

Commodity Futures Trading Commission
CEA CASES

NAME: DOUGLAS STEEN

CITATION: 21 Agric. Dec. 1076

DOCKET NUMBER: 104

DATE: OCTOBER 11, 1962

DOCUMENT TYPE: DECISION AND ORDER

(No. 8005)

In re DOUGLAS STEEN. CEA Docket No. 104. Decided October 11, 1962.

Improper Trading -- Fraud -- Denial of Trading Privileges

Respondent violated the act by trading in an account he managed after notification of the death of the owner of the account and all contract markets are ordered to deny all trading privileges to respondent for three years.

Mr. Donald A. Campbell and Mr. Earl L. Saunders, for Commodity Exchange Authority. *Mr. Leland D. Starkey*, of Los Angeles, California, for respondent. *Mr. John Curry*, Hearing Examiner.

Decision by Thomas J. Flavin, Judicial Officer

In this disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), John Curry, Office of Hearing Examiners, United States Department of Agriculture, issued a "Referee's Recommended Decision" after hearing, etc., proposing that respondent be found to have violated the act as charged (by trading in an account he managed after notification of the death of the owner of the account) and that contract markets be ordered to deny trading privileges to respondent for a period of three years. Respondent did not file exceptions to the recommended decision and proposed order.

The referee's recommended decision is adopted as the final decision in the proceeding and the order to contract markets denying all trading privileges to respondent for a period of three years is also adopted and shall become effective on November 15, 1962.

REFEREE'S RECOMMENDED DECISION

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), hereinafter sometimes referred to as the Act, instituted by a complaint and notice of hearing issued under § 6(b) of the Act (7 U.S.C. § 9) on October 26, 1961, by the Assistant Secretary of Agriculture.

The principal allegations of the complaint are as follows: The respondent, Douglas Steen, a member of the Board of Trade of the City of Chicago and of the Chicago Mercantile Exchange,

engaged in directing trading in commodity futures for, and controlled a commodity futures account of Mr. Carl H. Hopkins, which account was carried with Goodbody & Company, a registered futures commission merchant. The respondent was entitled to and received a share of the commissions earned by Goodbody & Company on transactions for such account and, also, the respondent was entitled to a share of the profits resulting from certain trading in the account. The respondent was notified of the death of Mr. Hopkins by a letter from his widow,

and subsequently, on November 21, 1960, the respondent, "notwithstanding such notification, caused the sale of December 1960 egg futures on the Chicago Mercantile Exchange and January and March 1961 soybean meal futures on the Board of Trade of the City of Chicago for said account, establishing new short positions in such futures for such account on the said exchanges. These sales subsequently were closed out at prices which resulted in a net loss of approximately \$ 2,457.00" (Complaint, pp. 2-3). The complaint charges that, by reason of such facts, "the respondent, in connection with the making of contracts for future delivery on behalf of a person, attempted to cheat or defraud and did cheat or defraud such person in violation of section 4b of the Act (7 U.S.C. § 6b)" (Complaint, p. 3).

The respondent filed an answer in which most of the principal allegations of the complaint are denied, and the respondent set forth affirmative allegations in support of his contention that he did not violate section 4b of the Act.

A hearing was held in Los Angeles, California, on April 11 and 12, 1962. John J. Curry, Office of Hearing Examiners, United States Department of Agriculture, was assigned as Referee and presided at the hearing. The respondent was represented at the hearing by Mr. L. D. Starkey, of Los Angeles, California, and the respondent testified in his own behalf. Donald A. Campbell, Office of the General Counsel, United States Department of Agriculture, appeared as counsel for the complainant. Six witnesses testified for the complainant and 18 exhibits were received in evidence on behalf of the complainant. Subsequently, both parties filed suggested findings of fact, conclusions, and orders, and briefs in support thereof.

PROPOSED FINDINGS OF FACT

1. The respondent, Douglas Steen, is an individual whose address

is 14944 Rhinestone Drive, Sherman Oaks, California. At all times material herein, the respondent was a member of the Board of Trade of the City of Chicago, hereinafter referred to as the Chicago Board of Trade, and the Chicago Mercantile Exchange.

2. The Chicago Board of Trade and the Chicago Mercantile Exchange were, at all times material herein, duly designated contract markets under the Commodity Exchange Act.

3. At all times material herein, the respondent engaged in directing trading in commodity futures for, and controlled, a commodity futures account of Mr. Carl H. Hopkins, which account was carried with Goodbody & Company, a registered futures commission merchant. With respect to such account, the respondent had an agreement with Mr. Carl H. Hopkins whereby the respondent was entitled to a share of the profits resulting from trading in the account other than trading on the Chicago Board of Trade (Complaint, p. 2; Answer, p. 1; Comp. ex 15). The respondent did not share in any losses resulting from trading in the account (Comp. ex. 15). Under an arrangement with Goodbody & Company, and pursuant to the rules of the Chicago Board of Trade and the Chicago Mercantile Exchange, the respondent was entitled to and received a share of the commissions earned by Goodbody & Company on transactions for the Carl H. Hopkins account (Complaint, p. 2; Answer, p. 1).

