

Commodity Futures Trading Commission  
CEA CASES

**NAME:** HARRY KAY (ALSO KNOWN AS AARON D. SCHLECTER), AND HARRY KAY & ASSOCIATES, INC.

**CITATION:** 23 Agric. Dec. 743

**DOCKET NUMBER:** 117

**DATE:** JULY 8, 1964

**DOCUMENT TYPE:** DECISION AND ORDER

(No. 9200)

*In re* HARRY KAY (ALSO KNOWN AS AARON D. SCHLECTER), AND HARRY KAY & ASSOCIATES, INC. CEA Docket No. 117. Decided July 8, 1964.

**Undersegregation and Commingling of Customers' Funds -- Cheating and Defrauding -- Records -- Denial of Trading Privileges -- Default**

The undersegregation and commingling of customers' funds, cheating and defrauding customers and the lack of required records constitute violations of the act and the regulations issued thereunder. All contract markets are ordered to refuse trading privileges to the respondent corporation for a period of 5 years.

*Mr. Earl L. Saunders* for Commodity Exchange Authority. *Mr. Benj. M. Holstein*, Hearing Examiner.

*Decision by Thomas J. Flavin, Judicial Officer*

**PRELIMINARY STATEMENT**

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), instituted by a complaint filed February 26, 1964, by an Assistant Secretary of Agriculture. The respondents are Harry Kay & Associates, Inc., a Nevada corporation which was registered as a futures commission merchant at the time of the transactions set forth in the complaint, and Harry Kay, an individual who allegedly managed and conducted the business of respondent corporation. Respondents are charged with cheating, defrauding and deceiving their customers, making false reports and confirming fictitious trades to customers, "bucketing" customers' orders, improper use and handling of customers' funds, including failure to segregate and keep records with respect to such funds, and failure to keep required books and records of futures transactions in violation of various sections of the act and the regulations issued thereunder. A copy of the complaint and a copy of the rules of practice were served upon respondent corporation but service of the complaint has not been made upon the individual respondent.

At the time of service of the complaint upon respondent corporation, it was notified in writing that an answer to the complaint should be filed within 20 days of its receipt and that, in accordance with the rules of practice, failure to answer would constitute an admission of the facts alleged in the complaint and

failure to request a hearing would constitute a waiver of hearing. Respondent corporation has not filed an answer and has not requested a hearing. The matter was referred to Benj. M. Holstein, Hearing Examiner, Office of Hearing Examiners, United States Department of Agriculture, for the preparation of a report without further investigation or hearing pursuant to section 0.9(c) of

the rules of practice (17 CFR 0.9(c)). On May 27, 1964, the hearing examiner filed a report recommending that respondent corporation be found to have violated the act substantially as charged and that an order be issued directing all contract markets to refuse all trading privileges to respondent corporation for a period of five years. No exceptions to the hearing examiner's report were filed.

#### **FINDINGS OF FACT**

1. Respondent Harry Kay & Associates, Inc., a Nevada corporation, was at all times referred to herein a registered futures commission merchant under the act. At all such times, respondent Harry Kay (also known as Aaron D. Schlecter), a member of the Board of Trade of the City of Chicago, was in complete control of said corporation, initiated and carried out the acts, dealings, and transactions of the corporation, and used it as an instrument to conduct his own business. n1

2. The Board of Trade of the City of Chicago, hereinafter referred to as the Chicago Board of Trade, the Chicago Mercantile Exchange and the New York Mercantile Exchange were, at all times referred to herein, duly designated contract markets under the act.

3. During the period November 16, 1962, through May 9, 1963, respondent corporation converted to its own use funds amounting to approximately \$ 60,000, which consisted of funds received by it in its capacity as a futures commission merchant from its customers in connection with orders to make transactions in commodities for future delivery, and funds accrued to such customers in connection with dealings in commodity futures.

4. As a result of the conversion of funds as described in Finding of Fact 3, respondent corporation was undersegregated in the amount of approximately \$ 60,000 on May 9, 1963, that is,

the total amount of customers' funds held in segregation was insufficient by the aforesaid sum to pay off all credits and equities due to such customers.

5. During the period November 16, 1962, through May 8, 1963, respondent corporation accepted 71 orders from 23 different customers for the execution of transactions in commodity futures on the Chicago Board of Trade, the Chicago Mercantile Exchange and the New York Mercantile Exchange, and in connection therewith falsely reported to these customers that transactions in commodity futures had been executed on such markets for such customers' accounts, whereas no such transactions had been executed.

6. During the period February 18 through May 7, 1963, respondent corporation made purchases and sales of commodity futures on the Chicago Board of Trade and the Chicago Mercantile Exchange for its own use and benefit, and placed 81 of such trades in its customers' accounts carried by clearing members, commingling the open contract positions and financial results of such trades with the open contract positions and financial results of the transactions of such customers.

7. During the period November 16, 1962, through May 9, 1963, respondent corporation did not make a daily computation nor maintain a permanent record of the amount of customers' money required to be held in segregated account, nor prepare nor maintain full, complete and systematic records of all commodity futures transactions made through it on or subject to the rules of contract markets.

8. The futures transactions described in the Findings of Fact were capable of being used for hedging transactions in interstate commerce, or determining the price basis of transactions in interstate commerce, or for delivering commodities sold, shipped or received in interstate commerce.

n1 Respondent Harry Kay's relationship with respondent corporation is deemed admitted by respondent corporation by virtue of its default in the

filing of an answer. Such finding, however, is not binding upon the individual respondent herein.

#### **CONCLUSIONS**

By reason of the facts set forth in Findings of Fact 3 and 5, respondent corporation willfully violated section 4b of the act (7 U.S.C. 6b). However, the hearing examiner's finding of a violation of section 4h of the act (7 U.S.C. 6h) is not adopted herein as such violation was not charged in the complaint. Nor do we find a violation of section 4c of the act (7 U.S.C. 6c) by reason of the facts set forth in Finding of Fact 5.

Section 4d(2) of the act (7 U.S.C. 6d(2)) requires each futures commission merchant to treat and deal with the funds of a customer "as belonging to such customer" and to account separately therefor, and prohibits the commingling of such funds with funds of the futures commission merchant or the use of such funds to margin or guarantee the trades or secure the credit of any person other than the customer for whom held. The regulations under this provision require each futures commission merchant to segregate such funds (17 CFR 1.20), and spell out additional details concerning the care and use thereof and the records to be kept in connection therewith (17 CFR 1.21, 1.22 and 1.32). The undersegregation and commingling described in Findings of Fact 4 and 6, and the lack of required records described in Finding of Fact 7, constitute violations of these provisions of the act and the regulations issued thereunder. Respondent corporation's failure in the matter of keeping necessary books and records of all futures transactions, described in Finding of Fact 7, also constitutes a violation of the record keeping requirements imposed upon futures commission merchants under section 4g of the act (7 U.S.C. 6g) and section 1.35 of the regulations issued thereunder (17 CFR 1.35).

The nature and scope of the violations by respondent corporation indicate a willful and flagrant disregard of the act and justify a substantial sanction. As respondent corporation is not presently registered as a futures commission merchant, complainant and the hearing examiner recommend a denial of trading privileges for a period of five years. It is concluded that this recommendation should be adopted.

#### **ORDER**

Effective August 3, 1964, all contract markets shall refuse all trading privileges to respondent Harry Kay & Associates, Inc., for a period of five years, such refusal to apply to all trading done and positions held by the said respondent directly or indirectly, whether for its own account or for the accounts of other persons.

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

**LOAD-DATE:** June 8, 2008

