

Commodity Futures Trading Commission
CEA CASES

NAME: ROBERT HALTMIER

CITATION: Comm. Fut. L. Rep. (CCH) P20,160; [1975-1977 TRANSFER BINDER]

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[P 20,160] In re Robert Haltmier.

Commodity Futures Trading Commission. May 5, 1976. CFTC Dkt. No. 75-2. Order imposing remedial sanctions in full text. (For prior opinion of administrative law judge, see P 20,078).

Antifraud -- Unauthorized Trading -- Cheating and Defrauding -- CFTC Adoption of Prior Agency Decisions. -- The Commodity Futures Trading Commission agrees with the decisions of its predecessor agency (the Commodity Exchange Authority) that unauthorized trading in an account of a customer by an employee of a registered futures commission merchant constitutes cheating and defrauding in violation of Sec. 4b of the Commodity Exchange Act.

See P 12,555 and 12,685, "Liabilities -- Prohibitions" division.

"Discretionary Account" -- Definition -- Failure to Follow Firm's Policy -- Unauthorized Trading. -- The failure of an account executive to follow his firm's policy with respect to "discretionary accounts," while not conclusive, coupled with the trader's testimony that he intended only limited discretion, constituted substantial evidence to support the

administrative law judge's findings of fact and conclusion of law that the respondent willfully violated Sec. 4b of the Commodity Exchange Act. The company ordinarily would not authorize a discretionary account (whereby the broker, authorized to trade in the account; may execute buy and sell orders without the prior consent of the owner for each individual order) in an amount less than \$ 10,000, and then only after the account was accepted and approved in writing. The account contained \$ 5,000 when opened, and the trader testified that his instructions were to purchase as many soybean contracts as he could with the money available for margin, and hold them for a period of at least six months in order for any anticipated profits to be taxed as long-term capital gains. After the initial purchase, the respondent made an additional 208 trades in the account, including other commodities besides soybeans, and such transactions in these commodities were not authorized by the trader and were not within the respondent's scope of discretion.

See P 12,555 and 12,685, "Liabilities -- Prohibitions" division.

Prohibition from Trading -- Unauthorized Trading -- Sanction Reduced -- Registration Required for Future Employment -- Evidence of Rehabilitation Would Be Required. -- A five year prohibition from trading that was based in part on the fact that an account executive was not required to register under the Commodity Exchange Act, and it was therefore not possible to revoke or suspend his license, was reduced to 18 months, since such person is now required to register as an associated person. At the end of the sanction period, the respondent, if he intends to resume his association with a FCM, would be required to apply for registration, and his violation of Sec. 4b for

unauthorized trading could serve as a basis for denial under Sec. 8a (2), absent evidence of rehabilitation.

See P 7485 and 7925, "Registration" division, and P 11,265, "Liabilities -- Prohibitions" division.

Administrative Proceedings -- Sanction Policy -- Effect on Particular Respondent. -- The Commodity Futures Trading Commission will ordinarily consider and evaluate the effect that an order prohibiting trading would have on the particular respondent. For, example, a short suspension imposed on an FCM or a firm or individual whose sole income is derived from futures trading could have substantially more impact than a much longer suspension imposed upon an occasional speculator.

See P 11,265, "Liabilities -- Prohibitions" division.

Administrative Proceedings -- Sanction Policy -- Correlation to Gravity of Violation -- Deterrent Effect -- "Particularly Egregious" -- Consistent Flaunting. -- The severity of a sanction should bear some correlation to the gravity of the violation committed, and an order prohibiting trading should be long enough to deter future violations by the respondent and discourage others from committing similar violations. However, if a violation is "particularly egregious," or if the violator has "consistently flaunted" the Act, or the rules and regulations thereunder, the Commission will impose sanctions sufficiently severe to protect the public interest.

See P 11,265, "Liabilities -- Prohibitions" division.

