

Commodity Futures Trading Commission
CEA CASES

NAME: SY B. GAIBER & CO., SY B. GAIBER, AND MICHAEL R. HEMPEL

DOCKET NUMBER: 165

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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: Sy B. Gaiber & Co., Sy B. Gaiber, and Michael R. Hempel, Respondents

CEA Docket No. 165

Complaint and Notice of Hearing Under the Commodity Exchange Act

There is reason to believe that the respondents have violated the Commodity Exchange Act (7 U.S.C. Chapter 1, 1964 ed., as amended, Supp. IV, 1969) and the regulations made pursuant thereto, and in accordance with the provisions of sections 6(b) and 6(c) of the said Act (7 U.S.C. 9 and 13b, Supp. IV, 1969), this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

Respondents Sy B. Gaiber and Michael R. Hempel, individuals, are now, and were at all times material to this complaint, the sole partners in an Illinois partnership doing business under the firm name of Sy B. Gaiber & Co., with offices at 343 South Dearborn Street, Chicago, Illinois, 60604. At all times material herein up to November 4, 1969, the said partnership, acting in the capacity of futures commission merchant under the Commodity Exchange Act, was engaged in trading in commodities for future delivery for the accounts of customers and holding for such customers sums of money, representing deposits of margin by and trading profits accruing to such customers. During the year 1969, the said

partnership was registered as a futures commission merchant under the Commodity Exchange Act. In accordance with the provisions of section 4f of the said Act (7 U.S.C. 6f, Supp. IV, 1969) and section 1.16 of the regulations thereunder (17 CFR 1.16), such registration expired on December 31, 1969, and the said partnership is not now so registered.

II

During the period from March 30 through November 4, 1969, while a registered futures commission merchant under the Commodity Exchange Act, respondent Sy B. Gaiber & Co. failed to meet the minimum financial requirements prescribed by section 1.17 of the regulations (34 F.R. 599) issued by the Secretary of Agriculture under the Commodity Exchange Act. Examination of the records of respondent Sy B. Gaiber & Co. by the Commodity Exchange Authority disclosed that the firm lacked approximately \$ 9,000.00 on March 31, 1969, \$ 28,000.00 on June 30, 1969, and \$ 55,000.00 on August 4, 1969, of having enough funds to meet such minimum financial requirements.

III

On July 1, 1969, representatives of the Commodity Exchange Authority, namely, Robert P. Piccirillo and Donald G. Smith, visited the office of the respondent

partnership and requested information from respondent Sy B. Gaiber as to the source of \$ 27,000 that had been deposited in the respondent partnership's

general funds bank account during June 1969, in order that a determination might be made with respect to whether the respondent partnership was meeting the minimum financial requirements prescribed by section 1.17 of the regulations (34 F.R. 599) issued under the Commodity Exchange Act. At that time, respondent Sy B. Gaiber reported to Messrs. Piccirillo and Smith that the \$ 27,000 in question had been contributed to the capital of the respondent partnership by respondent Michael R. Hempel and his brother William, his sister and father. Later, on or about July 10, 1969, the respondents submitted three statements to the Commodity Exchange Authority, signed by respondent Michael R. Hempel, William Hempel and Jerome P. Chernoff, respectively. According to such statements, the \$ 27,000 in question consisted of contributions of \$ 11,000 from respondent Michael R. Hempel, \$ 10,000 from William Hempel, and \$ 6,000 from Jerome P. Chernoff. In truth and in fact and as the respondents knew at the time the above information was given to the Commodity Exchange Authority, none of the \$ 27,000 was received from respondent Michael R. Hempel, only \$ 6,000 was received from William Hempel and Jerome P. Chernoff, and the remaining \$ 21,000 was advanced by seven different persons in payment of stock to be issued to them by Sy B. Gaiber & Co. Inc., a new corporation organized by respondents Sy B. Gaiber and Michael R. Hempel.

IV

By reason of the facts alleged in this complaint, the respondents wilfully violated sections 4f and 6(b) of the Commodity

Exchange Act (7 U.S.C. 6f and 9, Supp. IV, 1969) and sections 1.17 and 1.35 of the regulations issued thereunder (34 F.R. 599, 17 CFR 1.35).

WHEREFORE, it is hereby ordered that this complaint and notice of hearing be served upon the respondents and this proceeding shall be governed by sections 0.1, 0.2, 0.4(b), 0.5 through 0.22 and 0.28 of the rules of practice under the Commodity Exchange Act (17 CFR 0.1, 0.2, 0.4(b), 0.5 through 0.22, 0.28). The respondents will have twenty (20) days after the receipt of this complaint in which to file with the Hearing Clerk, United States Department of Agriculture, Washington, D. C. 20250, an answer with an original and four copies, fully and completely stating the nature of the defense and admitting or denying, specifically and in detail, each allegation of this complaint. Allegations not answered will be deemed admitted for the purposes of this proceeding. Failure to file an answer will constitute an admission of all the allegations of this complaint and a waiver of hearing. The filing of an answer in which all of the material allegations of fact contained in the complaint are admitted likewise shall constitute a waiver of hearing unless a hearing is requested. The respondents are hereby notified that unless hearing is waived, a hearing will be held at 10:00 a.m., local time, on March 25, 1970, in Chicago, Illinois, at a place therein to be specified later, 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 appropriate

order should not be issued in accordance with the Commodity Exchange Act, (1) prohibiting the respondents from trading on or subject to the rules of any contract market, and directing that all contract markets refuse all trading privileges to the respondents for such period of time as may be determined and (2) directing that the respondents shall cease and desist from violating the Act and regulations in the manner alleged herein.

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.

February 12, 1970

[SEE SIGNATURE IN ORIGINAL]

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