

Commodity Futures Trading Commission
CEA CASES

NAME: GARNAC GRAIN COMPANY, INC.

CITATION: 8 Agric. Dec. 244

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(A. D. 2022)

In re GARNAC GRAIN COMPANY, INC. CEA Doc. No. 45. Decided March 24, 1949.

Suspension of Registration -- Refusal of Trading Privileges -- Fraud and Deceit

Where in a disciplinary proceeding respondents were charged with having acted as a futures commission merchant without registering, having failed to report transactions, having bucketed customers' orders, having kept false records, and having falsely reported to, deceived, and defrauded customers, and respondents in their answer denied any fraud or deceit, and denied that M. and P. had consummated the transactions involved, and admitted and explained some of the facts alleged in the complaint, it is ordered, after full hearing, that the registration of the respondent company as a futures commission merchant should be suspended for five days, and that all contract markets shall refuse all trading privileges thereon to respondent company, F. H., H. R. S., and G. L., for five days.

Evidence -- Lack of Proof of Fraud and Deceit

While the records of respondent G. would seem to support the complainant's allegations that fraud and deceit were practiced upon a customer, the evidence that the customer was kept informed of the true facts and approved all the actual transactions supports the conclusion that there was no fraud or deceit as conceded by the complainant.

Violation of Act -- Failure to Apply for Registration -- Carelessness of Officer

While initial failure to apply for registration may well have been due to the carelessness of an officer who was later discharged for inefficiency, the continuance in a regulated business without complying with valid requirements is not to be lightly regarded as a mere technical violation, and the remaining officers were more than merely negligent in failing to correct the discharged officer's failure for so long.

Violation of Act -- Continuous Failure to Report

Continuous failure to report within the period of a year when reporting positions were involved should not be treated as mere isolated instances and should not be disregarded under the circumstances here disclosed.

Violation of Act -- Bucketing -- Making False Records and Reports -- Sections 4b (B) and 4b (D) of Act

Recording, reporting, and accounting for the sale of wheat and corn futures not sold on a contract market constitutes bucketing in violation of section 4b (D), and making false records and reports, in violation of section 4b (B) of the act.

Violation of Act -- Making False Records and Reports -- Effects of Knowledge and Consent of Customers

Though knowledge and consent of customer prevent unlawful acts from being fraudulent or deceitful as far as the customer is concerned, such knowledge and consent do not give truth to untrue records and reports nor repeal or excuse statutory provisions relative thereto.

**Suspension of Registration -- Extent of Sanctions Matter of Judgment --
Weight Given to Recommendation of Officer Administering Statute**

While sanction should be a matter of judgment, weight should be given to the suspension recommended by complainant charged with the duty of administering the statute, and, considering the whole matter, a suspension of five days should be ordered here.

Dismissal -- Failure to Establish Violation of Act

The evidence does not show that respondents M. or P. acted for respondent corporation in these transactions, or that respondent P. acted as an officer of the corporation although he held the title of Vice President, and hence the complaint against M. and P. should be dismissed.

Mr. Benj. M. Holstein for complainant. *Mr. Robert Perret*, of New York City, for respondent. *Mr. Jack W. Bain*, Referee.

Decision by Thomas J. Flavin, Judicial Officer

DECISION AND ORDER

This is a disciplinary proceeding under the Commodity Exchange Act (7 U. S. C. Chapter 1), instituted by a complaint signed by the Secretary of Agriculture, filed with the Hearing Clerk, Office of the Solicitor, on March 25, 1948. Garnac Grain Company, Inc., of New York, New York, and Fred Hediger, Jean Jacques Pasche, H. R. Schmid, George Lulie, and Erwin Minder, as its officers, were charged with having acted as a futures commission merchant without registering, having failed to report transactions, having bucketed customers' orders, having kept false records, and having falsely reported to, deceived, and defrauded customers. Respondents were given 20 days to answer the complaint, and a hearing was set for May 12, 1948, in New York City.

Jack W. Bain, Office of Hearing Examiners, was assigned as referee on April 7, 1948, and at respondents' request extended the time allowed to answer and postponed the hearing. Respondents filed an answer and supplemental answer, denying any fraud or deceit, denying that Minder and Pasche had consummated the transactions involved, and admitting and explaining some of the facts alleged in the complaint.

After postponements at requests of the parties, a hearing was held before the referee in New York City on August 17, 1948. Benjamin M. Holstein of the Washington office, Office of the Solicitor, appeared for the Commodity Exchange Authority, the complainant, and Robert Perret of New York City appeared for respondents. William T. Buster testified as a witness for complainant, and Frederick Rudolf Hediger and Jean Jacques Pasche testified as witnesses for respondents. As there is now no serious dispute concerning the material facts, which

are shown below in the Findings of Fact, no summary or analysis of the evidence is set out here.

After the hearing, on October 11, 1948, complainant filed suggested findings, etc., recommending suspensions for 15 days of the corporation's registration and of the trading privileges on contract markets of the corporation, Hediger, Pasche, Schmid, and Lulie. On October 12, 1948, respondents filed suggestions and a brief, and on October 28 a supplemental brief, recommending dismissal because there was no fraud and the violations shown were technical, isolated, and unintentional.

