

Commodity Futures Trading Commission
CEA CASES

NAME: SECRETARY OF AGRICULTURE V. GREAT WESTERN DISTRIBUTORS, INC., HARRY HARRIS, NATHANIEL E. HESS, CHARLES S. BORDEN

DOCKET NUMBER: 21

DATE: SEPTEMBER 28, 1940

DOCUMENT TYPE: COMPLAINT

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

CE-A DOCKET NO. 21

Secretary of Agriculture, Complainant, v. Great Western Distributors, Inc., Harry Harris, Nathaniel E. Hess, Charles S. Borden, Respondents.

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

There being reason to believe that the respondents have violated the Commodity Exchange Act (7 U.S.C., 1934 ed., and Supp. IV, § 1-17a) and the rules and regulations promulgated pursuant thereto, this complaint is issued alleging the following:

1.

Great Western Distributors, Inc. is a New York corporation having its principal place of business in New York, New York, with a branch office in Chicago, Illinois.

2.

Harry Harris and Nathaniel E. Hess were, during the time covered by this complaint, and are at this time, officers of the Great Western Distributors, Inc., being President and Vice President, respectively.

Charles S. Borden was, during the time covered by this complaint, and is at this time, Manager of the Chicago office of the Great Western Distributors, Inc.

3.

Great Western Distributors, Inc. were, during the year 1939 and have been continuously to the present time, registered as futures commission merchants under the provisions of the Commodity Exchange Act.

4.

Nathaniel E. Hess was, during the year 1939 and has been continuously to the present time, registered as a floor broker under the provisions of the Commodity Exchange Act.

5.

The individuals named herein as respondents during the year 1940 exercised management and control over the Great Western Distributors, Inc. as to all affairs relating to the matters and things hereinafter set forth.

6.

Great Western Distributors, Inc., through its operations in the butter futures market on the Chicago Mercantile Exchange, for its own account and for the account of four customers over whose accounts it exercised trading control,

traded in March 1940 butter futures contracts on said exchange during February and March of 1940, which

trading resulted in: (a) A long position in said future being held by Great Western Distributors, Inc. on March 21st amounting to 72 cars, 30 of which were for the account of the Great Western Distributors, Inc. and 42 for the account of the four customers. (b) The position referred to in "a" was increased between March 21st and March 27th resulting in a position of 139 cars being held on March 27th, 95 of which were for the account of Great Western Distributors, Inc. and 44 for the account of the four customers. This increase was represented by a purchase of five cars for the house account and one for customer account on March 23rd, purchase of eight cars for the house account and two for customers on March 25th, a purchase of 36 cars for house account and one for customers on March 26th and a purchase of 22 cars for house account on March 27th. On March 25th, three cars were sold for house account and on March 27th, three cars were sold for house account and two cars for customer account.

7.

The position of 139 cars held by the Great Western Distributors, Inc. in March 1940 butter futures on March 27th was liquidated by trading on March 28th and 29th, resulting in a reduction of 12 cars on the 28th and 10 cars on the 29th, and the balance of this position was liquidated by deliveries and defaults resulting in settlement as follows:

See original document-page 3

Deliveries and Defaults						
Date	Deliveries Received			Defaults		
	House	Customers	Total	House	Customers	Total
March 28	55	22	77	--	--	--
29	14	7	21	--	--	--
30	13	--	13	2	4	6
Total	82	29	111	2	4	6

8.

With the exception of three contracts filled by deliveries early in the month, all butter delivered on March 1940 butter futures contracts on the Chicago Mercantile Exchange to other clearing firms was eventually redelivered to Great Western Distributors, Inc.

9.

The six contracts of March butter which were defaulted by the sellers were settled by the payment of 29 cents per pound, this representing the actual value of contract grade butter at Chicago for merchandising purposes as determined by the "fair market value committee" of the Chicago Mercantile Exchange, which value was determined to be 27-1/2 cents per pound and a penalty for default in the amount of 1-1/2 cents per pound,

10.

