

Commodity Futures Trading Commission
CEA CASES

NAME: JACOB STERN AND JACOB STERN AND COMPANY, INC.

CITATION: 14 Agric. Dec. 807

DOCKET NUMBER: 69

DATE: OCTOBER 20, 1955

DOCUMENT TYPE: DECISION AND ORDER

(No. 4397)

In re JACOB STERN AND JACOB STERN AND COMPANY, INC. CEA Docket No. 69. Decided October 20, 1955.

Denial of Trading Privileges -- Stipulation by Respondents -- Jurisdiction of Secretary -- Consent Order

Upon respondents' admission of jurisdictional facts, waiver of oral hearing, consent to entry of the order herein, and stipulation, trading privileges on all contract markets are denied to them for a period of six months,

with an exception which would permit respondent Jacob Stern to execute bona fide orders received by him in his capacity as a floor broker.

Mr. Benj. M. Holstein for Commodity Exchange Authority. *Mr. Louis A. Tepper* of Moldauer & Tepper, of New York, New York, for respondents.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a quasi-judicial proceeding under the Commodity Exchange Act (7 U.S.C. 1952 ed., Chapter 1) instituted by a complaint and notice of hearing issued under section 6(b) of the Act (7 U.S.C. 1952 ed., § 9) by the Acting Secretary of Agriculture on June 24, 1955.

The respondents are an individual and a New York corporation of which he is the president and principal owner, and which he manages and directs.

The complaint charges that the respondents attempted to manipulate and did in fact manipulate the price of potatoes in interstate commerce and for future delivery on the New York Mercantile Exchange, a contract market. These charges are based upon allegations that during and prior to February 1955, the respondents sold large quantities of March 1955 potato futures on the exchange and thereby acquired and maintained a substantial short position in such future; that during the same period they purchased and withheld from sale large quantities of February 1955 potato futures and acquired and maintained a dominant long position in that future; that during the latter part of February 1955, their holdings represented from 30 to 40 percent of all open contracts in the March future and from 50 to 80 percent of all open contracts in the February future; that they sold deliverable potatoes to holders of short February contracts only at fixed and arbitrary prices, and subsequently reacquired such potatoes by repurchase or by delivery to them in satisfaction of their long February position; that they stood for delivery on such position and demanded and received delivery during February of more than 92 percent of all deliveries made on the exchange and held 149 carlots of potatoes at the end of the month, which quantity represented approximately the entire available supply of cash potatoes in New York which met requirements for delivery on the New York

Mercantile Exchange; that they employed these cash supplies to threaten delivery on their short March futures position in order to cause lower prices in that future; and that on March 1, 1955, they delivered the entire 149 carlots against their

short March position. The complaint also alleges that the respondents entered into these transactions for the purpose and with the intent of depressing the price of March 1955 potato futures, and that their acts caused an increase in the price of February 1955 potato futures, a decrease in the price of March 1955 potato futures and in the price of cash potatoes, and a widening of the spread between the prices of these two futures.

No hearing has been held. On September 21, 1955, prior to the date set for filing the answer, the respondents submitted a joint stipulation under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they admit the facts contained herein under "Findings of Fact," and consent to the entry of the order hereinafter set forth. The stipulation also contains a recital that it is submitted solely for the purpose of disposing of this administrative proceeding and with no other intent.

FINDINGS OF FACT

1. Respondent Jacob Stern and Company, Inc., is a corporation organized under the laws of the State of New York with offices and a place of business at 190 Duane Street, New York, New York. The said corporation is now and was at all times specified herein a clearing member of the New York Mercantile Exchange.

2. Respondent Jacob Stern is now and was at all times specified herein the president of the corporate respondent, the manager and director of its business, and the owner of 70 percent of its capital stock, with the remaining 30 percent of such capital stock being held by other members of the family of the said Jacob Stern. The said Jacob Stern is now and was at all times specified herein a member of the New York Mercantile Exchange and a registered floor broker under the Commodity Exchange Act.

3. The New York Mercantile Exchange is now and was at all times specified herein a board of trade duly designated as a contract market under the Commodity Exchange Act.

4. During January, February, and March, 1955, respondent Jacob Stern and Company, Inc., acting through respondent Jacob Stern, bought and sold potato futures on the New York Mercantile Exchange and entered the resulting transactions in the Jacob Stern and Company, Inc., account on the books of the said firm.

CONCLUSIONS

Section 0.4(b) of the rules of practice under the Commodity Exchange Act (17 CFR 0.4(b)) provides as follows:

"(b) Consent order. At any time after the issuance of the complaint and prior to the hearing in any proceeding, the Secretary, in his discretion, may allow the respondent to consent to an order. In so consenting, the respondent must submit, for filing in the record, a stipulation or statement in which he admits at least those facts necessary to the Secretary's jurisdiction and agrees that an order may be entered against him. Upon a record composed of the complaint and the stipulation or agreement consenting to the order, the Secretary may enter the order consented to by the respondent, which shall have the same force and effect as an order made after oral hearings."

The facts admitted by the respondents and set forth in the Findings of Fact are sufficient to subject them and each of them to the jurisdiction of the Secretary of Agriculture.

The complainant has filed a recommendation which recites that it has carefully considered the stipulation and the terms of the order to which the respondents propose to consent. The complainant states that, in its opinion, the proposed sanction would be adequate and the prompt entry of such an order without further proceedings would constitute a satisfactory disposition of this case, serve the public interest, and effectuate the purposes of the Commodity Exchange Act, and it therefore recommends that the waiver be accepted and that the order to which the respondents have consented be issued.

It is concluded that such an order should be issued.

ORDER

Effective December 1, 1955, all contract markets shall refuse all trading privileges to Jacob Stern and Jacob Stern and Company, Inc., for a period of six months, such refusal to apply to all trading done and positions held directly by said Jacob Stern and Jacob Stern and Company, Inc., or either of them, and also to all trading done and positions held indirectly through persons or firms owned or controlled by them, or either of them, or otherwise. *Provided*, that such refusal shall not be construed to prohibit the execution of *bona fide* orders received by the said Jacob Stern in his capacity as a floor broker, in which orders

the said Jacob Stern has no interest other than the usual broker-customer relationship.

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

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