4. Mr. Carl H. Hopkins died on November 10, 1960 (Tr. 4). On November 15, 1960, his widow, Mrs. Erna Hopkins, consulted Mr. Donald B. Cantwell, who was then Legal Assistance Officer at Castle Air Force Base, California, for legal advice with respect to her husband's estate (Tr. 5-10; Comp. ex. 4B). Mr. Cantwell advised Mrs. Erna Hopkins that in view of her children's interest in the estate, the commodity futures account should be placed in a less speculative form (Tr. 5-6; Comp. ex. 1 and 4B). Mr. Cantwell prepared the following typewritten letter for Mrs. Erna Hopkins to send to the respondent (Comp. exs. 1 and 4B):

103 Fifth Avenue
Atwater, California

November 15, 1960

Mr. Douglas Steen, Esq.

Goodbody & Company

2 Broadway

New York 4, New York

Re: Account of Carl H. Hopkins, deceased.

Your account No. 67428

Dear Mr. Steen:

This is to advise you that my husband, Carl H. Hopkins, of 103 Fifth Avenue, Atwater, California, died on Thursday, November 10, 1960. Although I am unable to locate his copies of the documents he signed with you pertaining to the Commodity account, it is my understanding that the account was carried solely in his name.

I have sought counsel concerning this matter and he advises me that, since there was no will, the Mississippi law of intestacy applies and that two-thirds of the account belongs to my children. In light of these facts, I feel the children's interest would best be served by the earliest favorable liquidation of the account. This sudden change of circumstance seems to me to necessitate a more conservative investment of the funds now represented by the Commodity account.

I would like your advice as to when you feel this account could be liquidated with the smallest amount of loss. I realize that this, to some extent, will involve estimates of future market conditions. Possibly the way most advantageous to me would be if you would indicate to me what you believe would be the various nets from the account on the liquidation date you may choose following December 1, 1960.

Please address future correspondence to the following address: Mrs. Carl H. Hopkins, in care of Tracy Hopkins, Route 2, Guntown, Mississippi.

Very truly yours,

Mrs. Carl R. Hopkins

5. The typewritten letter prepared by Mr. Cantwell, which is set forth in Finding of Fact number 4 hereof, was signed by Mrs. Erna Hopkins, and such letter was deposited by her in a post office box at Atwater, California, on November 15, 1960. The letter was addressed to Mr. Douglas Steen, Esq., Goodbody & Company, 2 Broadway, New York 4, New York, and the envelope was stamped with air mail postage (Tr. 5-10); Comp. ex. 1).

6. The respondent received the typewritten letter from Mrs. Erna Hopkins dated November 15, 1960, which is set forth in Finding of Fact number 4 hereof, and on November 19, 1960, the respondent wrote the following letter in reply to Mrs. Erna Hopkins' typewritten letter of November 15 (Comp. ex. 2):

Dear Mrs. Hopkins:

I am very sorry to learn of your husband's transition. I have been favorably impressed by his insight and character.

Agreement we have is enclosed.

I would strongly urge that this successful growth account is the best manner of handling a large part of his estate. My record is indicated by the enclosure. Please advise me after reading it and thinking it over.

Sincerely,

Douglas Steen

Member of 7 leading exch.

7. On November 18, 1960, the respondent gave an order to Mr. Frank Pado, the customer's man at Goodbody & Company who handled his accounts (Tr. 73), to sell 15 contracts (carloads) of December egg futures at 42.95 cents per dozen (Tr. 77). The order given to Mr. Pado called for such sale if the December egg futures price dropped to 42.95 cents per dozen prior to the close of trading on November 21 (Tr. 77). The order was executed on the Chicago Merchantile Exchange (Comp. ex. 12) on November 21, 1960 (Tr. 78; Comp. ex 7B), and on November 21 the respondent advised Mr. Pado to assign the egg futures to the same accounts for which January soybean futures had been liquidated on November 18, 1960 (Tr. 78). Acting pursuant to such instructions from the respondent, Mr. Pado assigned two of the December egg futures to the Carl H. Hopkins account (Tr. 75-79),

resulting in a new short position in the Carl H. Hopkins account of two December egg futures (Tr. 48-50; Comp. ex. 11).

8. On November 21, 1960, the respondent gave Mr. Pado orders to sell seven January soybean meal futures (100 tons each) and seven March soybean meal futures (100 tons each) on the Chicago Board of Trade for the Carl H. Hopkins account (Tr. 79-82). These orders were executed by Goodbody & Company on November 21 and the futures were assigned to the Carl H. Hopkins account (Tr. 79-82; Comp. exs. 8A-C, 9A-C). The Carl H. Hopkins account previously had a short position of two soybean meal futures and as a result of the sale on November 21 of the 14 soybean meal futures the short position in soybean meal futures in the Carl H. Hopkins account was increased to 16 contracts, or 1600 tons (Tr. 50; Comp. ex. 11).

9. The transactions in egg futures and soybean meal futures, referred to in Findings of Fact numbered seven and eight hereof, created new speculative positions in the Hopkins account (Tr. 96-99, 215-216, 124-127, 210-211). As a result of the new speculative positions in egg futures and soybean meal futures created in the Hopkins account on November 21, referred to in Findings of Fact numbered seven and eight hereof, the Hopkins account suffered a loss of approximately \$ 2450.00 (Tr. 59).

