenth day after issuance of the order and ending December 31, 1954. Cargill, Incorporated, hereby stipulates and agrees that such refusal of trading privileges in oats futures on all contract markets shall apply to trading done and positions held by Cargill, Incorporated, directly, and also to trading done and positions held indirectly by or through any person, as defined by the Commodity Exchange Act, owned wholly or in substantial part or otherwise directly or indirectly controlled by, or under a common control with, Cargill, Incorporated, or by any other means: *Provided*, that any position in May 1954 oats futures held by Cargill, Incorporated, on the effective date of the order herein may be liquidated by means of futures transactions or deliveries at any time prior to the expiration of trading in such May 1954 oats futures; and provided that, the order herein shall not be construed to prohibit the execution of *bona fide* orders

received by Cargill, Incorporated, or any person, as defined in the Commodity Exchange Act, owned wholly or in substantial part or otherwise directly or indirectly controlled by, or under a common control with Cargill, Incorporated, from its or their customers in its or their capacities as registered futures commission merchants under the Commodity Exchange Act.

"3. Cargill, Incorporated, hereby further stipulates and agrees that in all future reports to the Commodity Exchange. Authority it will refrain from using contracts or agreements with or commitments to any person, as defined by the Commodity Exchange Act, owned wholly or in substantial part or otherwise directly or indirectly controlled by, or under a common control with, Cargill, Incorporated, as a basis for classifying transactions or positions in commodity futures as hedging: and that in submitting such reports and in complying with the orders issued by the Commodity Exchange Commission under section 4a of the Commodity Exchange Act, it will treat all commodity transactions and positions of any such person as the transactions and positions of Cargill, Incorporated.

"4. Cargill, Incorporated, further stipulates and represents that it has not, since February 16, 1954, engaged in any transactions in oats futures on contract markets in the United States for its own account except for transactions necessary to transfer positions in March 1954 oats futures to May 1954 oats futures and except for transactions and deliveries in liquidation of its March 1954 short oats futures positions and transactions in partial liquidation of its May 1954 short oats futures position."

FINDINGS OF FACT

1. Cargill, Incorporated, is a corporation organized under the laws of the state of Delaware, with its principal office and place of business in Minneapolis, Minnesota and branch offices throughout the United States. The said corporation conducts various commercial enterprises throughout the United States, including the business of grain importing and merchandising, and was so engaged during 1951 and 1952, the period covered by the complaint in this proceeding.

2. During 1951 and 1952 and continuously since that time, Cargill, Incorporated, was registered as a futures commission merchant under the Commodity Exchange Act, and was the holder of membership trading privileges on various boards of trade designated as contract markets under the Commodity Exchange Act.

3. During 1951 and 1952, Cargill, Incorporated, engaged in futures trading for its own account on boards of trade in the United States and Canada, and futures trades for its account were executed by others on the Board of Trade of the City of Chicago, a contract market.

CONCLUSION

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 respondent and set forth in the Findings of Fact, above, are sufficient to subject it to the jurisdiction of the Secretary, and it is concluded that its waiver should be accepted and that the order to which it has consented should be issued.

The complainant has recommended that upon the issuance of the consent order with respect to respondent Cargill, Incorporated, the complaint against respondent Erwin E. Kelm be dismissed.

ORDER

Effective on the 10th day after the date of this order, all contract markets shall refuse to Cargill, Incorporated, all trading privileges in oats futures for its own account, either directly or indirectly, for the period beginning on the tenth day after the

date of this order to December 31, 1954, both inclusive: *Provided*, that any position in May 1954 oats futures on any contract market held by Cargill, Incorporated, on the effective date of this order may be liquidated by means of futures transactions or deliveries at any time prior to the expiration of trading in such May 1954 oats futures; and provided that, this order shall not be construed to prohibit the execution of *bona fide* orders received by Cargill, Incorporated, or any person, as defined in the Commodity Exchange Act, owned wholly or in substantial part or otherwise directly or indirectly controlled by, or under a common control with, Cargill, Incorporated, from its or their customers in its or their capacities as registered futures commission merchants under the Commodity Exchange Act.

The complaint against respondent Erwin E. Kelm is dismissed.

Copies hereof shall be served upon the parties by registered mail or in person and upon each contract market.

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