

Commodity Futures Trading Commission  
CEA CASES

**NAME:** PENNSYLVANIA CO-OPERATIVE POTATO GROWERS, INC., AND OWEN L. BARKLEY

**CITATION:** 21 Agric. Dec. 429

**DOCKET NUMBER:** 103

**DATE:** MAY 23, 1962

**DOCUMENT TYPE:** DECISION AND ORDER

**AGRICULTURE DECISIONS**

**BEFORE THE SECRETARY OF AGRICULTURE**

**UNITED STATES DEPARTMENT OF AGRICULTURE**

(No. 7746)

*In re* PENNSYLVANIA CO-OPERATIVE POTATO GROWERS, INC., AND OWEN L. BARKLEY. CEA Docket No. 103. Decided May 23, 1962.

**Customers' Funds -- Suspension of Registration -- Denial of Trading Privileges -- Consent Order**

The registration of Pennsylvania Co-operative Potato Growers, Inc., as a futures commission merchant is suspended for 90 days. All contract markets are ordered to refuse all trading privileges to both respondents for specified periods.

*Mr. Donald A. Campbell*, for complainant. *Mr. David Putney*, of Harrisburg, Pennsylvania, for respondents.

*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 and notice of hearing issued under § 6(b) of the Act (7 U.S.C. § 9) on September 13, 1961.

The complaint charges that the respondent Pennsylvania Co-operative Potato Growers, Inc., is a futures commission merchant which carried accounts of customers who traded in commodity futures on contract markets and that the acts and transactions involved in the case were initiated and carried out by or under the direction of the respondent Owen L. Barkley in his capacity as general manager of the corporation.

It is alleged in the complaint that during the period October 14 through November 14, 1960, the respondent Barkley caused the making of purchases and sales of egg futures on the Chicago Mercantile Exchange for his own use and benefit and placed such trades in the customers' omnibus account of the respondent corporation carried with E. F. Hutton & Company, another futures commission merchant, thereby commingling his personal positions and financial results with those of customers. It is also alleged that in connection with such purchases and sales of egg futures, the respondents failed to keep adequate records.

The complaint charges that during the period November 2 through November 23, 1960, the respondent corporation's records showed that it had an excess of funds belonging to customers in a segregated account whereas, as a result of losses incurred by the respondent Barkley in connection with the egg futures referred to in the preceding paragraph and the commingling of such transactions with

customers' transactions, the total amount of segregated funds belonging to customers was insufficient in amounts ranging from approximately \$ 2,174 to approximately \$ 13,684.

The complaint charges that during the period February 1 through April 24, 1961, the respondent Barkley caused the making of transactions in commodity futures for the account of the respondent corporation and placed such transactions in the customers' omnibus account of the respondent corporation with E. F. Hutton & Company, thereby commingling the respondent corporation's open contract positions and financial results with those of its customers, and that the respondents failed to prepare and keep a record showing the account for which the said transactions were executed, and the date, price, quantity, market, commodity, and future.

It is alleged in the complaint that from February 27, 1961, through March 28, 1961, the segregation record of the respondent corporation showed an excess of funds belonging to customers in segregation whereas, as a result of the losses of the respondent corporation incurred in connection with the transactions for the corporation referred to in the preceding paragraph, the respondent corporation had insufficient funds of customers in segregation in amounts ranging from approximately \$ 32 up to approximately \$ 16,000.

It is alleged that by reason of the acts and omissions described above, the respondent Barkley and the respondent corporation "failed to treat and deal with customers' funds as belonging to such customers, failed to segregate and account separately for such funds, commingled such funds with funds of the respondent corporation, used such funds to margin and guarantee the trades and secure and extend the credit of persons other than those for whom the same were held, and failed to prepare and maintain a true and accurate computation and record as a basis for such segregation and accounting, in knowing and wilful violation of section 4d(2) of the Commodity Exchange Act (7 U.S.C. 6d(2)) and sections 1.20, 1.21, 1.22, and 1.32 of the regulations (17 CFR 1.20, 1.21, 1.22, 1.32)." The complaint also

alleges that by reason of the acts and omissions described above, the respondent Barkley and the respondent corporation "failed to keep the books and records pertaining to futures transactions in the form and manner required by the Secretary of Agriculture, in knowing and wilful violation of section 4g of the Commodity Exchange Act (7 U.S.C. § 6g), and section 1.35 of the regulations (17 CFR 1.35)."