10. The transactions in egg futures and soybean meal futures, referred to in Findings of Fact numbered seven and eight hereof, were capable of being used for hedging transactions in interstate commerce in eggs and soybean meal or the products or by-products thereof, for determining the price basis of transactions in interstate commerce in eggs and soybean meal, and for delivering eggs and soybean meal sold, shipped, or received in interstate commerce (Tr. 127-128).

11. By reason of the facts described in the preceding Findings of Fact, the respondent, in connection with the making of contracts on November 21, 1960, for future delivery of eggs and soybean meal on behalf of the persons who were to share in the estate of Mr. Carl H. Hopkins attempted to cheat or defraud and did cheat or defraud such persons.

PROPOSED CONCLUSIONS

I

The letter of Mrs. Erna Hopkins, prepared by the Legal Assistance

Officer, Castle Air Force Base, California, dated November 15, 1960, advised the respondent that her husband "died on Thursday, November 10, 1960" and that her "children's interest would best be served by the earliest favorable liquidation of the account". It also requested the respondent's advice as to when he

believed that the account "could be liquidated with the smallest amount of loss". If the respondent received this letter, he had clear and definite knowledge of Mr. Hopkins' death and of his widow's desire to liquidate the account as soon as possible.

The respondent testified that he did not receive the letter, but that, instead, he received a handwritten note from a Mrs. Hopkins on November 19 which was "near totally indecipherable" (Tr. 133) and which did not clearly indicate that Mr. Hopkins had died (Tr. 133-134). The respondent testified that he replied to this letter on the same day it was received (Tr. 134; Comp. Ex. 2).

Mrs. Erna Hopkins testified that the only letter which she sent to Mr. Steen at that time was the aforesaid typewritten letter (Comp. Ex. 1) prepared by the Legal Assistance Officer (Tr. 6-9), 14-16, 18). Therefore, unless Mrs. Erna Hopkins is lying, the only letter which complainant could have received is the typewritten letter dated November 16, 1960. n1 Mrs. Erna Hopkins' testimony that Complainant's exhibit 1 is a copy of a letter prepared by a Legal Assistance Officer was corroborated by that officer's letter to Mr. Charles E. Robinson, dated March 23, 1962 (Comp. ex. 4B). Previously Mr. Robinson sent a copy of Mrs. Hopkins' typewritten letter dated November 15, 1960, which was identical to Complainant's exhibit 1, to the Legal Assistance Officer and asked him if he remembered preparing the letter (Tr. 23-24; Comp. ex. 4A). In his reply, that officer stated that he recalled the following facts with respect to the matter (Comp. ex. 4B):

n1 In his Answer (P. 2) the respondent states that the letter to which he was replying on November 19, 1960, was a "handwritten letter purportedly signed by Mrs. Tracy Hopkins". Mrs. Tracy Hopkins is the sister-in-law of Mrs. Erna Hopkins (Tr. 31-82), and she testified that she never wrote any letter to the respondent and that she had not even heard of the respondent until several days after November 19, 1960 (Tr. 32).

During the time in question I was the Legal Assistance Officer at Castle AFB, California. While other officers saw a few persons in this capacity, I handled the bulk of such matters. While I so worked, I saw a lady named Hopkins. Her husband had recently died, and she wished

to liquidate a commodity account. I can clearly recall the lady's expression of disapproval at her deceased husband's act of withdrawing the bulk of his savings (a sum I recall to be in the neighborhood of \$ 10,000) and placing them in the commodity account. The balance of the account had continually gone downways. She showed me receipts evidencing various transactions, but we were not able to use the declaration originating the account in preparing the letter. I wrote the instant letter after researching the Mississippi law regarding intestacy.

The time element supports the complainant's contention that the respondent received Mrs. Erna Hopkins' typewritten letter. Mrs. Erna Hopkins testified that she mailed the letter from Atwater, California, in the afternoon of November 15, 1960, with air mail postage on the envelope (Tr. 6-10). n2 Another letter bearing air mail postage was mailed by Mrs. Erna Hopkins at the same time addressed to Harris Upham & Company, Washington, D. C., and this letter was answered by Harris Upham & Company on November 17, 1960 (Tr. 8-9). Mrs. Erna Hopkins' typewritten letter to the respondent dated November 15, 1960, was sent in care of Goodbody & Company in New York, New York, and under ordinary circumstances, the letter would have been delivered to Goodbody & Company at least by November 17 (Tr. 8-9). Mr. Frank Pado testified that he received all of Mr. Steen's mail at Goodbody & Company, that he immediately forwarded Mr. Steen's mail to Forest Hills, New York, and that, under ordinary circumstances, it took one day for mail to reach Mr. Steen's office in Forest Hills (Tr. 85-86). Hence, under ordinary circumstances, Mr. Steen would have received an air mail letter mailed to him on November 15 from Atwater, California, in care of Goodbody & Company by November 18. n3 The respondent's reply to the letter which he received is dated November 19 (Comp. ex. 2). Hence the time factor

supports the complainant's contention that the letter to which the respondent was replying on November 19 (Comp. ex. 2) is Mrs. Erna Hopkins' typewritten letter dated November 15, 1960.

n2 The Legal Assistance Officer in his letter to Mr. Robinson (Comp. Ex. 4b) stated, inter alia, "It is my recollection I mailed it [the letter to respondent], although there is a possibility I placed it in the office mailing basket." However, see Compl. Ex. 5b where that officer deferred to Mrs. Hopkins' recollection that she mailed the letter herself.

n3 An inference, in this respect, may be drawn from the fact that in the afternoon of November 18, the trading in the Hopkins account was exceptionally heavy compared to the trading which previously had been conducted in the account (Tr. 52, 101-102; Comp. Ex. 11).