The referee issued his report on February 18, 1949, recommending dismissal as to respondents Pasche and Minder but proposing findings of fact and conclusions to the effect that the other respondents had violated the act substantially as charged in the complaint except as to the charge of having deceived and defrauded customers. The referee proposed a five-day suspension of the registration of Garnac Grain Company, Inc., as a futures commission merchant and an order to contract markets to refuse all trading privileges thereon to Garnac Grain Company, Inc., Fred Hediger, H. R. Schmid, and George Lulie for five days.

Respondents thereafter filed a document stating that they did not except to anything in the referee's report other than the sanctions proposed. They argued that a reprimand should suffice or that any suspension or registration or trading privileges should be suspended. Complainant filed no exceptions. Oral argument before the deciding officer was not requested.

After consideration of respondent's exceptions, it is believed that the referee's proposed sanctions should be adopted for the reasons given in his report and contained also in this decision and order which are substantially as proposed by the referee.

FINDINGS OF FACT

1. Respondent Garnac Grain Company, Inc. (herein called Garnac), is a New York corporation whose principal place of business is 2 Broadway, New York, New York. It enjoys membership trading privileges on The Board of Trade of the City of Chicago (the Chicago Board of Trade), a contract market. It was registered as a futures commission merchant for the year 1942, did not apply for registration and was not registered as such from January 1, 1943, until February 17, 1948, but has been registered as such since the latter date.

2. Respondent Fred Hediger, an individual residing at 10 Montague Terrace, Brooklyn, New York, was at all times material herein president of Garnac and a member of the Chicago Board of Trade.

3. Respondent Jean Jacques Pasche, an individual residing at 68 Montague Street, Brooklyn, New York, was at all times material herein vice-president of Garnac and a stockholder and salaried employee of Andre et Cie., S. A., mentioned below, which was founded by his grandfather, George Andre, and is owned by the Andre family.

4. Respondent H. R. Schmid, an individual residing at 225 Cumberland Street, Brooklyn, New York, was at all times material herein treasurer of Garnac.

5. Respondent George Lulie, an individual residing at 147-30 15th Drive, Whitestone, New York, was at all times material herein secretary of Garnac.

6. Respondent Erwin Minder, an individual residing at 469 Washington Avenue, Brooklyn, New York, at all times material herein held a power of attorney from Garnac.

7. At all times material herein Andre et Cie., S. A., of Lausanne, Switzerland, Evera, S. A. C., of Montevideo, Uruguay, and Range Grain Company, Ltd., of Winnipeg, Canada, foreign corporations, were customers of Garnac, whose business was almost exclusively with a few foreign corporations, and not with domestic customers.

8. On March 26 and five other days in 1946, and on 47 days in 1947, Garnac, acting as a futures commission merchant for Andre et Cie., its customer, received and transmitted orders for the purchase or sale of commodities named in the act for future delivery on the Chicago Board of Trade, a contract market, received and transmitted confirmations of executions of such orders, extended credit in connection with them, and recorded the transactions.

9. On 14 days in 1947 Garnac acted similarly with respect to Evera, S. A. C., its customer, and on seven days in 1947 with respect to Range Grain Company, Ltd., its customer.

10. On August 28 and 20 other days in 1947, Garnac made contracts for the purchase or sale of corn or wheat for future delivery on the Chicago Board of Trade when it had, or by such contracts obtained, long or short positions in corn or wheat futures, respectively, exceeding 200,000 bushels, without reporting in accordance with regulations issued by the Secretary of Agriculture under section 41 of the act (7 U.S.C.6i).

11. As a result of prior transactions, the position of Andre et Cie. carried with Garnac was short 60,000 bushels of May 1947 corn futures on the Chicago Board of Trade on May 17, 1947. It was agreed between Garnac and Andre that Garnac would "switch" this May position to July, which means that Garnac, for Andre's account, would purchase 60,000 bushels of Chicago May 1947 corn futures (thus closing out the short position in the May future) and sell 60,000 bushels

of Chicago July 1947 corn futures (thus establishing a 60,000 bushel short position in the July future).

12. On May 22, 1947, Garnac sold 35,000 bushels of Chicago July 1947 corn futures for Andre et Cie., but made record entries showing, and reported to Andre, that 60,000 bushels had been sold. About September 8, 1947, Garnac confirmed to Andre that 60,000 bushels had been sold and rendered an account on that basis. The 25,000 bushels not actually sold were recorded and accounted for as sold at \$ 1.67 3/4 per bushel. Against this reported sale was applied a purchase of 25,000 bushels on July 23, 1947, at \$ 2.18 per bushel, which resulted in a reported loss to Andre of \$ 12,562.50, on which basis accounting was made.