On March 28, 1940, Great Western Distributors, Inc. bought for its own account 18 contracts in March butter futures at 28.40-28.50

cents per pound and on the same day the company sold a car of cash butter of deliverable grade at 27.50 cents per pound.

11.

Fifteen of the cars of butter received by the Great Western Distributors, Inc. on delivery on March contracts were fresh butter which usually sells at a premium over storage butter of a contract grade.

12.

From March 21st to March 29th, the Great Western Distributors, Inc. participated in 189 contracts out of a total of 406 contracts in March 1940 butter futures executed on the Chicago Mercantile Exchange during that period.

13.

The Great Western Distributors, Inc., for itself and its customers, was long 56 cars of March butter at the opening of business March 21st, which was 29 percent of the total open interest in this future on the Chicago Mercantile Exchange. By March 27th, its long position was increased to 139 cars, which was 87 percent of the total open interest and on March 28th and 29th the company's long position represented the entire open interest on the market.

14.

The rules of the Chicago Mercantile Exchange permit delivery on butter futures contracts at a number of warehouses outside of

Chicago in important butter producing areas prior to the last six business days of the delivery month. Delivery during those six business days is required to be made in Chicago.

15.

The total supply of butter in storage in Chicago on March 27th was 137.9 cars of 19,200 pounds each.

Of the 137.9 cars of butter in storage in Chicago on March 27th 37.9 cars were held by the Federal Surplus Commodities Corporation and the Dairy Products Marketing Association, which butter was not available for delivery on March 1940 butter futures contracts.

16.

The delivery notices received by the Great Western Distributors, Inc, on March 1940 butter futures contracts were not transferred or redelivered, although the futures price was in excess of the merchandising value of the spot butter.

17.

The price of Chicago spot 90 score butter from March 12th to the 20th was 27 3/4 cents per pound. The price of this butter increased the last four days of March, prices for those days being as follows: March 27th @ 28 cents, March 28th @ 28 1/4 cents, March 29th @ 28 1/4-28 1/2 cents, March 30th @ 28 cents, and on April 1st the price declined to the previous prevailing price of 27 3/4-28 cents and continued to decline thereafter during the month of April.

18.

The closing prices of March 1940 butter futures contracts on the Chicago Mercantile Exchange and the November 1940 butter futures contracts from March 21st to March 30th were as follows:

Date 1940 March Future November Future

March		
21	26.25	26.75
22	No trading	
23	26.50	26.75
25	26.50	26.75
26	27.15	26.70
27	28.05	26.65
28	28.50	26.50
29	28.50	26.50
30		26.45

19.

The corporate respondent and the individual respondents by and through the means of the corporate respondent by reason of their operations in connection with the March butter futures market on the Chicago Mercantile Exchange as alleged in paragraphs 5 to 16, inclusive, were guilty of attempting to manipulate the price of butter futures contracts on and subject to the rules of the Chicago Mercantile Exchange, a duly designated contract market, and the price of actual butter on the Chicago Mercantile Exchange and elsewhere in interstate commerce and, in fact, did manipulate such prices and were responsible for the price movement set forth in paragraphs 17 and 18, all in

violation of the Commodity Exchange Act and the rules and regulations promulgated pursuant to said act.

20.

By reason of the actions of the respondents as alleged in paragraphs 5 to 16, the respondents were guilty of attempting to corner the 1940 March butter future on the Chicago Mercantile Exchange and the supply of contract grade storage butter in Chicago between March 28 and March 30, 1940, in violation of the provisions of the Commodity Exchange Act.

21.

Nathaniel E. Hess and Charles S. Borden were, during the time covered by this complaint, members of the Chicago Mercantile Exchange, a contract market duly designated as such by the Secretary of Agriculture pursuant to the provisions of the Commodity Exchange Act and their memberships were, during such time, registered for the use of the Great Western Distributors, Inc.

