

Commodity Futures Trading Commission
CEA CASES

NAME: COTTON PRODUCTS CO., INC., J. P. BARNETT, SR., A. F. SPENCER, J. P. DOHERTY, L. T. POULET, AND J. P. BARNETT, JR.

CITATION: 9 Agric. Dec. 1189

DOCKET NUMBER: 53

DATE: OCTOBER 11, 1950

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(No. 2577)

In re COTTON PRODUCTS CO., INC., J. P. BARNETT, SR., A. F. SPENCER, J. P. DOHERTY, L. T. POULET, AND J. P. BARNETT, JR., CEA Doc. No. 53. DECIDED OCTOBER 11, 1950.

Denial of Trading Privileges -- Failure to Report Transactions in Amounts Beyond Specified Size or Quantity -- Willful Violation of Act -- Imputation of Officer's Willfulness to Corporation -- Answer Treated as Admission of Facts and Waiver of Oral Hearing

Where complaint charged that on ten specified dates the corporate respondent willfully violated the act by failing to report transactions and market positions in cottonseed oil futures in amounts beyond a specified size or quantity, executed on the New York Produce Exchange, a contract market, as required under the act and rules and regulations thereunder, and that the transactions in question were carried out under the direction and supervision and by means of the acts of the individual respondents as officers of the corporation, and where respondents' answer in the form of letters indicated that no hearing was desired and alleged that the violations were entirely due to the negligence of respondent A. F. S., who was in sole charge of oil purchases and hedging transactions, and who was only responsible to J. P. B. who had been inactive in the business due to illness, it is held:

the respondents' answer was properly treated by the Government as an admission of the facts alleged in the complaint and a waiver of oral hearing;

since there is no claim that respondent A. F. S. was unaware of reporting requirements, but an assertion that the failure to report was due entirely to his negligence and indifference, he willfully violated the act;

respondent A. F. S. being an officer of the corporation, his failure to report must be considered as the failure of the corporation;

the circumstances of this case do not require the imputation of the officers willfulness to the corporation ;

all trading privileges should be denied to respondent A. F. S. for a period of 60 days;

and all trading privileges should be denied to the corporate respondent for a period of 60 days, to be held in abeyance for one year conditioned upon its observance during that time of the act and the rules and regulations. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Mr. Benj. M. Holstein for complainant., Messrs. J. P. Barnett, Sr., A. F. Spencer, J. P. Doherty, L. T. Poulet, and J. P. Barnett, Jr., of Opelousas, Louisiana, *pro se*, and for Cotton Products Co., Inc. Mr. John J. Curry, Referee.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a disciplinary 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 January 20, 1950, by the Acting Secretary of Agriculture, hereinafter called the complainant or the Government.

The corporate respondent is a Louisiana corporation located in Opelousas, Louisiana, doing business in its own name or in the name of various subsidiaries. The individual respondents are officers of the corporation. The complaint charged that on ten specified dates the corporate respondent willfully failed to report transactions and market positions in cottonseed oil futures executed on the New York Produce Exchange, a contract market, as required under section 4i of the act (7 U. S. C. 6i) and sections 10.10, 10.11, 10.12, and 10.21 of the rules and regulations (17 CFR 10.10, 10.11, 10.12, 10.21). The complaint charged further that the transactions in question were carried out under the direction and supervision and by means, of the acts, of the individual respondents as officers of the corporation, and that the said individual respondents were at all times aware of the reporting requirements of the act and the regulations.

The respondents filed answers in the form of letters dated January 27, 1950, and February 6, 1950. These answers allege that the violations were due entirely to the negligence of respondent A. F. Spencer, who was in sole charge of oil purchases and hedging transactions, that respondent Spencer was responsible only to respondent J. P. Barnett, Sr., that the latter had been inactive in the business due to illness, and that these facts were the only defense that could be offered. By letter dated February 18, 1950, filed as a supplemental answer, the respondents indicated that no hearing was desired. The Government filed a reply on February 23, 1950, in which it was stated that the letters of January 27, February 6, and February 20, 1950, were being treated as an admission of the facts and a waiver of hearing. No hearing was held.

Section 0.9 (c) of the rules of practice (17 CFR 0.9 (c)) provides in pertinent part as follows:

"The admission, in the answer or by failure to file an answer, of all material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission of facts, the referee, without further investigation or

hearing, shall prepare his report, in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint"

The suggested findings of fact, conclusions and order submitted by the complainant are adopted herein verbatim. The respondents did not file any suggested findings of fact, conclusions and order and did not file any exceptions to the referee's report which also adopted the complainant's suggested findings of fact, conclusions and order.

FINDINGS OF FACT

1. Respondent Cotton Products Co., Inc., is a corporation organized under the laws of the State of Louisiana and has its principal place of business at 909 Railroad Avenue, Opelousas, Louisiana. The individual respondents are officers of respondent Cotton Products Co., Inc., as follows: J. P. Barnett, Sr., is president and general manager; A. F. Spencer is vice president; J. P. Doherty is vice president; L. T. Poulet is secretary and treasurer; and J. P. Barnett, Jr., is assistant secretary and treasurer.

2. Respondent Cotton Products Co., Inc., does business sometimes in its own name and sometimes in the name of one or more of the following firms: Opelousas Oil Mill, Opelousas Cotton Oil Mill, Opelousas Moss Company, and Opelousas Oil Refinery.

3. At all times material to these findings, the New York Produce Exchange was a duly designated contract market under the Commodity Exchange Act.

