

Commodity Futures Trading Commission
CEA CASES

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

CITATION: 25 Agric. Dec. 1208

DOCKET NUMBER: 117

DATE: OCTOBER 4, 1966

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(No. 10,834)

In re HARRY KAY (also known as Aaron D. Schlecter), AND HARRY KAY & ASSOCIATES, INC. CEA Docket No. 117. Decided October 4, 1966.

Customers' funds -- Cheating and defrauding -- Bucketing -- Records requirements -- Denial of trading privileges of Harry Kay -- Default

The activities of the individual respondent in cheating, defrauding and deceiving customers, reporting to customers transactions that were fictitious, commingling and undersegregating customers' funds and in failing to keep required records are violations of the act and the regulations for which his trading privileges on the contract markets are denied 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 and 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, also known as Aaron D. Schlecter, an individual who allegedly managed and conducted the business of the 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 was served upon the corporate respondent, and on July 8, 1964, no answer having been filed, a default order was issued terminating the proceeding against the corporation. *In re Harry Kay (also known as Aaron D. Schlecter), and Harry Kay and Associates, Inc.*, 23 Agric. Dec. 743 (23 A.D. 743).

At the time of the order against the corporation, service of the complaint had not been made on the individual respondent. On June 16, 1966, the individual respondent was served with a copy of the complaint. On July 27, 1966, Harry Kay was again served with a copy of the complaint together with a copy of the referee's order rescheduling the hearing for October 6, 1966. At the same time, this respondent was notified in writing that an answer to the

complaint was due 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 and failure to request a hearing would constitute a waiver of hearing. Respondent Harry Kay has not answered the complaint nor has he 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, as provided by the rules of practice (17 CFR 0.9 (c)). On August 19, 1966, the hearing examiner filed a report recommending that Harry Kay 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 him for a period of five years. No exceptions to the hearing examiner's report were filed.

FINDINGS OF FACT

1. Respondent Harry Kay (also known as Aaron D. Schlecter) is an individual who at all times material herein was a member of the Board of Trade of the City of Chicago, hereinafter referred to as the Chicago Board of Trade.

2. Respondent Harry Kay and Associates, Inc., a Nevada corporation, was at all times material herein a registered futures commission merchant under the act. At all such times, respondent Harry Kay was in complete control of said corporation, initiated and carried out the acts, dealings and transactions of the

corporation, and used the corporation as an instrument to conduct his own business.

3. The Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Mercantile Exchange were at all times material herein duly designated contract markets under the act.

4. During the period from November 16, 1962, through May 9, 1963, respondents converted to their own use funds amounting to approximately \$ 60,000, which consisted of funds received by them from their customers in connection with orders to make transactions in commodities for future delivery, and funds accruing to such customers in connection with dealings in commodity futures.

5. As a result of the conversion of funds described in Finding of Fact 4, respondents were 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.

6. During the period November 16, 1962, through May 8, 1963, respondents 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 such customers that transactions in commodity futures had been executed on said markets for such customers' accounts, whereas no such transactions had been executed.

7. During the period February 18 through May 7, 1963, respondents made purchases and sales of commodity futures on the Chicago Board of Trade and on the Chicago Mercantile Exchange for the use and benefit of said respondents, and placed 81 of such trades in their 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 respondents' customers.

8. During the period November 16, 1962, through May 9, 1963, respondents 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 them on or subject to the rules of contract markets.

9. 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.

CONCLUSIONS

By reason of the facts set forth in Findings of Fact 4 and 6, respondent Harry Kay willfully violated section 4b of the act (7 U.S.C. 6b), which makes it unlawful for any member of a contract market, in connection with any order to make or the making of any transaction in commodity futures on behalf of any person, to cheat, defraud, or deceive such person, or to bucket any order received from such person.

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 5 and 7, and the lack of required records described in Finding of Fact 8, constitute violations of this provision of the act and of the regulations issued thereunder. The failure to keep necessary books and records of all futures transactions, described in Finding of Fact 8, also constitutes a violation of the record-keeping requirements 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 Harry Kay indicate a willful and flagrant disregard of the act and justify a substantial sanction. Complainant and the hearing examiner recommended that respondent Harry Kay be denied all trading

privileges for a period of five years. It is concluded that this recommendation should be adopted.

ORDER

Effective November 1, 1966, all contract markets shall refuse all trading privileges to respondent Harry Kay for a period of five years, such refusal to apply to all trading done and positions held by said respondent directly or indirectly, whether for his own account or for the accounts of other persons.

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

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