22.

Nathaniel E. Hess and Harry Harris were, during the time covered by this complaint, members of the New York Mercantile Exchange, a contract market duly designated as such by the Secretary of Agriculture pursuant to the provisions of the Commodity Exchange Act and their memberships were, during such time, registered for the use of the Great Western Distributors, Inc.

23.

The butter belonging to the four customers heretofore referred to, namely, Vincent Albano, Abe Harris, Harry Harris and S. Rothkopf and Son, which was received on delivery on March futures contracts, was merchandised by the company along with the butter received by the company on delivery of March futures contracts and settlements were made to the customers on the basis of an average selling price of 26.216 cents per pound rather than on the basis of the actual selling price,

24.

In determining the average price at which settlement was made with customers as alleged in paragraph 23, sales at prices in excess of 27-1/4 cents per pound were not included and the sales of the 15 cars of fresh butter were also disregarded in determining the selling price applied to customers' butter and to the remainder of the company's own butter.

25.

The corporate respondent reported to customers costs of receiving delivery of butter on March futures contracts other than the actual cost of receiving delivery resulting in customers being over-charged on a number of storage lots, among which were storage lots Nos. 13093, 11754, 13460, 14263, 14264, 12713 and 13366. In the case of these particular lots, the customers were over-charged various amounts from \$ 58 to \$ 97 on each lot.

26.

H. D., Shoemaker of Seattle, Washington, purchased one contract of March butter futures on March 4, 1940, through the Great Western Distributors, Inc. Delivery on this purchase was made on March 28, 1940, and Mr. Shoemaker instructed the company by telegraph on March 29, 1940, as follows:

"Confirming telephone conversation it is understood that you are to sell and deliver our car of butter on the board today."

27.

The Great Western Distributors, Inc. sold to Swift & Company on March 28, 1940, at 27-1/2 cents per pound, a car of butter identified as storage lot No. 94965 in Central Cold Storage. This car had been delivered on the futures market that day, assigned by the clearing organization of the Chicago Mercantile Exchange as applying against an open purchase contract of March 21, 1940.

28.

The lot of butter referred to in paragraph 27 was applied against Mr. Shoemaker's contract by the Great Western Distributors, Inc., which then wired a reply to Mr. Shoemaker's telegram as follows:

"Re telephone conversation your car actual butter delivered yesterday sold today 27.25 net to you."

29.

The Great Western Distributors, Inc., on March 28, 1940, received on delivery on March contracts three cars of butter assigned

by the clearing organization as applying against open purchase contracts of March 4, 1940, and these three cars were not sold until after March 30, 1940.

30.

The March butter futures market had a range of 28.45-28.70 on March 29, 1940,

31.

Under date of April 1, 1940, the Great Western Distributors, Inc. made an accounting to Mr. Shoemaker for the car of butter which it had applied to his futures purchase contract. The delivery cost of this car was invoiced to Mr. Shoemaker as being 18,018 pounds at 28 cents per pound, or \$ 5,045.04, whereas the actual amount stated on the tender notice and which was paid by Great Western Distributors, Inc. was \$ 5,041.76.

32.

The corporate respondent and the individual respondents by and through the means of the corporate respondents by reason of their acts and the facts alleged in paragraphs 21 to 31 in connection with orders to make and the making of contracts of sale of butter for future delivery for and on behalf of customers, made on and subject to the rules of the Chicago Mercantile Exchange, a contract market, such contracts being subject to use for hedging any transaction in interstate commerce in butter and determining the price basis of any

transaction in interstate commerce in butter did attempt to cheat and defraud and did cheat and defraud such customers and did wilfully make or cause to be made to such customers false reports and statements and attempted to deceive and did deceive such customers in regard to the disposition and execution of such orders and contracts, and acts of agency performed with respect thereto, all in violation of the Commodity Exchange Act.

33.