In addition, the contents of the respondent's letter to Mrs. Erna Hopkins dated November 19 (Comp. ex. 2) indicates that it was in reply to Mrs. Erna Hopkins' typewritten letter dated November 15, (Comp. ex. 1). The first sentence in Mrs. Erna Hopkins' typewritten letter is that her husband "died on Thursday, November 10, 1960." The first portion of the respondent's letter of November 19 is that "I am very sorry to learn of your husband's transition. n4 I have been favorably impressed by his insight and character" (Comp. ex. 2). This would seem to be a responsive expression of sympathy to the thought expressed in the first sentence of Mrs. Hopkins' typewritten letter.

n4 Respondent testified that, "The word transition' was chosen [in his letter] after discussion with my wife concerning just how to make an empathic reply to the letter since we did not know what had transpired." (Tr. 138).

The second sentence in Mrs. Erna Hopkins' typewritten letter of November 15 is that "[although] I am unable to locate his [Mr. Hopkins'] copies of the documents he signed with you pertaining to the Commodity account, it is my understanding that the account was carried solely in his name" (Comp. ex. 1). The second statement in the respondent's letter dated November 19 is: "Agreement we have is enclosed". This is plainly responsive to the second sentence in Mrs. Hopkins' typewritten letter. n5

n5 The agreement referred to is in evidence as Comp. Ex. 15.

The third and fourth sentence of Mrs. Erna Hopkins' typewritten letter of November 15 relate to the fact that, in view of her children's interest in the account, she felt that the account should be liquidated at the earliest favorable time (Comp. ex. 1). The third statement expressed in the respondent's letter of November 19 is that: "I would strongly urge that this successful growth account is the best manner of handling a large part of his estate. My record is indicated by the enclosure. n6 Please advise me after reading it and thinking it over" (Comp. ex. 2). The third idea expressed in the respondent's letter of November 19 is clearly responsive to the third concept expressed in Mrs. Erna Hopkins' typewritten letter dated November 15.

n6 The enclosure is a feature article in Business Week for June 11, 1960, reporting respondent's successful operations in the futures markets. (Comp. Ex. 18).

In the concluding sentence of Mrs. Erna Hopkins' typewritten letter dated November 15, she states that further correspondence should be addressed to her in care of Tracy Hopkins (Comp. ex. 1). That is obviously the source of Mr. Steen's dim recollection with respect to the name Tracy Hopkins (Tr. 182).

The foregoing analysis of the evidence establishes clearly that the respondent received Mrs. Erna Hopkins' typewritten letter dated November 15,

1960, and that the illegible handwritten note allegedly received by the respondent is a figment of his imagination.

Other circumstances also impeach the respondent's credibility. For example, the respondent testified on cross-examination that within a day or two after he wrote to Mrs. Hopkins on November 19, 1960, he attempted to telephone Mr. Hopkins but got no reply (Tr. 150-152). However, in a disciplinary proceeding before the Business Conduct Committee of the Chicago Board of Trade, relating to the same matters at issue in the present proceeding (Tr. 123), the respondent testified that he did not make any attempt to telephone Mr. Hopkins after receiving the letter to which he replied on November 19 (Tr. 152-156, 211-212). The questions asked at the hearing before the Business Conduct Committee of the Chicago Board of Trade, and Mr. Steen's replies thereto are as follows (Tr. 154-155):

"With Mr. Hopkins -- I mean, after all, I think it would be very prudent for you, when you get a letter like that, handling equities for other people, that you find out just what is the picture. Did you make any attempt to phone him or communicate with him by wire or anything like that?

"Answer: No, I didn't."

"Question: Yet, you did go through that -- what my personal opinion was --

"Answer: I expect that if a man is dead, the estate is bound to contact me. I couldn't understand how the man could be dead and the estate not contact me. It didn't make any sense to me."

Based on all of the foregoing, it is manifest that the respondent received Mrs. Erna Hopkins' typewritten letter dated November 15, 1960, advising him of the death of her husband and requesting the earliest favorable liquidation of the account. In addition, the hearing officer who saw and heard the witnesses testify and thus was able to form a judgment of their credibility is of the opinion that the testimony of Mrs. Erna Hopkins is worthy of belief and legal acceptance. *N.L.R.B. v Universal Camera Corp.*, 179 F. 2d 749, 754.

II

The transactions at issue in this proceeding, referred to in Findings of Fact numbered seven and eight (*i.e.*, the sale of 2 December egg futures and 14 soybean meal futures), were executed for the Hopkins account on November 21, 1960, which is after the respondent received notice of the death of Mr. Hopkins.

