

Commodity Futures Trading Commission  
CEA CASES

**NAME:** PEERS AND COMPANY, HENRY M. PEER, JR., LEADING EMBROIDERY COMPANY, SMITHERMAN COTTON MILLS, INC., AND LEON SALKIND

**CITATION:** 13 Agric. Dec. 875

**DOCKET NUMBER:** 61

**DATE:** SEPTEMBER 17, 1954

**DOCUMENT TYPE:** DECISION AND ORDER

(No. 4033)

*In re* PEERS AND COMPANY, HENRY M. PEER, JR., LEADING EMBROIDERY COMPANY, SMITHERMAN COTTON MILLS, INC., AND LEON SALKIND. CEA Docket No. 61. Decided September 17, 1954.

**Suspension of Trading Privileges -- Violation of Act -- Wash Sales -- Default**

Where complaint alleges that respondents caused the execution of fictitious trades on the New York Cotton Exchange, *held*, respondents, by failing to file a answer, are deemed to have admitted the material facts alleged and waived an oral hearing, and the transactions complained of were in violation of the act for which respondents are denied all trading privileges on all control markets for a period of three months.

*Mr. Benj. M. Holstein* for Commodity Exchange Authority. *Mr. Jack W. Bain*, Referee.

*Decision by Thomas J. Flavin, Judicial Officer*

**PRELIMINARY STATEMENT**

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1) instituted by a complaint filed by the Acting Secretary of Agriculture on February 17, 1954. In the complaint it is alleged that Leon Salkind controlled Leading Embroidery Company and Smitherman Cotton Mills, Inc., and by giving orders for them caused Henry M. Peers, Jr., and Peers and Company to have wash or fictitious trades in futures executed on the New York Cotton Exchange in violation of the act. Peers and Company and Henry M. Peers, Jr., filed an answer to the complaint in April 1954, but the other three respondents have filed nothing.

After three continuances, an oral hearing was opened in New York, New York, on June 8, 1954, by Hearing Examiner Jack W. Bain, the referee. Respondents Peers and Company and Henry M. Peers, Jr., appeared but the other respondents, although duly notified, did not. Admissions and recommendations were made at the hearing, but no evidence was presented. Thereafter, on June 28, 1954, an order was issued disposing of the proceeding as it applied to respondents Peers and Company and Henry M. Peers, Jr. (13 Agric. Dec. 597 (13 A.D. 597)), to which reference is made for its contents.

In accordance with section 0.9 of the rules of practice (17 CFR Part 0), the failure of the other three respondents to answer constituted admission of the allegations in the complaint and waiver of hearing on their part, and authorized issuance of the referee's report without further investigation or hearing. The referee issued a report recommending that such respondents be found to have violated the act as charged. Copies of the report were served upon these respondents. They did not file exceptions.

**FINDINGS OF FACT**

1. Respondent Leading Embroidery Company is a partnership organized under New York laws and registered in New Jersey with offices at 5620 Bergenline Avenue, West New York, New Jersey. Its partners are Leon Salkind, principal partner, and Harold J. Baum and Max Muehlfriedel.

2. Respondent Smitherman Cotton Mills, Inc., is a North Carolina corporation with offices at 5620 Bergenline Avenue, West New York, New Jersey. It is wholly owned and controlled

by the partnership mentioned in Finding 1. Leon Salkind is its president, Harold J. Baum is its secretary-treasurer, and both Salkind and Baum are directors.

3. At all times material herein, respondent Leon Salkind managed and controlled the business of the partnership and corporation mentioned in Findings 1 and 2, and the futures transactions described in subsequent findings were decided upon and made at his direction as principal partner and president, respectively.

4. About September 10, 1952, respondents Leading Embroidery Company and Smitherman Cotton Mills, Inc., acting through respondent Leon Salkind, each opened a regulated commodity account with Peers and Company, a futures commission merchant registered under the act and a clearing member of the New York Cotton Exchange, a contract market duly designated under the act.

5. About September 15, 1952, respondent Leon Salkind simultaneously ordered Peers and Company to buy 4,000 bales of March 1953 cotton futures on the New York Cotton Exchange for the account of respondent Leading Embroidery Company and to sell 4,000 bales of March 1953 cotton futures for the account of respondent Smitherman Cotton Mills, Inc. Peers and Company simultaneously transmitted both orders to Aubrey Wolford, a registered floor broker under the act, for execution. Acting as floor broker on both sides of the orders, Wolford purchased and sold 4,000 bales of March 1953 cotton futures at 39.31 cents per pound on the floor of the New York Cotton Exchange. Wolford reported the purchase and sale to Peers and Company, and Peers and Company entered the transactions in its books in the respective accounts of the respondent partnership and the respondent corporation and notified Salkind that his orders had been executed.

6. About November 12, 1952, respondent Leon Salkind simultaneously ordered Peers and Company to buy 3,500 bales of March 1953 cotton futures on the New York Cotton Exchange for the account of respondent Smitherman Cotton Mills, Inc., and to sell 4,000 bales of March 1953 cotton futures for the account of respondent Leading Embroidery Company. Peers and Company simultaneously transmitted both orders to Aubrey Wolford for execution. Acting as floor broker on both sides of the orders, Wolford purchased and sold 3,500 bales of March

1953 cotton futures at 36.06 cents per pound on the floor of the New York Cotton Exchange. Wolford reported the purchase and sale to Peers and Company, and Peers and Company entered the transactions in its books in the respective accounts of the respondent corporation and the respondent partnership and notified Salkind that his orders had been executed.

7. About November 12, 1952, respondent Leon Salkind, simultaneously ordered Peers and Company to buy 4,000 bales of May 1953 cotton futures on the New York Cotton Exchange for the account of respondent Smitherman Cotton Mills, Inc., and to sell 4,000 bales of May 1953 cotton futures for the account of respondent Leading Embroidery Company. Peers and Company simultaneously transmitted both orders to Aubrey Wolford for execution. Acting as floor broker on both sides of the orders, Wolford purchased and sold 4,000 bales of May 1953 cotton futures at

36.16 cents per pound on the floor of the New York Cotton Exchange. Wolford reported such purchase and sale to Peers and Company, and Peers and Company entered the transactions in its books in the respective accounts of the respondent corporation and the respondent partnership, and notified Salkind that his orders had been executed.

8. The futures transactions mentioned in the preceding findings could be used for hedging transactions in interstate commerce in cotton or cotton products or byproducts, or for determining the price basis of interstate transactions in cotton, or for delivering cotton sold, shipped, or received in interstate commerce.

#### **CONCLUSIONS**

The transactions described in Findings of Fact 5, 6 and 7 were wash sales, or fictitious sales, in violation of Section 4c of the Commodity Exchange Act (7 U.S.C. 6c). *In re Jean Goldwurm et al.*, 7 Agric. Dec. 265 (7 A.D. 265 (1948)). For causing them to be made, respondents Leon Salkind, Leading Embroidery Company, and Smitherman Cotton Mills, Inc., should be denied all trading privileges on all contract markets for a period of three months.

#### **ORDER**

Beginning on the 20th day after the date of this order, all contract markets shall refuse all trading privileges thereon to Leon Salkind, Leading Embroidery Company, and Smitherman

Cotton Mills, Inc., respondents herein, for a period of three months. This order applies not only to trading done and positions held by the respondents *directly* but also to trading done and positions held by the respondents *indirectly* either through persons owned or controlled by the respondents or otherwise.

A copy hereof shall be served upon each of the respondents in the proceeding and upon each contract market.

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

