

Commodity Futures Trading Commission
CEA CASES

NAME: MILROSE FOODS COMPANY, MILTON E. ROSENBERG AND RUTH ROSENBERG

CITATION: 14 Agric. Dec. 1037

DOCKET NUMBER: 67

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AGRICULTURE DECISIONS**BEFORE THE SECRETARY OF AGRICULTURE****UNITED STATES DEPARTMENT OF AGRICULTURE**

(No. 4459)

In re MILROSE FOODS COMPANY, MILTON E. ROSENBERG AND RUTH ROSENBERG. CEA Docket No. 67. Decided December 14, 1955.

Suspension of Trading Privileges -- Futures Trading in Excess of Limit -- False Reports

Where the respondents sold 15 carlots each of January egg futures on two different days and held net short positions on such days of 65 carlots and 80 carlots, respectively, only 10 carlots and 6 carlots of which, respectively, represented hedges, and where the respondents submitted reports to the Commodity Exchange Authority which showed no sales on such days and reported their position in such future as 50 carlots, and in order to compensate for such omitted sales arbitrarily adjusted a report for a subsequent day by showing 57 carlots sold whereas only 27 had actually been sold, *held*, the respondents exceeded the maximum position limit of 50 carlots, and since their books and records correctly reflected their transactions and positions, the discrepancies in the reports were not due to carelessness, negligence, or mistake but to intentional falsification, and respondent's trading privileges are denied for a period of thirty days.

Dismissal -- Inactive Partner of Respondent

Where it appears a respondent partner was not an active member of the firm and did not participate in any of the transactions involved, the complaint is dismissed as to that partner.

Mr. Benj. M. Holstein for Commodity Exchange Authority. *Mr. William C. Hurtt*, of Pittsburgh, Pennsylvania, for respondents. *Mr. John Curry*, Referee.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a quasi-judicial proceeding under Section 6 (b) of the Commodity Exchange Act (7 U.S.C. Chapter 1) instituted by a complaint issued by the Assistant Secretary of Agriculture on March 29, 1955. The respondents are Milrose Foods Company and two partners in the firm, Milton E. Rosenberg and Ruth Rosenberg, his wife. Respondent Milton E. Rosenberg manages and controls the business of the firm.

The complaint charges that the respondents traded in egg futures on the Chicago Mercantile Exchange in quantities in excess of permissible limits in wilful violation of section 4a of the act (7 U.S.C. 6a) and the order of the Commodity Exchange Commission establishing limits on position and trading in

eggs for future delivery (17 CFR, 1953 Supp., 150.5), and that the respondents submitted false reports to the Commodity Exchange Authority in wilful violation of section 4i of the act (7 U.S.C. 6i) and sections 5.10, 5.11, 5.12, and 5.21 of the rules and regulations (17 CFR 5.10, 5.11, 5.12, 5.21).

In a letter addressed to the Hearing Clerk on April 15, 1955, the respondents admitted some of the material allegations of the complaint, denied others, and remained silent with respect to the balance of the allegations. Respondents specifically denied that they had submitted false reports or that any of the violations were wilful. A hearing was requested.

John J. Curry, Office of Hearing Examiners, United States Department of Agriculture, was assigned as referee in the proceeding and presided at the hearing which was held in Pittsburgh, Pennsylvania, on May 5, 1955. At the hearing, Milton E. Rosenberg appeared on behalf of himself and the other respondents. Benjamin M. Holstein, Office of the General Counsel, United States Department of Agriculture, appeared as counsel for the complainant. After the hearing, the parties filed suggested findings of fact, conclusions and orders and briefs.

The referee issued a report recommending that respondents Milrose and Milton E. Rosenberg be found to have violated the act as charged in the complaint but that, pursuant to complainant's suggestion, the complaint be dismissed as to Ruth Rosenberg since she did not appear to be an active member of the firm and did not participate in any of the transactions involved. The referee recommended also that the contract markets be ordered to refuse trading privileges to Milrose and Milton E. Rosenberg for a period of 15 days. The respondents filed exceptions to the report and the complainant also objected to the proposed sanction contending that the refusal of trading privileges should be for a 30-day period. Oral argument upon the exceptions was held before the Judicial Officer in Washington, D. C., on November 4, 1955. In the posthearing procedures, the respondents were represented by William C. Hurtt, Pittsburgh, Pennsylvania.

