

Commodity Futures Trading Commission
CEA CASES

NAME: I. USISKIN AND COMPANY, INC., I. USISKIN AND COMPANY, ISADORE USISKIN, SIDNEY FASHENA, AND HOWARD S. FISHER

DOCKET NUMBER: 101

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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: I. Usiskin and Company, Inc., I. Usiskin and Company, Isadore Usiskin, Sidney Fashena, and Howard S. Fisher, Respondents

CEA Docket No. 101

Complaint and Notice of Hearing under Section 6(b) of the Commodity Exchange Act

There is reason to believe that the respondents, I. Usiskin and Company, Inc., I. Usiskin and Company, Isadore Usiskin, Sidney Fashena, and Howard S. Fisher, have violated the Commodity Exchange Act (7 U.S.C. 1958 ed., Chapter 1) and the regulations made pursuant thereto (17 CFR, Part 1), and in accordance with the provisions of section 6(b) of the said act (7 U.S.C. § 9), this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

Respondent I. Usiskin and Company, Inc., is an Illinois corporation with its principal office and place of business at Room 1045, 141 West Jackson Boulevard, Chicago 4, Illinois.

The said corporation is now and was at all times material to this complaint a clearing member of the Chicago Board of Trade and a registered futures commission merchant under the Commodity Exchange Act.

II

Respondents Isadore Usiskin and Sidney Fashena, individuals, are now and were at all times material to this complaint the president and the secretary-treasurer, respectively, of the aforesaid I. Usiskin and Company, Inc., and the sole partners in a New York partnership doing business under the firm name of I. Usiskin and Company, with offices and a place of business at 11 Broadway, New York 4, New York. The said partnership is now and was at all times material herein a registered futures commission merchant under the Commodity Exchange Act. At all times material herein up to April 1961, respondents Isadore Usiskin and Sidney Fashena were the only shareholders of the aforesaid corporation, each of the said individual respondents holding 50 percent of its capital stock, and at all times thereafter each of the said individual respondents has owned and held 33-1/3 percent of such capital stock. Each of the said individual respondents is now and was at all times

material to this complaint a member of the New York Produce Exchange and a registered floor broker under the Commodity Exchange Act, and at all such times respondent Sidney Fashena was also a member of the Chicago Board of Trade.

III

Respondent Howard S. Fisher, an individual whose business address is Room 1045, 141 West Jackson Boulevard, Chicago 4, Illinois, is now and was at all times material to this complaint, a vice president of the respondent corporation, the manager of its Chicago office, a member of the Chicago Board of Trade, and a registered floor broker under the Commodity Exchange Act. In April 1961, respondent Howard S. Fisher acquired 33-1/3 percent of the capital stock of respondent I. Usiskin and Company, Inc., and has owned and held the same since that time.

IV

The acts and transactions hereinafter described were carried out under the direction of respondent Howard S. Fisher in his capacity as vice president of the respondent corporation and manager of its Chicago office, and such acts and transactions were at all times subject to the supervision and control of respondents Isadore Usiskin and Sidney Fashena.

V

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

VI

At the times hereinafter stated, respondent I. Usiskin and Company, Inc., in the regular course of its business, carried accounts of customers who traded in commodity futures subject to the provisions of the Commodity Exchange Act and regulations. At all such times, respondent I. Usiskin and Company, Inc., had to its credit with a bank, the Chicago Board of Trade Clearing Corporation, or other depository, money and securities in varying amounts, held in segregated accounts and identified as customers' funds, representing deposits of margin by and trading profits accruing to such customers.

VII

On twelve business days between February 13, 1961, and June 12, 1961, to wit, February 13, February 14, February 15, May 22, May 23, May 24, May 25, May 26, May 29, May 31, June 9,

and June 12, respondent I. Usiskin and Company, Inc., was under-segregated in amounts ranging from \$ 5,336 on May 31 to \$ 98,533 on June 12 - that is, the total amount of customers' funds held in segregation as described in paragraph VI was insufficient, by the aforesaid sums, to pay all credits and equities due to such customers, contrary to the provisions of section 4d(2) of the Commodity Exchange Act (7 U.S.C. 6d(2)), and sections 1.20, 1.21, and 1.22 of the regulations (17 CFR 1.20, 1.21, 1.22).