The respondent contends that the egg futures contracts were placed in the Hopkins account on November 21, 1960, by error, although he was never precise as to the nature of the error relating to this particular transaction (Tr. 141). The evidence, however, establishes the fact that the egg futures were placed in the Hopkins account because of explicit instructions given by the respondent to Mr. Pado on November 21. The 2 egg futures placed in the Hopkins account were part of an order relating to 15 egg futures, and the respondent told Mr. Pado to place the egg futures in the same accounts for which soybean futures had been liquidated on November 18 by purchasing soybean futures. The Hopkins account was one of the accounts for which soybean futures had been liquidated in that manner on November 18 (Tr. 73-79, 82-85, 203-209; Comp. exs. 6A-D, 7 A-C, 10A-C). Hence, the egg futures were placed in the Hopkins account on November 21 in accordance with the express directions of the respondent, and this created a new short position in egg futures in the Hopkins account (Tr. 48; Comp. ex. 11). n7 The respondent does not question the fact that this new short position in egg futures increased the speculative nature of the Hopkins account.

n7 The establishment of a position of two egg futures in the Hopkins account on November 21 was consistent with prior trading in the account. A position of two egg futures was held in the Hopkins account from October 31, 1960, to November 8, 1960 (Comp. ex. 11). On November 15, 1960, one egg future was bought for the Hopkins account, and on November 16, 1960.

one egg future was bought and two egg futures were sold for the Hopkins account, thereby liquidating the egg futures position in the Hopkins account on November 16, 1960 (Comp. ex. 11).

The respondent admits that he placed an order with Mr. Pado on November 21 to sell seven January soybean meal futures and seven March soybean meal futures on the Chicago Board of Trade for the Hopkins account (Tr. 139-140), and this order was executed by Goodbody & Company for the Hopkins account on November 21 (Tr. 79-82; Comp. exs. 8A-C, 9A-C). Prior to November 21, the Hopkins account had a long soybean oil position of 17 contracts and a short soybean meal position of 2 contracts (Comp. ex. 11). As a result of the sale of 14 soybean

meal futures on November 21, the short soybean meal position in the Hopkins account was increased to 16 contracts and the long soybean oil position in the Hopkins account remained at 17 contracts (Tr. 49; Comp. ex. 11).

The respondent contends that the sale of the soybean meal futures on November 21 was a "spread" which reduced the speculative commitment in the Hopkins account (Tr. 139). The respondent contends that in November of 1960 "it was generally considered that meal versus oil was a spread" inasmuch as they are "derivatives of the same product" (Tr. 139). However, the testimony of Mr. Charles E. Robinson, Director of the Compliance Division of the Commodity Exchange Authority, who has had approximately 20 years of experience with the Commodity Exchange Authority (Tr. 23, 114), and of Mr. Werner Lehnberg, a partner in Goodbody & Company, who is in charge of the firm's Commodity Division, and who has had approximately 25 years of experience in futures trading work (Tr. 93-94), clearly establishes that the sale of soybean meal against the purchase of soybean oil is not a spread, and that such a transaction is purely speculative subjecting the account to additional risk of loss (Tr. 96-99, 215-216, 124-127, 210-211). Mr. Lehnberg testified that the sale of 14 contracts of soybean meal on November 21 in the Hopkins account made the account "more speculative" because (Tr. 97) --

the meal is a transaction in itself, and while -- and this new position would be subject to supply and demand factors that govern the price trend of meal. It has no direct relation to the price trend of soybean oil.

Mr. Lehnberg testified that if a person has a position which is long in soybean oil and short in soybean meal he can "frequently lose money on both sides of the transaction" (Tr. 97).

Similarly, Mr. Robinson testified that the fact that commodities are derivatives of the same product has no bearing on whether or not such commodities can be used as a spread (Tr. 211), and that a short position in soybean meal could not be used as a spread against a long position in soybean oil (Tr. 211) --

because soy bean meal is primarily used as a feed stuff, and a component of feed, and its price is determined from the demand side, by the demand for feed. Soy bean oil is a vegetable oil, and is competitive with cotton seed

oil and lard, so its price is determined by different factors. So, since the prices of the different commodities from the demand side are determined by basically different economic factors, the purchase of one against the sale of the other would not be considered a spread and never has, to my knowledge.

Mr. Robinson explained that his opinion with respect to soybean oil and soybean meal is "the opinion of practically all the people in the commodity market" (Tr. 213).

Both Mr. Lehnberg and Mr. Robinson testified that there has been no change in trade opinion since 1960 with respect to transactions in soybean meal against transactions in soybean oil, and that transactions in soybean meal against

transactions in soybean oil have never been considered by the trade as a spread (Tr. 96-99, 215-216, 124-127, 210-211). Mr. Lehnberg and Mr. Robinson also testified that under the margin rules of the Chicago Board of Trade in effect in November of 1960, a position in soybean meal against a position in soybean oil was not considered as a spread (Tr. 99, 126-127). In addition, both witnesses testified that the two sides of a spread are ordinarily closed out at the same time, and that the position in the Hopkins account in soybean meal was not closed out at the same time as the position in soybean oil (Tr. 98-99, 125-126).

In the circumstances, the record clearly demonstrates that, after receiving notice of the death of Mr. Hopkins, the respondent established new speculative positions in the Hopkins account, thereby increasing the speculative nature of the account.

III

The respondent is charged in the complaint with having "attempted to cheat or defraud and did cheat or defraud" the estate of Carl H. Hopkins.