The Great Western Distributors, Inc. on March 30, 1940, and April 1, 1940, were accountable to commodity customers for \$ 15,358.20, representing funds received from such customers and amounts due such customers as a result of trades in butter for future delivery.

34.

On March 30, 1940, the Great Western Distributors, Inc. had segregated for the benefit of regulated commodity customers the sum of \$ 8,206.04, representing deposits in a segregated bank account of \$ 5,722.04, deposits with clearing organizations of a contract market of \$ 1,000 and \$ 1,484 due from the clearing organization of a contract market.

35.

On April 1, 1940, the Great Western Distributors, Inc. had segregated for the benefit of regulated commodity customers the sum of \$ 6,722.04, representing deposits in a segregated bank account of \$ 5,722.04 and deposits with a clearing organization of a contract market of \$ 1,000.

36.

The Great Western Distributors, Inc., from January 1, 1940 to May 9, 1940, failed to obtain a waiver from the bank wherein its regulated commodity customers' funds were deposited with respect to using such funds to satisfy claims other than those of such customers.

37.

The Great Western Distributors, Inc. received a total of \$ 15,996.40 from the clearing organization of the Chicago Mercantile Exchange as settlement and release of margins on customers' trades for March 27, 28, 29 and 30, 1940, and deposited this money in a general bank account with the company's own funds.

38.

The corporate respondent and the individual respondents by and through the means of the corporate respondent by reason of their acts and the facts alleged in paragraphs 33 to 37, inclusive, did, while engaged as futures commission merchants in soliciting and accepting orders for the purchase and sale of commodities for future delivery involving contracts of sale of such commodities for future delivery on or subject to the rules of the Chicago Mercantile Exchange, accept orders from various persons for the purchase and sale of butter, a commodity as defined in the Commodity Exchange Act, for future delivery and receive funds from said persons to

margin and guarantee respective trades and contracts of said persons in such commodity and as a result of such trades received additional funds belonging to such persons and at such times and places, and while so engaged, the respondents violated the Commodity Exchange Act by failing to account separately for the funds so received and by commingling these said funds with the funds of the Great Western Distributors, Inc. The respondents violated the regulations promulgated pursuant to said act by failing to obtain a waiver from the bank where regulated commodity customers' funds were deposited, with respect to using such funds to satisfy claims other than the customers'.

THEREFORE, the respondents are hereby notified to be and appear before a referee to be appointed by the Secretary of Agriculture at a hearing to be held at 10 o'clock a.m., on October 28, 1940, in Room 1026, at 332 South LaSalle Street, Chicago, Illinois, or at such other times and places as may be determined by the referee, and then and there show cause, if any there be, why an order shall not be made revoking the registration of the corporate respondent as a futures commission merchant and Nathaniel E. Hess as a floor broker and

directing that all contract markets, until further notice of the Secretary of Agriculture, refuse all trading privileges to the respondents.

IT IS ORDERED that this complaint and notice of hearing be served on the named respondents by delivery of true and correct copies hereof to the respondents, by an employee of the Department of Agriculture or by registered mail, at least twenty days prior to the date herein set for the hearing.

IT IS FURTHER ORDERED that the respondents shall file with the hearing clerk, Office of the Solicitor, Department of Agriculture at Washington, D. C., within fifteen days after the receipt of the complaint, answers signed by the respondents fully and completely stating the nature of any affirmative defense and admitting or denying specifically, in detail, each material and relevant allegation of the complaint. The failure to file such answer within said fifteen day period may be deemed an admission of the truth of the allegations of the complaint for the purpose of this proceeding unless application for an extension of time in which to answer has been made by the respondents and granted by the Secretary of Agriculture or a referee designated by him to conduct the hearing herein.

(SEAL)

Done at Washington, D. C., this 28th day of September, 1940. Witness my hand and the seal of the Department of Agriculture.

Grover B. Hill,

Acting Secretary of Agriculture.

LOAD-DATE: June 11, 2008