OPINION OF THE COMMISSION

The respondent, Robert Haltmier, has appealed to the Commission from the decision and order of an Administrative Law Judge, prohibiting him from trading on or subject to the rules of any contract market for a period of five years. n1 The respondent, who was employed as an account executive with the registered futures commission merchant firm of Conti-Commodity Services ("Conti"), was alleged to have executed 208 transactions for the regulated commodity futures trading account of a customer (Albert Millet) without his knowledge or authorization. The complaint filed before the Secretary of Agriculture charged the respondent with a willful violation of Section 4b of the Act, 7 U. S. C. § 6b. n2 A hearing was held on January 16, 1975, before Administrative

Law Judge John G. Liebert (the "Administrative Law Judge"), to determine whether the respondent's alleged actions were in violation of Section 4b of the Act, which provides in pertinent part:

It shall be unlawful (1) for any . . . employee of any member [of a contract market], in or in connection with any order to make, or the making of, any contract or sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person . . .

n1 The Administrative Law Judge also ordered that the respondent cease and desist from violations of Section 4b of the Commodity Exchange Act, 7 U. S. C. §§ 1-22 (Supp. IV, 1974).

n2 On June 10, 1974, the Assistant Secretary of Agriculture Instituted these proceedings by filing a complaint and notice of hearing. Since the institution of these proceedings, the Commodity Exchange Act was amended by the Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93-463 (Oct. 23, 1974). The Commodity Futures Trading Commission was also created as a result of the amendments to the Act and has taken jurisdiction of this matter from, its predecessor agency, the Commodity Exchange Authority, under authority of Sections 411 and 412 of Pub. L. No. 93-463 (Oct. 23, 1974).

(A) to cheat or defraud or attempt to cheat or defraud such other person. . .

In March of 1972, Albert Millet's account with Conti was transferred to the respondent from another account executive at that firm. Millet gave the respondent specific instructions to trade only in soybean contracts. On March 27, 1972, the date on which the respondent made the initial purchases for Millet's account, the account contained approximately \$ 5,000. Margin on that date was \$ 1,000 per soybean contract. The Administrative Law Judge found that the respondent initially purchased five such contracts for Millet's account. n3 Millet's instructions to the respondent were to purchase as many soybean futures contracts as he could with the money available for margin, and to hold them for a period of at least six months, so that anticipated profits would be taxed as long-term capital gains. The respondent was authorized to make additional purchases of soybean contracts if the market went up as anticipated. According to the Administrative Law Judge's findings, Millet also instructed the respondent that an amount up to \$ 500 could be obtained from Mrs. Elizabeth Eastment to supplement his margin account. Having transferred his account, Millet then left for England on April 1, 1972, and did not return to the United States until the end of October of that year. Before leaving, Millet had directed the respondent to forward his monthly activity statement to his address in England. However, the statements apparently were sent to Mrs. Eastment's address and held at the post office, as she also spent the summer in Europe. Other than the receipt of one letter from the respondent, which Millet testified was illegible, he received no other communication from the respondent while he was abroad. When Millet returned from England at the end of October and discovered that substantial activity had occurred in his account, he directed that the account be closed. The Administrative Law Judge found that after the initial purchase of soybean contracts, the respondent had engaged in some 208 additional transactions involving 690 contracts which, besides soybeans, included soybean oil, soybean meal, wheat, cotton, and potatoes. The Administrative Law Judge also found that Millet had not vested the respondent with the discretionary authority to make the trades in question.

n3 Although the respondent testified that he initially purchased five soybean contracts for Millet's account, the statement of account, dated April 18, 1972, indicates that on March 27, 1972, only two contracts in "November Beans" were purchased for Millet's account.

The respondent, who is acting *pro se*, has raised a number of issues in this appeal. The Commission, however, having reviewed the record and submissions by the respondent has determined that only two of the many issues raised by the respondent need be considered: (1) whether there is substantial evidence in the record to support the findings of fact and conclusions of law of the Administrative Law Judge that the respondent willfully violated Section 4b of the Act as charged; and (2) whether the sanctions imposed by the Administrative Law Judge were excessive on the facts of this case n4

n4 The respondent also challenged: (a) the objectivity of the Administrative Law Judge to render an impartial decision in this matter, as a result of a conversation which the Administrative Law Judge had with Millet after the hearing, apparently involving a mutual friend; (b) the Administrative Law Judge's findings as to the reason for the transfer of Millet's account to the respondent from another account executive at Conti; (c) the Administrative Law Judge's determination to give more credence to Millet's testimony than to that of the respondent, alleging that Millet committed perjury; and (d) the Administrative Law Judge's finding that the respondent had written ". . . a report to Millet of what he had done, or intended to do, and mailed this to Mrs. Eastment's address."