It is provided in section 4b of the Act that it "shall be unlawful for any member of a contract market * * * in or in connection with * * * the making of * * * any contract of sale of any commodity for future delivery made, or to be made, on or subject to the rules of any contract market for or on behalf of any person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the product or byproducts thereof, or (b) determining

the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof -- (A) to cheat or defraud or attempt to cheat or defraud such person" (7 U.S.C. § 6b).

To "cheat" is defined in Webster's New International Dictionary, Unabridged (2d ed. 1959), p. 456, as to "deprive of something valuable by use of deceit; to practice fraud upon; to defraud * * *." To "defraud" is defined as to "deprive of some right, interest, or property, by deceit; to cheat * * *" (*id.* at p. 689). "'Cheat and defraud' include every kind of trick, device, artifice, or deception from false representation and intimidation to suppression and concealment of fact or information, used for the purpose of depriving another of his property or other known right contrary to the plain rules of common honesty." *State v. Gerich*, 138 Conn. 292, 83 A. 2d 488, 490; *State v. Parker*, 114 Conn. 354, 158 A. 797, 800.

"It is established law that acts in violation of the fiduciary duties of an agent are regarded as fraudulent." *Ramey v. Myers*, 159 Cal. App. 2d 82, 323 P. 2d 805, 808. Acts which tend to violate the "fiduciary obligation" of an agent to a principal "are considered, in law, as 'frauds upon confidence bestowed.'" *Myers v. Ellison*, 249 Ala. 367, 31 So. 2d 353, 355. The "vital principle [relating to agency] is good faith; without it the relation of principal and agent cannot exist; and so sedulously is this principle guarded, that all departures from it are esteemed frauds upon the confidence bestowed." *Nagel v. Todd*, 185 Md. 512, 45 A. 2d 326, 328.

A person may "defraud" someone irrespective of whether there is an "attempt to secure any monetary advantage" (*United States v. Tommasello*, 160 F. 2d 348, 350 (C. A. 2)), and irrespective of whether the defrauded person would "suffer a pecuniary loss" (*Johnson v. Warden*, 134 F. 2d 166, 167 (C. A. 9), certiorari denied, 319 U.S. 763; see, also, *United States v. Buckner*, 108 F. 2d 921, 926 (C. A. 2); *United States v. Goldsmith*, 68 F. 2d 5, 7 (C. A. 2)). Specifically, it was held in *Braatelian v. United States*, 147 F. 2d 888, 890-894 (C. A. 8), that the defendant was guilty of defrauding a person (the United States) by taking unauthorized action intended to promote the defendant's business even though the defrauded person suffered no "property or pecuniary loss by the fraud" (147 F. 2d at 893-894).

In this case, the respondent, a member of several contract markets, had a power of attorney to trade for Mr. Carl H. Hopkins (Comp. exs. 14 and 15), but the respondent's authority to engage in new transactions in the Hopkins account ended prior to November 21, 1960, in view of the death of Mr. Hopkins and the notice received by the respondent of such death. Under the general rules of agency, it is well settled that an ordinary agent's power to act for his principal ceases upon the death of the principal (2 C.J.S. Agency, § 86a). The trade practice as to an agency relating to commodity futures accounts is consonant with the general rules of agency. Specifically, under the trade practice applicable to the handling of a commodity futures account upon the death of the owner of the account, no new positions may be established in the account and the account must be liquidated as soon as possible (Tr. 59-62, 94, 123-124). n8 The underlying basis for the trade practice is that after the death of the owner of the account, the account no longer belongs to the person who opened the account and who was willing to speculate with his money in commodity futures. The money belongs to those persons who are to share in the dead man's estate, and they might not want to speculate with the money and, also, creditors might be jeopardized by any further speculation (Tr. 62, 94, 124).

n8 Although various transactions were executed in the Hopkins account after the death of Mr. Hopkins and before notice was received by the respondent of such death (Comp. ex. 11), there is no allegation in the complaint with respect to such transactions and, therefore, such transactions are not involved in this proceeding.

In the present case, the respondent cheated and defrauded the persons who were to share in Mr. Hopkins' estate by speculating with the money in the Hopkins account after the respondent had received notice of the death of Mr. Hopkins and instructions to liquidate the account. By engaging in such speculation, the respondent was depriving such persons of the right to choose for themselves how to invest or handle their money. The respondent pretended not to receive Mrs. Hopkins' typewritten letter of November 15, and by means of this device or scheme, he handled the money in the Hopkins account in accordance with his views instead of following the instructions of Mrs. Hopkins. This constitutes cheating or defrauding within the meaning of the authorities cited above irrespective of whether the respondent's action was dictated by motives of personal gain.

The record shows, however, that the respondent personally profited from the trading in the Hopkins account on November

21. As a result of the unauthorized transactions in the Hopkins account on November 21, the respondent earned commissions of \$ 180 (Tr. 53-56; Comp. ex. 12). Hence, the respondent secured immediate and certain financial advantage to himself as a result of the unauthorized transactions on November 21.