VIII

On December 1, 1960, and December 12, 1960, and on June 1, June 2, June 5, June 6, June 7, and June 8, 1961, respondent I. Usiskin and Company, Inc., failed to make any computation or permanent record, as of the close of the market on each of the said business days, of the amount of money, securities, and property required to be held in segregated account in order to pay all credits and equities due to its customers, as provided in section 1.32 of the regulations (17 CFR 1.32). On twenty-three additional business days in December 1960 and January 1961, the daily computation and record of funds to be held in segregation was incomplete

and inaccurate to an extent which made it impossible to determine whether the funds so held were in fact sufficient to pay all credits and equities due to customers.

IX

During the period from November 16, 1960, through May 21, 1961, respondent I. Usiskin and Company, Inc., received securities to margin, guarantee, and secure the commodity trades and contracts of its customers, but the said respondent failed to prepare and maintain any record of such securities, including a description thereof, the name and address of the customer from whom received, and the dates when the same were received from and when returned to such customer, or otherwise disposed of, together with the facts and circumstances of such other disposition, as required by section 1.36 of the regulations (17 CFR 1.36).

X

During the period from November 16, 1960, through May 31, 1961, respondent I. Usiskin and Company, Inc., failed to prepare and keep a record showing, separately for each account carried on its books, all commodity futures transactions executed for such account, including the date, price, quantity,

market, commodity, and future, contrary to the provisions of section 4g of the Commodity Exchange Act (7 U.S.C. § 6g), and section 1.35 of the regulations (17 CFR 1.35).

XI

Early in 1960 and prior to the acts and omissions described above, an examination of the books and records of respondent I. Usiskin and Company, Inc., by the Commodity Exchange Authority disclosed that the said respondent was not properly preparing a daily permanent record of customers' funds required to be in segregation, that it was not maintaining a record of securities received from its customers to margin and guarantee the trades and contracts of such customers, and that it was not maintaining a record showing all commodity futures transactions executed for each account carried on its books, including the details of such transactions, as required by the aforementioned sections of the Commodity Exchange Act and regulations. Representatives of the Commodity Exchange Authority called these matters to the attention of respondents Howard S. Fisher and Sidney Fashena in March 1960, and requested them to correct the deficiencies in question in order that the records of the respondent corporation would comply with the provisions of the Commodity Exchange Act and regulations, and the said individual respondents promised that this would be done.

XII

By reason of the acts and omissions described in paragraphs VII, VIII and IX, respondents I. Usiskin and Company, Inc., I. Usiskin and Company, Isadore Usiskin, Sidney Fashena, and Howard S. Fisher failed to treat and deal with customers' funds as belonging to such customers, failed to segregate and account separately for such funds, used funds to margin and guarantee the trades and secure and extend the credit of customers other than those for whom such funds were held, and failed to prepare and maintain or cause the preparation and maintenance of the records required under the Commodity Exchange Act and regulations 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, 1.32, and 1.36 of the regulations (17 CFR 1.20, 1.21, 1.22, 1.32, 1.36).

By reason of the acts and omissions described in paragraph X, the said respondents failed and refused 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).

Wherefore, it is hereby ordered that this complaint and notice of hearing be served upon each of the said respondents. The respondents will have twenty (20) days after the receipt of this notice of hearing in which to file with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., an answer with an original and six copies, wholly and completely stating the nature of the defense and admitting or denying, specifically and in detail, each material and relevant allegation of this complaint. Allegations not answered will be deemed admitted for the purpose of this proceeding. Failure to file an answer will constitute an admission of all the material allegations of this complaint and a waiver of hearing. The respondents are hereby notified that unless hearing is waived, either expressly or by failure to file an answer and request a hearing, a hearing will be held at 10:00 a.m., local time, on the 10th day of October 1961, in Chicago, Illinois, at a place therein to be specified later, before a referee designated to conduct such hearing. At such hearing, the respondents will have the right to appear and show cause, if any there be, why an order should not be made suspending or revoking the registrations of respondents I. Usiskin and Company, Inc., and I. Usiskin and Company as

futures commission merchants and the registrations of respondents Isadore Usiskin, Sidney Fashena, and Howard S. Fisher as floor brokers, and directing all contract markets to refuse all trading privileges to all the respondents for such period of time as may be determined.

It is ordered that this complaint and notice of hearing be served on the respondents at least twenty (20) days prior to the date set for hearing.

Done at Washington, D. C.

August 4, 1961

/s/ Orville L. Freeman

Orville L. Freeman

Secretary

LOAD-DATE: June 12, 2008