The complaint charges in paragraph IX that between March 1 and March 6, 1961, the respondent Barkley caused the making of purchases of potato futures for the account of the respondent corporation, and placed such purchases in the customers' omnibus account of the respondent corporation with E. F. Hutton & Company. It is alleged that after the contracts resulting from such purchases showed a loss, the respondent Barkley informed representatives of the estate of one Hugh McPherson, deceased president of Maple Lawn Farms, Inc., which corporation had a commodity futures trading account with the respondent corporation, that the said purchases had been ordered by the said Hugh McPherson, and that the representatives of the estate then ordered the aforesaid contracts to be sold. It is alleged that the net loss resulting from such potato futures was charged to the Maple Lawn Farms, Inc., account and that the respondent Barkley destroyed certain records pertaining to such account, altered other records of the respondent corporation, and made entries in the Maple Lawn Farms, Inc., account which purported to show that the said purchases had been made for the Maple Lawn Farms, Inc., account. The complaint charges that by reason of the acts and omissions described in paragraph IX of the complaint, the respondent Barkley and the respondent corporation, "in connection with an order to make and the making of futures contracts on behalf of a customer, cheated or defrauded or attempted to cheat or defraud such customer, made a false report to such customer, entered a false record for such customer with respect to such transaction, and deceived or attempted to deceive such customer with respect to

the execution of such contract, in knowing and wilful violation of section 4b of the Commodity Exchange Act (7 U.S.C. § 6b)."

No hearing has been held with respect to this proceeding. On May 16, 1962, the respondents filed a stipulation and waiver under § 0.4(b) of the rules of practice (17 CFR § 0.4(b)) in which they admit the facts hereinafter set forth, waive hearing on the charges, and consent to the entry of the order contained herein.

#### **FINDINGS OF FACT**

1. The respondent Pennsylvania Co-operative Potato Growers, Inc., is a Pennsylvania corporation with its principal office and place of business at 5235 North Front Street, Harrisburg, Pennsylvania. The said corporation was at all times material to this complaint registered as a futures commission merchant under the Commodity Exchange Act. At all such times up to about May 7, 1961, the said corporation had membership privileges on the New York Mercantile Exchange.

2. The New York Mercantile Exchange, the Chicago Mercantile Exchange, and the Chicago Board of Trade are now and were at all times material to this complaint duly designated contract markets under the Commodity Exchange Act.

3. The respondent Owen L. Barkley, an individual whose address is 5235 North Front Street, Harrisburg, Pennsylvania, is now and was at all times material to this complaint the general manager of the respondent Pennsylvania Co-operative Potato Growers, Inc. At all times material to this complaint the respondent Owen L. Barkley was a member of the New York Mercantile Exchange. The acts and transactions hereinafter described were initiated and carried out by or under the direction of the respondent Owen L. Barkley in his capacity as general manager of the respondent corporation and such acts and transactions were at all times subject to his control and management.

4. At the times hereinafter stated, the respondent Pennsylvania Co-operative Potato Growers, Inc., in the regular course of its business, carried accounts of customers who traded in commodity futures on contract markets subject to the provisions of the Commodity Exchange Act and regulations. In connection therewith, the said respondent had to its credit with a bank or other depository sums of money in varying amounts, held in segregated accounts, representing deposits of margin by and trading profits accruing to such customers. During the same periods, the respondent Owen L. Barkley traded in commodity futures for his personal use and benefit or for the house account of the respondent corporation, as hereinafter more particularly described.

5. Between October 14 and November 14, 1960, both inclusive, the respondent Owen L. Barkley caused the making of purchases and sales of egg futures on the Chicago Mercantile Exchange for his own use and benefit and placed such trades in the customers' omnibus account of the respondent corporation carried with E. F. Hutton & Company, another registered

futures commission merchant, by reason of which the open contract positions and financial results of such trades were commingled with the open contract positions and financial results of the transactions of the customers of the respondent corporation. In connection with the aforesaid purchases and sales for the use and benefit of the respondent Owen L. Barkley, the respondents failed to prepare and keep, or cause the preparation and keeping of, a record showing the account for which the said transactions were executed, and the date, price, quantity, market, commodity, and future.

6. During the period between November 2 and November 23, 1960, the segregation record of the respondent corporation showed an excess of funds in segregation ranging from approximately \$ 129 to approximately \$ 7,000, that is, such segregation record indicated that the total amount of customers' funds in segregation exceeded, by the aforesaid sums, the amount of money necessary to

pay all credits and equities due to such customers. In truth and in fact, as the result of losses incurred by the respondent Owen L. Barkley in connection with the transactions in egg futures executed for his own use and benefit and the commingling of such transactions with those of the respondent corporation's customers, as described in the paragraph numbered five hereof, the said corporation was undersegregated on fifteen business days between November 2 and November 23, 1960, in amounts ranging from approximately \$ 2,174 to approximately \$ 13,684, that is, the total amount of segregated funds was insufficient, by the aforesaid sums, to pay all credits and equities due to such customers.