FINDINGS OF FACT

1. Respondent Milrose Foods Company is a partnership with offices at 16th and Smallman Streets, Pittsburgh, Pennsylvania. The said partnership is in the egg merchandising business and trades in eggs for future delivery on or subject to the rules of contract markets. At all times material to these findings, the said partnership enjoyed membership privileges on the Chicago Mercantile Exchange, a duly designated contract market under the Commodity Exchange Act.

2. Respondents Milton E. Rosenberg and Ruth Rosenberg are members of the respondent partnership. Respondent Milton E. Rosenberg manages and controls the business of the firm and was responsible for the transactions hereinafter described. Respondent Ruth Rosenberg was not an active member of the firm and did not participate in any of such transactions.

3. On December 23, 1954, respondent Milrose had a net short position of 50 carlots of January 1955 egg futures on the Chicago Mercantile Exchange. On that date and while holding the said position, respondent Milrose sold 15 carlots of January 1955 egg futures on the Chicago Mercantile Exchange thereby increasing its short position in such future to 65 carlots. Ten carlots of the said position represented hedging. On December 24, 1954, respondent Milrose sold an additional 15 carlots of January 1955 egg futures on the Chicago Mercantile Exchange, thereby increasing its short position in such future to 80 carlots. Six carlots of the said position represented hedging.

4. On December 23, 24, 29, and 31, 1954, respondent Milrose held open contracts in January 1955 egg futures on the Chicago Mercantile Exchange equal to or in excess of 25 carlots. Accordingly, Milrose was required to report to the Commodity Exchange Authority with respect to all transactions executed and all open contract positions in egg futures held by it on the said dates, as provided in section 4i of the Commodity Exchange Act (7 U.S.C. 6i), and sections

5.10, 5.11, 5.12, and 5.21 of the rules and regulations thereunder (17 CFR 5.10, 5.11, 5.12, 5.21).

5. On January 14, 1955, the Commodity Exchange Authority received from respondent Milrose reports purporting to show its transactions and open contract positions in egg futures on December 23, 24, 29, and 31, 1954.

a. The report for December 23, 1954, showed that respondent Milrose had made no purchases or sales of January 1955 egg futures on that date and held a short open contract position of 50 carlots. In fact, as shown by Finding of Fact 3, respondent Milrose had sold 15 carlots and held a short position of 65 carlots in such future on that date.

b. The report for December 24, 1954, showed that respondent Milrose had made no purchases or sales of January 1955 egg futures on that date and held a short open contract position of 50 carlots. In fact, as shown by Finding of Fact 3, respondent Milrose had sold 15 carlots and held a short position of 80 carlots in such future on that date.

c. The report for December 29, 1954, showed that respondent Milrose held a short open contract position of 50 carlots in January 1955 egg futures on that date. In fact, the said respondent held a short position of 80 carlots in such future on that date.

d. The report for December 31, 1954, showed that respondent Milrose had sold 57 carlots of January 1955 egg futures on that date. In fact, the said respondent had sold 27 carlots of such futures on that date.

6. All transactions in January 1955 egg futures executed for the account of Milrose on December 23, 24, 29, and 31, 1954, and all positions in such future held by the respondent firm on the said dates were reflected in its books and records. The reports filed by Milrose did not reflect the positions shown on its books and records.

7. On or about January 11, 1955, respondent Milton E. Rosenberg directed William C. Heyl, an employee of Milrose, to prepare the reports described in Finding of Fact 5, and Heyl prepared each of the reports at that time. In preparing such reports, Heyl did not refer to the books and records of Milrose but merely copied certain figures as to the firm's short position in January 1955 egg futures from a prior report which Milrose had submitted to the Commodity Exchange Authority. In order to balance the discrepancy due to the omission from the December 23 and 24 reports of the 30 carlots sold on those dates, Heyl, in preparing the report for December 31, added 30 carlots of January

1955 egg futures to the quantity of such futures actually sold on that date, as described in Finding of Fact 5d.