13. On July 22, 1947, Andre et Cie. was short with Garnac 90,000 bushels of Chicago July corn futures. On July 23, 1947, Andre instructed Garnac to switch this position from July to September, and Garnac replied that it had purchased for Andre 90,000 bushels of Chicago July corn futures (thus closing out the short July position) and sold 90,000 bushels of Chicago September corn futures (thus establishing a short position in the September future), the sale of the September reported as made at 8 3/4 cents per bushel less than the purchase of the July. The reported sale of the September future was not made.

14. Garnac recorded the reported sale of futures mentioned in Finding 13 as made at \$ 2.09 3/4 per bushel. In accounting with Andre et Cie., Garnac applied, against this reported sale, purchases made in August 1947, which resulted in a loss to Andre of \$ 17,612.50, including \$ 337.50 commission. Stratton Grain Company, in accounting with Garnac for these August purchases, had applied them against August sales (not the reported July 23 sale), and this accounting showed a profit of \$ 515.

15. About October 29, 1947, Garnac received an order from Andre et Cie. to sell 5,000 bushels of Chicago December 1947 wheat futures at \$ 2.95 per bushel. As the price was then above \$ 2.95, Garnac thought the message was a mistake and asked for clarification. By the time the accuracy of the message was confirmed, the price was below \$ 2.95 and the order could not be executed. No sale was made, but Garnac confirmed the sale and accounted with Andre as if it had been made at \$ 2.95.

16. Andre et Cie. was fully informed concerning the progress, status, and results of all transactions for it mentioned herein, knew how such transactions were handled by Garnac, and approved.

17. Each transaction in futures mentioned herein could have been used to hedge, to fix the price of, and to deliver the commodity involved in interstate commerce.

18. In the transactions mentioned herein, respondents Hediger, Schmid, and Lulie acted for Garnac as its officers and within the scope of their authority. While respondent Pasche held the title of vice-president of Garnac, he was rather the representative of Andre than an officer of Garnac, in the usual

sense, and the evidence does not show that he acted for Garnac in these transactions. There is no evidence that respondent Minder acted for Garnac in this connection.

CONCLUSIONS

The allegations of fraud and deceit were based upon the transactions with Andre et Cie. While Garnac's records alone would seem to support these allegations, the evidence that the customer was kept informed of the true facts and approved all the actual transactions supports the conclusion that there was no fraud or deceit, and complainant has conceded that none was shown.

Although Garnac may have had only a few customers in 1946 and 1947, it concededly failed to comply with the statutory requirement that it register pursuant to section 4d of the act. The initial failure to apply for registration may well have been due to the carelessness of an officer who was later discharged for inefficiency, as claimed. The continuance in a regulated business without complying with valid requirements, however, is not to be lightly dismissed as a mere technical violation. The remaining officers were more than merely negligent in failing to correct the discharged officer's failure for so long.

Failure to report when reporting positions were involved violated section 4i of the act. We do not think that 21 instances of such failure in a year constitute mere isolated instances which may be disregarded under the circumstances before us.

Recording, reporting, and accounting for the sales of wheat and corn futures not sold on a contract market constituted bucketing, in violation of section 4b (D) of the act, and making false records and reports, in violation of 4b (B). The knowledge and consent of Andre prevent these acts from being fraudulent or deceitful as far as the customer is concerned, but such knowledge and consent do not give truth to untrue records and reports, nor repeal or excuse the statutory provisions. As indicated by complainant, the records and reports might readily deceive Government authorities charged with the duty of keeping in touch with conditions in the commodity markets.

Perhaps it should be said that there is no criticism of Garnac's indemnifying Andre for what they agreed was Garnac's mistake in not executing the order mentioned in Finding 15. The method used is what was unlawful: recording, etc., a trade that was not made.

The number and variety of the violations discount the assertion that they were merely technical, isolated, and unintentional. Viewed as a whole, they constitute such disregard of applicable law as must be considered intentional on the part of those choosing to engage in a regulated trade or profession.

The facts stated in Finding 18 indicate that as to respondents Pasche and Minder the complaint should be dismissed, and that the violations of Garnac were executed by its officers and agents, Hediger, Schmid and Lulie. There appears no reason for invoking different sanctions for the corporation and the executing officers.

What the sanction should be is, as usual, a matter of judgment. Weight should be given to the suspension recommended by complainant, which is charged with the duty of administering the statute. Also to be considered, as respondents point out, is that the publication of the charges, including fraud, has already damaged reputations in the eyes of persons who may never learn that we have found no fraud. Considering the whole matter, we think a suspension of five days should be ordered here, as set out below.

ORDER

The registration of Garnac Grain Company, Inc., as a futures commission merchant is suspended for five days, beginning on the 30th day after the date of this order.

Beginning on the 30th day after the date of this order, all contract markets shall refuse all trading privileges thereon to Garnac Grain Company, Inc., Fred Hediger, H. R. Schmid, and George Lulie, for five days.

As to Jean Jacques Pasche and Erwin Minder, the complaint herein is dismissed.

A copy hereof shall be sent by registered mail to each respondent and to each contract market.

LOAD-DATE: March 12, 2008

