

Commodity Futures Trading Commission
CEA CASES

NAME: MELVIN MILLER, AND DOMINICK F. AUCIELLO

DOCKET NUMBER: 151

DATE: JANUARY 3, 1968

DOCUMENT TYPE: COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re: Melvin Miller, and Dominick F. Auciello, Respondents
CEA Docket No. 151

Complaint and Notice of Hearing Under Section 6(b) of the Commodity Exchange Act

There is reason to believe that the respondents, Melvin Miller and Dominick F. Auciello, have violated the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.) and in accordance with the provisions of section 6(b) of the said act (7 U.S.C. 9), this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

Respondent Melvin Miller, an individual whose business address is 6 Harrison Street, New York, New York, is now and was at all times material herein a member of the New York Mercantile Exchange and a registered floor broker under the Commodity Exchange Act.

II

Respondent Dominick F. Auciello, an individual whose business address is 6 Harrison Street, New York, New York, is now and was at all times material herein a member of the New York Mercantile Exchange, a registered floor broker under the

Commodity Exchange Act and an agent and employee of respondent Melvin Miller and engaged in assisting him in handling orders from futures commission merchants to execute trades on the New York Mercantile Exchange and in the making of the reports of execution with respect to such orders.

III

The futures transactions referred to in this complaint were sales of May 1967 potato futures on the New York Mercantile Exchange, a duly designated contract market under the Commodity Exchange Act and hereinafter referred to as the exchange. Such sales could have been used for (a) hedging transactions in interstate commerce in potatoes or the products or by-products thereof, or (b) determining the price basis of transactions in interstate commerce in such commodities, or (c) delivering such commodities sold, shipped, or received in interstate commerce. Trading in May 1967 potato futures on the exchange was conducted in units of one contract or carlot consisting, at all times material herein, of 50,000 pounds of Maine-grown Irish potatoes. Trading in such futures ended on May 10, 1967.

IV

On May 10, 1967, the respondents received for execution an order to sell 85 carlots of May 1967 potato futures for the accounts of customers of Goodbody & Co., a clearing member of the exchange and a registered futures commission merchant under the Commodity Exchange Act. The respondents executed such order, selling 85 carlots at \$ 2.84

per hundred pounds and reported the execution at that price to Goodbody & Co. Thereafter, on May 10, 1967, the respondents learned that they had oversold in excess of 40 carlots of May 1967 potato futures in the course of executing a number of orders received from various futures commission merchants and that substantial losses had accrued with respect to the oversales. Thereafter, on May 10, 1967, and approximately one and one-half hours after the close of trading on the exchange, the respondents reported or caused to be reported to Goodbody & Co. a "corrected" report of execution with respect to its order of May 10, 1967, to sell 85 carlots of May 1967 potato futures. This "corrected" report had the effect of taking from the accounts of the selling customers 21 sales executed pursuant to such order at a price of \$ 2.84 per hundred pounds and substituting therefor 21 less favorable sales - 16 sales at \$ 2.80 and 5 sales at \$ 2.81 - which had not been executed pursuant to such order. The respondents placed the 21 sales taken from the customers' accounts in an account through which the respondents cleared their error trades. Based on the "corrected" report of execution, Goodbody & Co. showed on its records and reported to its customers 16 sales at \$ 2.80 and 5 sales at \$ 2.81, rather than the 21 sales that were actually executed pursuant to the order from Goodbody & Co. to sell 85 carlots.

V

By reason of the facts alleged in this complaint, the respondents, in connection with an order to make and the making of futures contracts on behalf of customers of Goodbody & Co., cheated or defrauded or attempted to cheat or defraud such customers, caused false reports to be rendered such customers and false records to be entered for them, made or caused to be made a false report to Goodbody & Co. and deceived or attempted to deceive that firm, all in wilful violation of section 4b of the Commodity Exchange Act (7 U.S.C. 6b).

WHEREFORE, it is hereby ordered that this complaint and notice of hearing be served upon the said respondents. The respondents will have twenty (20) days after the receipt of this complaint in which to file with the Hearing Clerk, United States Department of Agriculture, Washington, D. C. 20250, an answer with an original and five copies, fully and completely stating the nature of the defense and admitting or denying, specifically and in detail, each allegation of this complaint. Allegations not answered will be deemed admitted for the purposes of this proceeding. Failure to file an answer will constitute an admission of all the allegations of this complaint and a waiver of hearing. The filing of an answer in which all of the material allegations of fact contained in the complaint are admitted likewise shall constitute a waiver of hearing unless a hearing is requested. The respondents are hereby notified

that unless hearing is wai[ILLEGIBLE TEXT] hearing will be held at 10:00 a.m., local time, on February 28, 1968, in New York, New York, at a place therein to be specified later, before a referee designated to conduct such hearing. At such hearing, the respondents will have the right to appear and show cause, if any there be, why an order should not be made suspending or revoking the registrations of the respondents as floor brokers and directing that all contract markets refuse all trading privileges to the respondents for such period of time as may be determined.

It is ordered that this complaint and notice of hearing be served on each of the said respondents at least twenty (20) days prior to the date set for hearing.

Done at Washington, D. C.

January 3, 1968

[SEE SIGNATURE IN ORIGINAL]

Assistant Secretary

LOAD-DATE: June 16, 2008