7. During the period February 1 through April 24, 1961, the respondent Owen L. Barkley caused the making of transactions in commodity futures on the New York Mercantile Exchange and the Chicago Board of Trade for the account of the respondent corporation and placed such transactions in the customers' omnibus account of the said corporation with the aforesaid E. F. Hutton & Company, by reason of which the open contract positions and financial results of such transactions were commingled with the open contract positions and financial results of the transactions of the customers' of the respondent corporation. In connection with the aforesaid transactions for the account of the respondent corporation, the respondents failed to prepare and keep, or cause the preparation and keeping of, a record showing the account for

which the said transactions were executed, and the date, price, quantity, market, commodity, and future.

8. From February 27, 1961, through March 28, 1961, the segregation record of the respondent corporation showed an excess of funds in segregation ranging from approximately \$ 296 to approximately \$ 5,400, whereas, in truth and in fact, by reason of losses incurred in connection with the transactions described in the paragraph numbered seven hereof and the commingling thereof with those of the respondent corporation's customers, the said corporation was undersegregated on sixteen business days within the said period in amounts ranging from approximately \$ 32 up to approximately \$ 16,000.

#### **CONCLUSIONS**

It is provided in § 4d of the Commodity Exchange Act as follows (7 U.S.C. § 6d):

It shall be unlawful for any person to engage as futures commission merchant in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless --

\* \* \* \*

(2) such person shall, whether a member or nonmember of a contract market, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: *Provided, however,* That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with the clearing house organization of such contract market, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee,

secure, transfer, adjust, or settle the contracts or trades of such customers, or resulting market positions, with the clearing-house organization of such contract market or with any member of such contract market, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with such contracts and trade \* \* \*.

The regulations issued by the Secretary contain specific provisions with respect to the segregation of and accounting for customers' funds (17 CFR § 1.20), the care of money and equities accruing to customers (17 CFR § 1.21), the use of money, securities, or property of customers (17 CFR § 1.22), and the compilation and record to be kept relating to the segregated account (17 CFR § 1.32).

The facts described in Findings of Fact one through eight hereof demonstrate that the respondents violated § 4d(2) of the Commodity Exchange Act and the regulations referred to in the preceding paragraph (17 CFR §§ 1.20, 1.21, 1.22, 1.32). It is provided in § 6 (b) of the Commodity Exchange Act that if any person violates any of the provisions of the Act or any of the rules and regulations made pursuant to its requirements, the Secretary "may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, and, if such person is registered as futures commission merchant \* \* \* may suspend, for a period not to exceed six months, or revoke, the registration of such person" (7 U.S.C. § 9).

In addition, section 4g of the Commodity Exchange Act provides that if any person registered as a futures commission merchant "shall fail or refuse to keep the books and records pertaining to \* \* \* [futures transactions of such person, or the transactions of the customers thereof] in the form and manner required by the Secretary of Agriculture, \* \* \* the registration of such person may be suspended or revoked after notice and hearing \* \* \*" (7 U.S.C. § 6g). Section 1.35 of the Secretary's regulations (17 CFR § 1.35) requires each futures commission merchant and each member of a contract market to keep "full, complete, and systematic records of all commodity futures transactions and cash commodity transactions, made by or through him, on or subject to the rules of a board of trade." The facts described in Findings of Fact five and seven hereof demonstrate

that the respondents failed to keep the books and records pertaining to futures transactions in the form and manner required by the Secretary, and that they violated § 4g of the Act (7 U.S.C. § 6g) and § 1.35 of the regulations (17 CFR § 1.35).

With respect to the allegations in paragraph IX of the complaint, relating to the Maple Lawn Farms, Inc., account, the respondents admit that during the relevant period the respondent Pennsylvania Co-operative Potato Growers, Inc., was registered as a futures commission merchant under the Commodity Exchange Act, and that the respondent Barkley was a member of the New York Mercantile Exchange. The facts admitted by the respondents with respect to the allegations in paragraph IX of the complaint are sufficient to subject each of the respondents to the jurisdiction of the Secretary of Agriculture with respect to the allegations contained therein.

The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation and waiver, and the terms of the suggested order, and that they believe that the proposed sanction based on the record as a whole is adequate and that the prompt entry, without further proceedings, of the order to which the respondents have consented will constitute a satisfactory disposition of this case as against the said respondents, serve the public interest, and effectuate the purposes of the Act. The complainant, therefore, recommends that the stipulation and waiver submitted by the respondents be accepted and that the proposed order be issued. It is so concluded.

**ORDER**

Effective June 25, 1962, (1) the registration of the Pennsylvania Co-operative Potato Growers, Inc., as a futures commission merchant is suspended for a period of ninety (90) days, and (2) all contract markets shall refuse all trading privileges to Pennsylvania Co-operative Potato Growers, Inc., for a period of ninety (90) days and to Owen L. Barkley for a period of one year, such refusal to apply to all trading done and positions held by them directly or indirectly.

A copy of this Decision and Order shall be served upon each of the parties and upon each contract market.

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

