

Commodity Futures Trading Commission
CEA CASES

NAME: GARNAC GRAIN COMPANY, INC.

CITATION: 8 Agric. Dec. 514

DOCKET NUMBER: 45

DATE: MAY 20, 1949

DOCUMENT TYPE: DISMISSAL OF PETITION FOR INTERVENTION, REOPENING, ETC.

(A. D. 2086)

In re Garnac Grain Company, Inc., *et al.* CEA Doc. No. 45. Decided May 20, 1949.

Dismissal of Petition for Intervention and Reopening

Petition for intervention, reopening, etc., dismissed, where grounds for petition are based on matter wholly extraneous to this proceeding, and where the petitioner has no justiciable interest in the outcome of the proceeding, but certain language in the prior decision is amended to indicate that the decision did not intend to convey the impression that the respondents' allegations with reference to the petitioner's negligence were correct. *

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

Messrs. Maurice J. Smith and Richard T. Graham, of New York City, for petitioner. *Mr. Benj. M. Holstein* for complainant. *Mr. Robert Perret*, of New York City, for respondent.

Decision by Thomas J. Flavin, Judicial Officer

DISMISSAL OF PETITION FOR INTERVENTION, REOPENING, ETC.

I

On March 24, 1949, a decision and order were entered in this proceeding under the Commodity Exchange Act finding, among other things, that respondent Garnac Grain Company, Inc., failed to register with the Secretary of Agriculture as a futures commission merchant in 1946 and 1947 in violation of the act.

The answer filed by the respondents in the proceeding contains the following statements with respect to the allegations of the complaint dealing with failure to register:

"That the corporate respondent had not again registered as a futures commission merchant under Section 4-d of the Commodity Exchange Act for the reason that the then President of the company, Paul Schupbach, was the office manager and the person entrusted with the handling of such matters. That the

said Paul Schupbach had opened the mail, received the blanks and placed them in his drawer without taking the necessary steps to register as required by the regulations. That for other acts of negligence arrangements were made to have him leave the employ of the company in the Fall of 1947. * * *

"That the failure of the corporate respondent and the three individual respondents Fred Hediger, H. R. Schmid and George Lulie, to renew the registration of the company as a futures commission merchant be condoned for the

reason that such failure was due to the neglect of a former officer of the company and that their failure to register and to file reports was not willful, and actually harmed no one."

The decision entered March 24, 1949, says the following in the second paragraph under the heading "Conclusions."

"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."

II

On April 12, 1949, Paul Schupbach filed an application to intervene in the proceeding and to reopen the hearing. The petition relates that Mr. Schupbach was in the active employment of the Garnac Grain Company, Inc., from 1938 until the latter part of 1947; that after 1945 he had no supervision, control, or direction over Garnac's trading; that he did not take part directly or indirectly in any trading transaction by Garnac; that he was never president of the company; that he commenced his employment in 1938 as an assistant treasurer and was made treasurer in 1941; that Mr. Fred Hediger, president of Garnac, was in full supervision and control over all futures transactions by Garnac during the period involved in the proceeding; that although petitioner was treasurer of Garnac in name, he acted in a ministerial capacity under specific direction from the president; that Garnac's failure to register as a futures commission merchant was not due to petitioner's oversight; that his services with the firm were entirely satisfactory and that he was not discharged for inefficiency or any other cause. Attached to the petition are exhibits consisting of letters from the Garnac Grain Company indicating Garnac's satisfaction with and appreciation for Schupbach's services to the company. The petition relates that Mr. Schupbach has been in the grain business for a number of years, that he expects to remain in the business, and that the wide distribution of the decision of March 24, 1949, with its

implication of negligence on the part of petitioner, has caused or may cause irreparable damage to his reputation. The petition asks that the proceeding be reopened so that petitioner may prove in evidence the facts alleged in his petition.

Answers to the petition for intervention were filed by the respondent Garnac Grain Company, Inc., and by complainant. Garnac's answer admits that the company appreciated Schupbach's honesty, loyalty and efforts, but contends that there was a difference of opinion between Mr. Schupbach and the company as to whether the treasurer should undertake activities other than those of a ministerial nature. Both Garnac's answer and the answer filed by complainant point out that the issues sought to be raised by the petition for intervention are not material or relevant to the proceeding.

Schupbach filed an affidavit on May 9, 1949, reiterating that he had been specifically instructed by Fred Hediger, Garnac's president, to follow orders and that trading was Hediger's business. Petitioner states in the affidavit,

"The fair statement in the Answer to my petition controverting the original contention of a discharge for acts of negligence is the following on page 3 of Garnac's answer:

" 'The Company had determined to effect certain changes in its management in view of the resumption of more normal business after the war years and Mr.

Schupbach left its employ by mutual consent. As already stated, the Company had employed Mr. Schupbach and appreciated his honesty, loyalty and efforts.' "

III

The question as to who had the responsibility in the Garnac organization of filing the registration papers is not one that must be answered in this proceeding. The fact is that Garnac was not registered and, as far as this proceeding is concerned, the act was breached, regardless of what may have been the distribution of duties among the officials of the company. Therefore, we see no reason for reopening the proceeding on this score. Necessarily, therefore, we would not reopen the proceeding to adjudicate the question as to why Mr. Schupbach left the company. This is a matter wholly extraneous to our proceeding. Mr. Schupbach has no justiciable interest in the outcome of the proceeding, that is a decision as to whether or not respondents violated the act and if so, what the sanctions should be. Accordingly, the petition for intervention, reopening, etc., is dismissed.

However, the language in our decision, quoted above, may not be happily worded as far as Mr. Schupbach is concerned, although we did not intend to convey the impression that we had found Garnac's allegation in this connection to be correct. Consequently, the decision

is amended by substituting for the paragraph in question the following:

"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 continuance in a regulated business without complying with valid requirements 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."

Copies of this decision and order shall be served upon the parties and also upon the contract markets so that publicity may be given to this decision and order explaining Mr. Schupbach's position equal to that of original decision and order.

LOAD-DATE: March 12, 2008