In addition, the evidence compels the inference that the respondent executed the transactions on November 21 for the purpose of procuring greater financial advantage than the \$ 180 received in commissions. The respondent's business was taking a sharp turn for the worse during November of 1960, and by December 2, 1960, the respondent's business had "collapsed" and there was "little or nothing left of many accounts," including the respondent's personal account (Tr. 143; Comp. ex. 3). The only reasonable inference, n9 considering the entirety or totality of the factual situation revealed in this case, is that the respondent was attempting, by means of the transactions entered into on November 21, to make a profit in the Hopkins account in order to obtain Mrs. Erna Hopkins as a new customer. The respondent admitted that he believed that the transactions in the Hopkins account on November 21 would increase the "probability of profit" in the Hopkins account (Tr. 145; see, also, Tr. 161, 171, 189-192). In his letter

of November 19 to Mrs. Erna Hopkins, (1) the respondent included a copy of an article which appeared in Business Week magazine stating, *inter alia*, that he "has run \$ 6,000 into \$ 240,000, and now holds about a \$ 2-million position in various commodities, and has earned a reputation as one of the shewdest of a vanishing breed of commodity traders" (Tr. 193-194; Comp. ex. 18); (2) the respondent enclosed a customer's agreement signed by himself and with the place for the customer's signature blank (Tr. 13, 195; Comp. exs. 2, 15); and (3) the respondent stated (Comp. ex. 2) --

n9 An administrative agency is permitted to draw reasonable inferences upon the basis of the evidence. *Cardillo v. Liberty Mutual Co.*, 330 U.S. 469, 477-478; *Corn Products Co. v. Federal Trade Commission*, 324 U.S. 726, 739; *Labor Board v. Southern Bell Co.*, 819 U.S. 50, 60; *Great Western Food Distributors v. Brannan*, 201 F. 2d 476, 480 (C.A. 7), certiorari denied, 345 U.S. 997; *National Labor Relations Board v. Kropp Forge Co.*, 178 F. 2d 822, 826 (C.A. 7), certiorari denied, 340 U.S. 810; *National Labor Relations Board v. Arnolt Motor Co.*, 173 F. 2d 597, 598 (C.A. 7); *Fort Howard Paper Co. v. Federal Trade Com'n.*, 156 F. 2d 899, 907 (C.A. 7), certiorari denied, 329 U.S. 795. Specifically, it has been held that in proceedings under the Commodity Exchange Act findings of fact may be based on "the evidence, including the demeanor of the witnesses, the reasonable inferences drawn therefrom and other pertinent circumstances" (*Great Western Food Distributors v. Brannan*, 201 F. 2d 476, 480 (C.A. 7), certiorari denied. 345 U.S. 997).

I would strongly urge that this successful growth account is the best manner of handling a large part of his

[Mr. Carl H. Hopkins'] estate. My record is indicated by the enclosure. Please advise me after reading it and thinking it over.

In the circumstances, it is manifest that the respondent was attempting to obtain Mrs. Carl H. Hopkins as a new customer and that he wanted Mrs. Hopkins to leave "a large part" of Mr. Hopkins' estate in the commodity account. The respondent referred to the account as a "successful growth account" notwithstanding the fact that by November 19, 1960, the account had declined from approximately \$ 8200 to approximately \$ 4800 (Tr. 5, 59). This indicates that the respondent was aware of the fact that Mrs. Hopkins would naturally be influenced by the success or failure of the account and affords an additional basis for the inference that the respondent's motive -- in establishing new speculative positions in the Hopkins account on November 21, and in pretending not to have received Mrs. Erna Hopkins' typewritten letter of November 15 with its clear statement that her husband had died -- was to try to make a profit in the account, thereby affording an additional basis for using Mrs. Erna Hopkins to leave a large part of Mr. Hopkins' estate in the commodity account. Although the respondent denied that this was his motive (Tr. 195-202), objective circumstances are frequently accorded greater probative value than a respondent's protestations of innocence. See *Wright v. Securities & Exchange Commission*, 112 F. 2d 89, 92-93 (C. A. 2); *R. J. Koeppe & Co. V. Securities & Exchange Commission*, 95 F. 2d 550, 552 (C. A. 7).

The prohibition in section 4b of the Act against cheating or defrauding is plainly broad enough to encompass the respondent's activities at issue in this proceeding. Moreover, the Commodity Exchange Act is remedial legislation, and it is settled that remedial legislation should be liberally construed to achieve the Congressional purpose. *McDonald v. Thompson*, 305 U.S. 263, 266; *Piedmont & Northern Ry. v. Comm'n.*, 286 U.S. 299, 311-312; *Adler v. Northern Hotel Co.*, 175 F. 2d 619, 620-621 (C. A. 7). A statute should be construed, if possible, "in the manner which effectuates rather than frustrates the major purpose of the legislative draftsmen" (*Shapiro v. United States*, 335 U.S. 1, 31), and an interpretation should be adopted which "will preserve the vitality of the Act and the utility of the language" (*Sunshine Coal Co. v. Adkins*, 310 U.S. 381,

392). Remedial legislation "should be interpreted (when that is possible) in a manner tending to discourage attempted evasions by wrongdoers"

(*Scarborough v. Atlantic Coast Line R. Co.*, 178 F. 2d 253, 258 (C. A. 4), certiorari denied, 339 U. S. 919).

IV

Respondent's defense of his actions is not persuasive. At best it represents an attempt to grasp at straws in the face of wilful wrongdoing on his part. Respondent contends that he never received Mrs. Hopkins' letter of November 15 and that in any event his trading in the Hopkins' account was characterized by good faith. The answer to this is that the evidence is overwhelmingly to the contrary. Also, the great weight of the evidence is to the effect that the order to sell December eggs was allocated on November 21 and not on November 18, as claimed by respondent (see Findings of Fact 7 and 8). All other contentions made by the respondent have been considered, but are deemed to be without merit.