The Commission has found no evidence of bias on the part of the Administrative Law Judge or of perjury by Millet. The respondent's other allegations of error are not supported by the record and are therefore found to be without merit.

Although a number of the respondent's exceptions to the Administrative Law Judge's findings of fact are without basis, the respondent is correct that the date of the initial purchase of soybeans for Millet's account was March 27, 1972, and not April 18, 1972, as indicated in the Administrative Law Judge's findings of fact. In addition, contrary to the Administrative Law Judge's findings, there was no margin, change in soybeans in June.

While the Administrative Law Judge was mistaken as to the above findings of fact, these errors are not material to the conclusion that the respondent's actions involving unauthorized trading constituted a violation of Section 4b of the Act. The above findings of fact are, thus, harmless errors.

I. ISSUE OF UNAUTHORIZED TRADING

We find that the Administrative Law Judge's conclusion that the respondent willfully violated Section 4b of the Act, by unauthorized trading in Millet's account, is supported by the weight of the evidence in the record. n5

n5 On review by courts of appeals, the findings of the Commission as to the facts will be conclusive if supported by the weight of the evidence in the record. 7 U. S. C. § 9.

The respondent has challenged the Administrative Law Judge's finding that Millet's account was *not* a "discretionary account." n6 Norton D. Waltuch, an official of Conti, testified at the hearing that Conti would not authorize a "discretionary account" in an amount less than \$ 10,000, and that such an account would have to be accepted by them and approved in writing. The respondent's testimony indicated that, notwithstanding the firm's rules, he had handled the Millet account as a "discretionary account." Haltmier also testified that he was aware of his firm's policy regarding "discretionary accounts," and further acknowledged that Millet had not given him specific instructions to trade in commodities other than soybeans.

n6 A "discretionary account" is an account whereby the broker, authorized to trade in the account, may execute buy and sell orders without the prior consent of the owner for each individual order. Such authority is generally vested in the broker by a blanket written agreement. Under the rules of the Chicago Board of Trade and, Chicago Mercantile Exchange, a "discretionary account" requires a minimum opening balance of \$ 5,000.

A review of Millet's testimony indicates that he intended the respondent to have limited discretion with regard to the purchase of futures contracts in soybeans. However, he specifically testified that soybeans were the only contracts in which the respondent was authorized to trade. While the respondent's failure to comply with the firm's policy regarding "discretionary accounts" is not conclusive of the fact that the respondent's trades in Millet's account were unauthorized, when coupled with Millet's testimony, there can be little doubt that the respondent was not given unlimited discretion in handling Millet's account.

After the initial purchase of soybean contracts on March 27, 1972, the respondent made an additional 208 trades in Millet's account which, while to a large extent in soybeans, also included soybean oil, soybean meal, wheat, cotton, and potatoes. It is clear that those transactions in commodities other than soybeans were not authorized by Millet, and were not within the respondent's scope of discretion.

The Commodity Futures Trading Commission's predecessor agency n7 had consistently held that unauthorized trading in an account of a customer by an employee of a registered futures commission merchant constituted cheating or defrauding such customer in violation of Section 4b of the Act. n8 We agree with

those decisions and find the respondent's action to have been a willful violation of the Act. n9

n7 See note 2 *supra*.

8 *George Rex Andrews*, 32 Agric. Dec. 553 (32 A.D. 553) (1973); *Elliott Alkow*, 31 Agric. Dec. 1353 (31 A.D. 1353) (1972); *Edward Woltman*, 30 Agric. Dec. 600 (30 A.D. 600) (1971); *Rodger Harris*, 29 Agric. Dec. 1330 (29 A.D. 1330) (1970); *The Siegel Trading Co., Inc.*, 29 Agric. Dec. 189 (29 A.D. 189) (1970); *William R. Thompson, Jr.*, 27 Agric. Dec. 335 (27 A.D. 335) (1968); *Douglas Steen*, 21 Agric. Dec. 1076 (21 A.D. 1076) (1962).

