

Commodity Futures Trading Commission
CEA CASES

NAME: TIDEWATER GRAIN COMPANY AND R. J. BARNES

CITATION: 15 Agric. Dec. 205

DOCKET NUMBER: 71

DATE: MARCH 21, 1956

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AGRICULTURE DECISIONS

BEFORE THE SECRETARY OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

(No. 4563)

In re TIDEWATER GRAIN COMPANY AND R. J. BARNES, CEA Docket No. 71. Decided March 21, 1956.

Suspension of Registration -- Denial of Trading Privileges -- Stipulation by Respondents -- Jurisdiction of Secretary -- Furnishing Information to Determine Proper Handling of Customers' Funds -- Consent Order

Where it is alleged that respondents refused to furnish information of profit-sharing agreements of their customers with another corporation under common ownership and management with the respondent corporation in order that a determination might be made as to the proper handling of the funds of such customers, and respondents entered a stipulation admitting jurisdiction of the Secretary, waving oral hearing, and consenting to the entry of an order, *held*, respondent company's registration is suspended for five days and trading privileges are denied respondents for the same period but such prohibitions shall not become effective unless, within a year, the respondents shall have been found to have violated the statute or regulations by reason of acts other than those constituting the basis for the charges brought in this proceeding.

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

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 Assistant Secretary of Agriculture on January 27, 1956.

The respondents are a corporation registered as a futures commission merchant under the act and an individual who is its president and principal shareholder. The complaint charges that the respondents wilfully violated the act by refusing to furnish information to the Commodity Exchange Authority with respect to profit-sharing agreements between two of the corporate respondent's customers and Commodities Management

Corporation, a Pennsylvania corporation of which the individual respondent, R. J. Barnes, is also the president and principal shareholder.

No hearing has been held. On March 12, 1956, prior to the date set for filing the answer, respondents submitted a joint statement in which they admit the facts alleged in the complaint and contained herein under "Findings of Fact", waive hearing on the charges, and consent to the entry of the order hereinafter set forth. The statement also contains a stipulation that Tidewater Grain Company and R. J. Barnes will make available for examination by the Commodity Exchange Authority, upon request, all profit-sharing agreements or arrangements between the two customers in question and Commodities Management Corporation, and that the said respondents will, in like manner, furnish to the Commodity Exchange Authority upon request similar information and details concerning any interest, direct or indirect, which the said Tidewater Grain Company or R. J. Barnes may now or hereafter have in any customer's account.

FINDINGS OF FACT

1. Tidewater Grain Company is a Delaware corporation in the grain merchandizing and brokerage business, with an office and place of business at 301 Bourse Building, Philadelphia, Pennsylvania. The said corporation is now and has been at all times material herein a registered futures commission merchant under the Commodity Exchange Act, trading in commodity futures on contract markets for the accounts of customers. Respondent R. J. Barnes, an individual, is now and has been at all such times the president and principal shareholder of said Tidewater Grain Company, and also the president and a principal shareholder of Commodities Management Corporation, a Pennsylvania Corporation engaged in the business of managing and directing commodity futures trading for others, with an office and place of business at 301 Bourse Building, Philadelphia, Pennsylvania.

2. At all times material herein, respondent Tidewater Grain Company was carrying among its regulated commodity accounts the "managed accounts" of Francis G. McGrath and Donald M. Steele, customers of said Tidewater Grain Company, and at all such times funds belonging to the said accounts have been comingled and deposited together with the funds of other customers of said Tidewater Grain Company. Each of such

accounts was at all such times and is now the subject of an agreement between its owner and Commodities Management Corporation, under which Commodities Management Corporation manages the accounts, controls and directs the trading and shares in the resulting profits or losses.

3. In October and November, 1955, and in January 1956, the Commodity Exchange Authority requested information from the respondents herein as to the details of the profit-sharing agreements between Commodities Management Corporation and the said Francis G. McGrath and Donald M. Steele, in order that a determination might be made with respect to the proper handling of the funds in such accounts under the applicable provisions of the Commodity Exchange Act and the rules and regulations thereunder, but respondents Tidewater Grain Company and R. J. Barnes refused to furnish such information.

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 are set forth in the Findings of Fact and are identical with those alleged in the complaint. Such facts are sufficient to subject the respondents 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. This recommendation states that in view of the respondents' agreement to furnish the information in question and similar information in future instances, an operative sanction is not required,

and that the prompt entry, without further proceedings, of the order to which the respondents have consented would provide an adequate sanction, constitute a satisfactory disposition of the case, serve the public interest, and effectuate the purposes of the Commodity Exchange Act. For these reasons, the complainant recommends that the stipulation and waiver be accepted and that the order to which the respondents have consented be issued. It is so concluded.

ORDER

The registration of respondent Tidewater Grain Company as a futures commission merchant under the Commodity Exchange Act is suspended for a period of five (5) days, and all contract markets shall refuse all trading privileges to Tidewater Grain Company and R. J. Barnes for the same period, such refusal to apply to all trading done and positions held by the said Tidewater Grain Company and R. J. Barnes, or either of them, directly, or indirectly, provided, however, that such suspension of registration and refusal of trading privileges shall not become effective unless, within one year from the date of issuance of this order, the respondents or either of them should, after complaint and hearing in accordance with established procedure, be found to have violated the Commodity Exchange Act or regulations by reason of acts other than those constituting the basis for the charges brought in this proceeding, in which event a supplemental order in this proceeding may be issued against the said respondents or either of them without further notice, making effective forthwith the aforesaid suspension of registration and refusal of trading privileges.

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