V

The respondent, by undertaking to direct the trading in commodity futures accounts owned by other persons, handled the money of other persons and, therefore, owed the highest degree of loyalty in discharging his duties as an agent. See, e.g., *Eaton v. Thieme*, 15 Cal. App. 2d 458, 59 P. 2d 638, 646. As stated in *Mechen on Agency* (2d ed.), Vol. 1, § 1188:

Loyalty to his trust is the first duty which the agent owes to his principal. Without it, the perfect relation cannot exist. Reliance upon the agent's integrity, fidelity and capacity is the moving consideration in the creation of all agencies; in some it is so much the inspiring spirit, that the law looks with jealous eyes upon the manner of their execution, and condemns, not only as invalid as to the principal, but as repugnant to the public policy, everything which tends to destroy that reliance.

The obligation of an agent to his principal was expressed in *Bank of British North America v. Cooper*, 137 U.S. 479, as follows:

There can, as a rule, be little hardship, and there is generally great benefit, in holding an agent bound to absolute compliance with the explicit instructions of his principal. In view of the manifold contingencies of

business transactions, and the wide range of possibilities that attend any act of a commercial nature, few things could be more unfortunate than to incorporate into established law the right of an agent to disobey specific instructions, and to make a guess as to results an excuse for relief from accruing loss. Uniform recognition and enforcement of certain settled and clear rules are important. Among them, few are more significant or more essential than that in the relation of principal and agent strict compliance by the latter with the instructions of the former is an unvarying condition of exemption from liability.

In this case, notwithstanding the receipt by the respondent of a plain and precise notification as to the death of Mr. Carl H. Hopkins and of the desire of his widow to have the account liquidated at the earliest favorable time, the respondent subsequently established new speculative positions in the Hopkins account. The respondent may have believed that his market judgment was right and that, given time, his opinion as to the market would be justified. Nonetheless, it was a flagrant disregard of his duties with respect to the Hopkins account to establish new speculative positions in the account after receiving Mrs. Erna Hopkins' typewritten letter of November 15.

The respondent's violation should not be judged by the amount of loss sustained by the Hopkins account as a result of the unauthorized trading on November 21, 1960. n10 The respondent's violation would have been just as

serious if there had been a profit in the Hopkins account as a result of the respondent's unauthorized transactions. The significant circumstance is that the respondent permitted his own judgment as to the course of action to be taken with respect to the Hopkins account to prevail notwithstanding the receipt of notification of the death of Mr. Hopkins and a request to liquidate the account at the earliest favorable opportunity. This is a flagrant disregard of the respondent's obligations in the handling of money belonging to other persons.

Moreover, the evidence compels the inference that the respondent was motivated by hope of personal gain.

n10 The loss in the Hopkins account as a result of the new positions established on November 21, 1960, was approximately \$ 2450.00 (Tr. 59), and the loss in the account as a result of the new positions established on November 18, 1960, was approximately \$ 4100.00 (Tr. 59). Although there is basis for believing that the respondent received Mrs. Erna Hopkins' typewritten letter prior to his unusually heavy trading in the Hopkins account on November 18, 1960 (see, supra, pp. 11-12), the complaint does not allege any violation relating to November 18.

Any person who commits such a violation of the Act should not be permitted to handle other persons' commodity accounts for a substantial period of time. The nature of the offense, and not the amount of money involved, is the important consideration. For example, if a bank teller is found to have embezzled even a small amount of money from a bank, it is not likely that he will ever again be permitted to handle money for the bank, or for any other bank which knows of the offense.

One of the fundamental purposes of the Commodity Exchange Act is to "insure fair practice and honest dealing on the commodity exchanges" (H. Rep. No. 421, 74th Cong., 1st Sess., p. 1), and section 4b of the Act relating to cheating or defrauding customers is a basic part of the measure designed to achieve that purpose (see H. Rep. No. 421, 74th Cong., 1st Sess., p. 5). Considering all of the circumstances of this case, it is believed that in order to effectuate that purpose of the Act, the respondent should be denied all trading privileges on contract markets for a period of three years.

The respondent is not registered as a floor broker or as a futures commission merchant and, therefore, it is not possible to suspend or revoke any license as a result of the respondent's violation. Also, the respondent testified that he is not presently engaged in handling commodity futures accounts for others and that he does not intend to handle such accounts in the future (Tr. 144). However, in order to have an effective sanction in this case, it is necessary to deny to the respondent all trading privileges for a specified period of time whether for the respondent's own account or for the account of other persons.

VI

All suggested findings of fact, conclusions, and orders inconsistent with those proposed herein are herewith overruled and denied.

PROPOSED ORDER

Effective on the 30th day after the date of this order, all contract markets shall deny all trading privileges to Douglas Steen for a period of three (3) years, such refusal to apply to all trading done and positions held by the said Douglas Steen

directly or indirectly whether for his own account or for the account of other persons.

A copy of this decision and order shall be served upon the said Douglas Steen and upon each contract market.

LOAD-DATE: June 8, 2008