9 See *Goodman v. Benson*, 286 F. 2d 896, 900 (7th Cir. 1961), which holds that ". . . if a person 1) Intentionally does an act which is prohibited. - Irrespective of evil motive or reliance on erroneous advice, or 2) acts with careless disregard of statutory requirements, the violation is wilful"

The Act imposes a high degree of trust on those engaged in trading activity with customer's funds, and in this instance, the respondent's activities breached that trust by disregarding Millet's instructions. Consequently, we find that the weight of the evidence in the record supports the Administrative Law Judge's conclusion that the respondent willfully engaged in unauthorized trades in violation of Section 4b of the Act.

II. ISSUE OF THE SEVERITY OF THE SANCTIONS

In imposing sanctions on' the respondent, consisting of the issuance of a cease and

desist order, and a denial of all trading privileges for a period of five years, the Administrative Law Judge followed the recommendation of the Commodity Exchange Authority, the predecessor agency to the Commission in administering the Act. In so doing, the Administrative Law Judge implied that the severity of the trading ban was based, at least in part, on the fact that the respondent was not required to be registered under the Act, and therefore, it was not possible to revoke or suspend any license as a result of his having violated the Act.

As a result of the 1974 amendments to the Act, in order to be employed as an account executive with a futures commission merchant, the respondent will be required to file an application for registration as an associated person of a futures commission merchant under Section 4k of the Act. n10 Pursuant to Section 8a(2) of the Act, as amended, 7 U. S. C. § 12a(2):

The Commission is authorized . . .

(2) to refuse to register any person . . .

(B) if it is found, after opportunity for hearing, that the applicant is unfit to engage in the business for which the application for registration is made, (i) because such applicant . . . at any time engaged in any practice of the character prohibited by this Act or was convicted of a felony in any State or Federal Court, or was debarred by any agency of the United States from contracting with the United States, or the applicant willfully made any material false or misleading statement in his application or willfully omitted to state any material fact in connection with the application, or (ii) for other good cause shown n11

n10 Section 4k of the Act, as amended, 7 U. S. C. § 6k, provides In pertinent part:

(1) It shall be unlawful for any person to be associated with any futures commission merchant. . . . In any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical

capacity) or (ii) the supervision of any person or persons so engaged, unless such person shall have registered, under this Act

n11 See Jack W. Savage, CFTC Docket No. 76-1 (March 1, 1976) (P 20,139). See also *Standards for Denial of Registration*, 40 Fed. Reg. 28125 (July 3, 1975).

If the respondent submits an application at the expiration of the period during which he is prohibited from trading, his violation of Section 4b of the Act could serve as the basis for a future denial of registration as an associated person, absent evidence of rehabilitation. In view of the registration requirements of the Act, the Commission believes that a five-year sanction is excessive on the facts of this case. Accordingly, the sanction will be reduced to eighteen months, during which time the respondent will be prohibited from trading on or subject to the rules of any contract market.

In order to effectuate properly the prophylactic purposes of the Act, a determination must be made, in each case, of the effect of an Order suspending or prohibiting a person from trading on or subject to the rules of a contract market for a specified period of time. A short suspension imposed on a futures commission merchant may well have a more substantial impact than a much longer suspension would have on the occasional speculator. Where a firm's or individual's sole income is derived from trading in the futures markets, an Order revoking trading privileges for even a short period of time, in most cases, would have a significantly greater economic effect on the person sanctioned than it does on the occasional speculator. Thus, in imposing any sanction, the Commission ordinarily will consider and evaluate the effect that a sanction has on the particular respondent. In any case, the severity of the sanction should bear some correlation to the gravity of the violation committed.

A Commission Order suspending or prohibiting trading privileges generally should be long enough to serve as a deterrent to future violations by the respondent, and also discourage similar actions by other potential violators. However, if the violation for which the sanction to be imposed is particularly egregious, or if the violator has consistently flaunted the Act or the Commission's rules and regulations, the Commission will act effectively to impose sanctions sufficiently severe to protect the public interest.

It is the Commission's view that an Order prohibiting the respondent from trading on or subject to the rules of any contract market for eighteen months is a sufficiently severe sanction for the respondent's actions involving unauthorized trading. At the expiration of the period of prohibition of trading, the respondent, if he intends to resume his association with a futures commission merchant, will have to apply for registration with the Commodity Futures Trading Commission pursuant to section 4k of the Act, as amended.

At such time, his fitness for registration under the Act will be reviewed by the Commission.