8. At the time of the transactions described in Findings of Fact 3 and 5, respondent Milton E. Rosenberg was aware of the requirements with respect to maximum speculative limits and with respect to the necessity for reporting positions equal to or in excess of 25 carlots in a single egg future.

9. On December 27, 1954, the Commodity Exchange Authority informed respondent Milton E. Rosenberg by letter that the firm had not reported its trading of December 23, that a report covering its trading of December 24 was not correct, and requested that the necessary reports and corrections be transmitted. Respondent Milton E. Rosenberg, acknowledged this letter, explained that he was then on vacation, and stated that all required reports would be submitted by January 12, 1955. On January 14, 1955, the Commodity Exchange Authority received the reports described in Finding of Fact 5. On February 1, 1955, the Commodity Exchange Authority informed respondent Milrose by letter of the discrepancies between the said reports and the firm's trading, and requested an explanation or further information. Respondent Milton E. Rosenberg replied to

this letter on February 8, 1955, stating that the information which the Commodity Exchange Authority had with respect to the firm's trading was correct; that the violations were due to confusion, ignorance, negligence, and mistake; and that there was no intent or design to conceal anything. On February 25, 1955, the Commodity Exchange Authority sent another letter to respondent Milrose concerning these violations and received a reply thereto. None of the letters from respondent Milton E. Rosenberg to the Commodity Exchange Authority with respect to these violations contained any mention of hedging transactions other than those mentioned in Finding of Fact 3.

10. On March 8, 1955, Arthur R. Grosstephan of the Commodity Exchange Authority interviewed respondent Milton E. Rosenberg and informed him that the Commodity Exchange Authority was contemplating recommending the issuance of a complaint with respect to these violations, and Grosstephan discussed with Rosenberg the procedure which is followed after the issuance of a complaint.

CONCLUSIONS

I

Section 4a of the Commodity Exchange Act (7 U.S.C. 6a) provides as follows:

". . . it shall be unlawful for any person -- * * *

"(B) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market, any amount of such commodity that shall result in giving such person a net long or net short position at any one time in or with respect to any such commodity in excess of any trading limit fixed by the commission for net long or net short position in such order for or with respect to such commodity.

"(3) No order issued under . . . this section shall apply to transactions which are shown to be bona fide hedging transactions"

The order of the Commodity Exchange Commission establishing limits on position and daily trading in egg futures (17 CFR, 1953 Supp., 150.5) provides as follows:

"§ 150.5. *Limits on position and daily trading in eggs for future delivery.* The following limits on the amount of trading under contracts of sale of eggs for future delivery on or subject to the rules of any contract market, which may be done by any person, are hereby proclaimed and fixed, to be in full force and effect on and after October 1, 1951.

"(a) *Position limit.* The limit on the maximum net long or net short position which any person may hold or control in eggs on or subject to the rules of any one contract market is 150 carlots in any one future or in all futures combined; *Provided*, That no person may hold or control a net long or net short position in excess of . . . (4) 50 carlots in the January egg future. * * *

"(C) *Bona Fide Hedging.* The foregoing limits upon position and daily trading shall not be construed to apply to bona fide hedging transactions"

After the sale of December 23, 1954, Milrose held a short position of 65 carlots in January 1955 egg futures, ten carlots

of which may be accepted as representing hedges. On that date, therefore, the respondent firm had exceeded the limit by five carlots. On December 24, 1954, Milrose sold an additional 15 carlots of January 1955 egg futures which increased its short position in such future to 80 carlots. Only six carlots of this position represented hedging and, therefore, Milrose exceeded the limit by 24 carlots.