4. At the opening of business on December 2, 1949, as the result of transactions in March 1950 and May 1950 cottonseed oil futures contracts theretofore executed on the New York Produce Exchange for the account of the corporate respondents, its net short open contract position on the New York Produce Exchange in each of such futures was in excess of 900,000 pounds and remained in excess of 900,000 pounds through December 13, 1949. By reason of such position, the said respondent was in reporting status under section 4i of the Commodity Exchange Act and sections 10.10, 10.11, 10.12 and 10.21 of the rules and regulations thereunder, and was required to submit daily reports to the Commodity Exchange Authority, while in such status, with respect to transactions and changes in open contracts in all cottonseed oil futures. On December 2, December 3, December 6, December 12, and December 13, 1949, on each of which dates the corporate respondent was in reporting status as above described, respondent A. F. Spencer, acting on behalf of the corporate respondent, ordered the execution of purchases and sales of March 1950 and sales of May 1950 and July 1950 cottonseed oil futures contracts on the New York Produce Exchange. The said A. F. Spencer

was aware of the above described provisions of the act and regulations, but failed to submit the required reports until January 4, 1950.

5. On the following dates and in the amounts indicated, respondent A. F. Spencer, acting on behalf of the corporate respondent, ordered the execution of purchases and sales of cottonseed oil for future delivery on the New York Produce Exchange:

Date	Bought		Sold	
	Quantity Pounds	Future	Quantity Pounds	Future
Dec. 14, 1949	180,000		60,000	July.
Dec. 20, 1949	180,000	March		
Dec. 28, 1949	60,000	May		
Dec. 29, 1949			120,000	May.
Jan. 5, 1950	300,000	March		
Do	60,000	September		

CONCLUSIONS

Section 4i of the act (7 U. S. C. 6i) requires a person to file reports in accordance with the rules and regulations whenever such person has a long or short position in any commodity future equal to or in excess of the amount fixed for that purpose by the Secretary of Agriculture. Pursuant to this authority, the Secretary has fixed 900,000 pounds or more as the amount which governs in the case of cottonseed oil futures, and has provided that such reports must be submitted within a specified time after the transaction (17 CFR 10.12, 10.21).

There is no claim that respondent Spencer, who ordered the execution of the transactions in question, was unaware of reporting requirements, but, on the contrary, an assertion that the failure to report was due entirely to his negligence and indifference. Accordingly, we must conclude that Mr. Spencer willfully violated the act. He is a responsible officer of the corporation and his failure must be considered as the failure of the corporation. In any event, the answers admit that the corporate respondent did not report as required. While a corporation is responsible for the negligence or nonfeasance of its officers and agents and may be held liable therefor in actions for damages or even in criminal prosecutions, we do not believe that the circumstances of this case require us to impute Mr. Spencer's willfulness to the Cotton Products

Company, Inc. The Government has no reason to question the statements in the answers to the effect that respondent Spencer was in sole charge of the transactions in question, that he was responsible only to respondent J. P. Barnett, Sr., who was inactive due

to illness, and that neither the latter nor any of the other respondents knew that reports were not being filed. Accordingly, it is concluded that the corporate respondent's violations were not willful.

n1 *Escambia County Electric Light and Power Company v. Sutherland*, 61 Fla. 167, 55 So. 83, 88 (1911); *New York Central and Hudson River Railroad Company v. United States*, 212 U. S. 481 (1909).

At the opening of business on each of the above dates, as the result of transactions in cottonseed oil for future delivery theretofore executed on the New York Produce Exchange for the account of the corporate respondent, its net short open contract position on the New York Produce Exchange in one or more cottonseed oil futures was equal to or in excess of 900,000 lbs. By reason of such position, the said respondent was in reporting status under section 4i of the Commodity Exchange Act and sections 10.10, 10.11, 10.12 and 10.21 of the rules and regulations thereunder, and was required to submit daily reports to the Commodity Exchange Authority with respect to the above transactions and the resulting changes in open contracts. The said A. F. Spencer was aware of the above described provisions of the act and regulations, but failed to submit the required reports.

6. Respondents J. P. Barnett, Sr., J. B. Doherty, L. T. Poulet, and J. P. Barnett, Jr., were unaware of the fact that respondent A. F. Spencer had failed to submit reports to the Commodity Exchange Authority in connection with the transactions described in paragraphs 4 and 5 above, as required by the act and the regulations.

Insofar as respondent Spencer is concerned, the circumstances are similar to those considered in other proceedings for failure to report under section 4i of the act, n2 and a similar sanction should be imposed. It is therefore concluded that all trading privileges be denied to respondent Spencer for a period of 60 days. In the case of the corporate respondent, the purposes of the act will be adequately served by a denial of trading privileges for a period of 60 days, to be held in abeyance for one year conditioned upon the corporate respondent's observance during that time of the act and the rules and regulations.

n2 *In re A. Feldstein & Company*, 5 Agric. Dec. 337 (5 A.D. 337); *In re Raymond G. Brown, Sr., et al.*, 5 Agric. Dec. 745 (5 A.D. 745); *In re Claud Wilkes*, CEA Docket No. 52.

ORDER

Effective on the 30th day after the date of this order, all contract markets shall refuse all trading privileges thereon to A. F. Spencer for a period of 60 days.

Effective on the 30th day after the date of this order, all contract markets shall also refuse all trading privileges thereon to the Cotton Products Company, Inc., for a period of 60 days, such refusal of trading privileges to be held in abeyance for a period of one year, *provided that*, if within such one year period the said Cotton Products Company, Inc., should, after complaint and hearing in accordance

with established procedure, be found to have again violated the act, then and in that event and without further notice the Secretary of Agriculture may issue a supplemental order in this proceeding against the said Cotton Products Company,

Inc., which supplemental order shall make effective forthwith the aforesaid refusal of trading privileges.

The proceeding is dismissed as against respondents J. P. Barnett, Sr., L. T. Poulet, and J. P. Barnett, Jr.

A copy of this decision and order shall be served on the respondents and on each contract market.

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