Accordingly, for the reasons set forth above, we affirm the findings and conclusions of the Administrative Law Judge that the respondent willfully violated Section 4b of the Act as charged. However, as indicated in this Opinion, the prohibition from trading on or subject to the rules of any contract market shall be for a period of eighteen months, which shall commence on the twentieth day after the date of this Opinion and Final Order. In all other respects, the order of the Administrative Law Judge is affirmed. An appropriate Order by the Commission will be issued.

By the Commission (Chairman BAGLEY, Vice-Chairman RAINBOLT, and Commissioner MARTIN), Commissioner DUNN not participating and Commissioner SEEVERS dissenting.

COMMISSIONER SEEVERS DISSENTING

In my opinion, this case should be remanded for a new hearing before another Administrative Law Judge. A summary discussion of the pertinent facts in this proceeding will show why I do not subscribe to the majority's disposition.

In concluding that the respondent willfully violated Section 4b of the Act by unauthorized trading in Millet's (the complaining customer's) account, the Administrative Law Judge rejected the respondent's contention that the trades in question were within his discretion. The Administrative Law Judge apparently found Millet to be a more credible witness than Haltmier, the respondent, n1 and based his decision upon Millet's testimony, that he had not authorized the respondent to trade in any commodities other than the initial soybean contracts.

n1 The Administrative Law Judge's findings indicate: "On the basis of the evidence, we place more credence on the testimony of Millet."

Absent a substantial showing of error, I would not ordinarily question the findings of an Administrative Law Judge as they pertain to the weight of the evidence adduced at a hearing. However, in this case, there are a number of matters which make it difficult to conclude that the Administrative Law Judge's findings are supported by the weight of the evidence.

A review of the Administrative Law Judge's findings and conclusions reveals at best a carelessly written decision. The Commission Opinion has noted that, as asserted by the respondent, the date of the initial purchase of soybeans for Millet's account was incorrect. n2 In reviewing the record and submissions, the Commission also found that, contrary to the Administrative Law Judge's findings, there was no margin change in soybeans in June, which is also corroborative of the respondent's testimony at the hearing, notwithstanding expert testimony to the contrary.

n2 See footnote 4 of the Commission's Opinion.

The complaint, filed by the Assistant Secretary of Agriculture, charged the respondent with having made "208 transactions involving 690 contracts" during the period. April 18, 1972 to October 10, 1972, without authorization. At the beginning of the hearing, the Administrative Law Judge asked for and obtained a stipulation from the respondent that he had in fact made the transactions in question for Millet's account. However, the Administrative Law Judge, in his findings of fact, stated: "Respondent admitted that these 208 transactions were not expressly authorized by Millet." The record, however, does not support that finding. Haltmier testified: "I thought that I had discretion in choosing not to liquidate if I could see my way to hold on." At the conclusion of the hearing, the Administrative Law Judge stated to Haltmier:

JUDGE LIEBERT: . . . I asked what would happen when margin was required and what's available. You said you would sell another month short. I understand that. Now, why would it be necessary to go in at a subsequent date and buy long another commodity or sell short another commodity?

THE WITNESS [Haltmier]: That was not necessary, you are right.

* * * *

JUDGE LIEBERT: And you recognize that was unauthorized?

THE WITNESS: Yes.

Taken in context, however, neither the respondent's stipulation that he made the "208 transactions" in question, nor his acknowledgement that the method he employed in meeting margin requirements was "unauthorized," can be construed to sup-

effective on the twentieth day after the date of this Opinion and Final Order.

IT IS FURTHER ORDERED that Robert Haltmier, in addition to being prohibited from trading on or subject to the rules of any contract market for a period of eighteen months, shall from the date of this Order permanently cease and desist from placing, or causing to be placed, in any customer's account, any contracts of sale of any commodity for future delivery, without the prior knowledge, consent or authorization of such customer, or otherwise to cheat or defraud, or attempt to cheat or defraud, any person in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery on or subject to the rules of any contract market for, or on behalf of, any person.

By the Commission (Chairman BAGLEY, Vice-Chairman RAINBOLT, and Commissioner MARTIN). Commissioner DUNN not participating and Commissioner SEEVERS dissenting.

LOAD-DATE: June 16, 2008

