

Commodity Futures Trading Commission  
CEA CASES

**NAME:** CLAUD WILKES

**CITATION:** 10 Agric. Dec. 138

**DOCKET NUMBER:** 52

**DATE:** FEBRUARY 12, 1951

**DOCUMENT TYPE:** DISMISSAL OF PETITION FOR RECONSIDERATION

(No. 2686)

*In re* CLAUD WILKES. CEA Doc. No. 52. Decided February 12, 1951.

**Denial of Petition for Reconsideration -- Vacation of Stay Order**

Respondent's petition for reconsideration of prior order is dismissed, since all questions raised and argument made in support of this petition were fully considered at the time of issuing the order to which objection is made, and the stay order of October 31, 1950, is vacated and, beginning on the 30th day after the date of this order, all contract markets shall refuse all trading privileges thereon to respondent for a period of 60 days. \*

\* Reference to other points involved in this case will be found in  
Index-Digest and Subject. Index in this issue of Agriculture Decisions. -  
- Ed.

*Mr. Benjamin M. Holstein* for Commodity Exchange Authority. *Messrs. Kelleher, Hurley & Kohlmeyer*, of New Orleans, Louisiana, for respondent.

*Decision by Thomas J. Flavin, Judicial Officer*

**DISMISSAL OF PETITION FOR RECONSIDERATION**

I

In this disciplinary proceeding under the Commodity Exchange Act (7 U. S. C. Chapter 1) a decision and order (9 Agric. Dec. 1194 (9 A.D. 1194)) were entered on October 11, 1950. (1) finding that the respondent wilfully violated provisions of the act and the regulations by failing to report transactions and positions in cotton futures and (2) ordering all contract markets to refuse the respondent trading privileges for a period of 60 days. Preceding the issuance of this decision and order, there had been a hearing. Following the hearing, the complainant filed suggested findings of fact, conclusions and order on May 29, 1950. The referee who presided at the hearing, John J. Curry, Office of Hearing Examiners, filed his report on June 7, 1950, a copy of which was served upon the respondent's attorney of record on June 12, 1950. The referee's report recommended the issuance of a decision and order similar to the final decision and order entered on October 11, 1950. The respondent filed no exceptions to the referee's recommended decision and order. Following the entry of the final decision and order, however, the respondent filed a petition for reconsideration. A stay order was entered in the proceeding on October 31, 1950 (9 Agric. Dec. 1198 (9 A.D. 1198)), pending action upon the petition for reconsideration.

II

The petition for reconsideration recites that the decision and order are erroneous in finding that the respondent's violations of the act and regulations

were wilful. The petition also states that the respondent has been informed by J. M. Mehl, Administrator of the Commodity Exchange Authority, that the denial of all trading privileges ordered includes the carrying of existing accounts as well as making new trades. The petition says that liquidation of the respondent's contracts would be out of proportion to the violations involved and would be violative of the due process clause of the Constitution.

An answer to the petition was filed by the complainant and oral argument was held before me in Washington, D. C., on December 7, 1950.

At the oral argument, the respondent was permitted to amend his petition orally, that is, to argue some issues not set out in the petition. The respondent contends first that the complaint is defective because it charges failure to make reports as a violation when there is no such offense under the act. He also contends that under section 4i of the act a person reaches reporting status only when he makes contracts *in one day* over the prescribed limit for reporting purposes and that since this was not the case here, the respondent did not violate 4i. A third point urged is that the decision erred in concluding that the respondent's actions were wilful with the result that there was no necessity for affording the respondent an opportunity to demonstrate or achieve compliance prior to the institution of this proceeding as required by Section 9(b) of the Administrative Procedure Act. Finally, the respondent claims that the sanction ordered is out of line with the violations found and that the impact of the suspension is unusually severe in this case because compelling the respondent to liquidate his position means that he will lose a great deal of his profits as these would have to be reported for Federal income tax purposes as short term capital gains.

### III

We are not persuaded by the petition for reconsideration or the supporting oral argument that any substantial change should be made in the decision and order entered. True it is that section 4i of the act n1 makes transactions illegal when reporting status has been reached and the required reports are not filed, rather than making the *failure to report* the violation. Paragraphs 3 and 4 of the complaint recite that the respondent reached reporting status, that he became subject to the reporting requirements of section 4i of the act and the reporting provisions of the regulations, and that he wilfully failed to make the required reports in violation of the act and the regulations. We see little practical difference between a charge of failing to make required reports in violation of the act and a charge of failing to make reports required to make transactions valid under the act. And, as far

as the regulations are concerned, section 8a (5) of the act authorizes the issuance of regulations considered reasonably necessary to effectuate the purposes of the act, that is, regulations of the legislative type as well as those of the interpretative kind.

n1 "Sec. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the Secretary of Agriculture (1) whenever such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity, during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture; and (2) whenever such person shall directly or indirectly have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture . . . ."

The respondent's claim that section 4i is violated under any circumstances only when there first occurs trading in *one day* in excess of the maximum position fixed is based upon erroneous construction of this part of the act. The word "and" preceding 4i (2) is not used in the sense that both the eventualities in 4i (1) and 4i (2) must be present for any violation of 4i. "And" is preceded by a semicolon and it is clear to us that a violation occurs when there is failure to report contracts in one day in excess of the amount fixed for such purpose or when there is failure to report long or short positions equal to or in excess of the amount fixed for this purpose. Therefore, the respondent's view as to section 4i is rejected as well as his view that section 3.10 of the regulations is invalid because it is based only upon 4i (2) instead of both 4i (1) and 4i (2).

We concluded in our decision that the respondent's violations were wilful as charged in the complaint and that, therefore, there was no lack of compliance with Section 9 (b) of the Administrative Procedure Act. The respondent was specifically warned on numerous occasions of the reporting requirements and his delinquencies. His failures to report involved here cannot be regarded as accidental and are either deliberate or so grossly negligent as to be deliberate and wilful.

As to the protests about the sanction ordered, the principal grievance seems to be the respondent's income tax status. The order of suspension of trading privileges was to be effective on November 10, 1950. Apparently some, if not most, of the transactions which would be brought within the six months' short term capital gain period if the respondent were compelled to liquidate by November 10 were entered into *subsequent* to the filing and service of the referee's report recommending a 60-day suspension of trading privileges to which the respondent did not object. In any event, the passage of time caused by the filing of the petition for reconsideration and its consideration has removed this objection insofar as the transactions entered into prior to September 1950 are concerned. In several proceedings involving failures to report. *In re Cotton Products Company*, 9 Agric. Dec. 1189 (9 A.D. 1189) (1950); *In re A. Feldstein and Company*, 5 Agric. Dec. 337 (5 A.D. 337) (1946); *In re Raymond G. Brown, Sr., et al.*, 5 Agric. Dec. 745 (5 A.D. 745) (1946), effective suspensions of trading privileges equalling or exceeding the 60-day

suspension ordered for the respondent were imposed. We do not believe that this case presents matters justifying a deviation from the sanctions in those cases. On the contrary, there were not such numerous and repeated warnings as disclosed here.

#### IV

In view of the foregoing, the stay order of October 31, 1950, is vacated and, beginning on the 30th day after the date of this order, all contract markets shall refuse all trading privileges thereon to the respondent, Claud Wilkes, for a period of 60 days. A copy of this order shall be served on the respondent and on each contract market.

**LOAD-DATE:** June 8, 2008