During this proceeding, the respondents seemingly took the position that because Milrose handled 30 carlots of cash eggs a month, 30 carlots of its

futures position should be considered hedging and thus the trading limit would not have been exceeded. Milrose's report for December 23 showed 10 carlots as hedges and while its report for December 24 showed no hedges, six carlots were credited to Milrose as hedges because a subsequent report by Milrose showed six carlots of cash eggs in its inventory on that day. Milrose, then, has been given credit for all hedging operations claimed by it and all futures sales which appeared to be hedging operations. The attempt now to classify additional futures sales as hedging is belated and ineffective. Moreover, the mere fact that Milrose handled 30 carlots over the period of a month would not entitle it to claim 30 carlots of futures sales as hedges under the act on any particular day since it would be necessary for Milrose to have 30 carlots in inventory, or contracts to buy 30 carlots at fixed prices, at one time. See *In re Corn Products Refining Co.*, 13 Agric. Dec. 1117 (13 A.D. 1117) (1954). Therefore, the respondents' intimation that the maximum trading limit was not exceeded is without merit.

II

As shown by Finding of Fact 4, Milrose was in reporting status on December 23, 24, 29, and 31, 1955, because it held open contracts in January 1955 egg futures on the Chicago Mercantile Exchange equal to or in excess of 25 carlots. The reports submitted to the Commodity Exchange Authority by respondent Milrose covering its activities on December 23 and December 24 failed to show that the firm had sold any January 1955 egg futures on those dates and represented its position in that future to be less than it actually was. The report for December 29 also misrepresented the firm's position, and the report for December 31 showed 57 carlots of January futures sold instead of 27.

III

The respondents do not dispute the fact that the firm traded and held positions in excess of the permitted limits on the dates in question. Nor do they dispute the fact that the reports which the firm submitted failed to show such trades and misrepresented such positions and other positions and trades. They insist however that the violations were not wilful but were due to confusion, ignorance, unintentional mistake, etc. The gist of respondents' argument that the violations were unintentional is that respondent Milton E. Rosenberg conducted trades while on vacation in Florida, that he was busy with his additional duties of acting as associate broker for Heifer-King & Associates, and that on his return to the Pittsburgh office he carelessly allowed an employee to file the required reports without checking by him.

Respondent Rosenberg had been trading in commodity futures for 23 years. He stated at the hearing that he had been specifically informed about the trading limit and reporting requirements under the act and that he knew what they were prior to the trades in question. He testified that he kept records of the trades made from Florida and that he was in constant communication with his office in Pittsburgh. He examined his firm's records on his return to Pittsburgh and found that they included the transactions which he had made from Florida. At the time the reports were prepared, the firm's books and records reflected all the transactions executed and positions held on the dates in question. Mere reference to the books was all that was necessary to establish the true situation and permit the submission of correct reports.

Finally, all these reports were prepared at the same time, and the employee who prepared them admitted that he arbitrarily adjusted the report for December 31 to compensate for the sales omitted from the reports for December 23 and December 24. This cannot be explained as carelessness, negligence, or mistake. It was intentional misrepresentation of the facts. Too, the false reports were submitted after specific request from the Commodity Exchange Authority for correct and complete reports. Under the circumstances then, it is not a meritorious defense either legal or otherwise to claim that the employee who prepared the reports did not clear them through Rosenberg. Rosenberg was put on particular notice as to the necessity for filing these reports and that they should be correct.

n1 See section 2(a) of the act (7 U.S.C. 1952 ed § 4).

In the light of the foregoing, it is concluded that the recommendation of the complainant as to the sanction should be adopted, namely that the contract markets should be ordered to refuse trading privileges to respondent Milrose and respondent Milton E. Rosenberg for a period of 30 days.

ORDER

Effective February 1, 1956, all contract markets shall refuse all trading privileges to respondents Milrose Foods Company and Milton E. Rosenberg for a period of thirty (30) days, such refusal to apply to all trading done and positions held directly by the said Milrose Foods Company or Milton E. Rosenberg, and to all trading done and positions held indirectly through persons owned or controlled by them, or either of them, or otherwise.

The proceeding is dismissed as against Ruth Rosenberg.

A copy of this decision and order shall be served upon the parties by registered mail or in person and upon each contract market.

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