

Commodity Futures Trading Commission  
CEA CASES

**NAME:** CLAUD WILKES

**CITATION:** 9 Agric. Dec. 1194

**DOCKET NUMBER:** 52

**DATE:** OCTOBER 11, 1950

**DOCUMENT TYPE:** DECISION AND ORDER

(No. 2578)

*In re* CLAUD WILKES. CEA Doc. No. 52. Decided October 11, 1950.

**Denial of Trading Privileges -- Failure to Report Transactions in Amounts Beyond Specified Size or Quantity -- Willful Violation of Act**

Where complaint charged that on three specified dates respondent willfully violated the act by failing to report transactions and market positions in cottonseed oil futures in amounts beyond a specified size or quantity, executed on the New York Produce Exchange, a contract market, as required under the act and rules and regulations thereunder, and respondent's answer admitted his failure to report, but denied that such failure was willful, it is held, that, in view of the circumstances disclosed in this proceeding, it would be unreasonable to conclude that respondent's failure to report was an oversight due to the pressure of other business or the lack of adequate help, but the only possible conclusion is that his failure to report was either deliberate and therefore willful, or else due to such gross negligence as to constitute willfulness, and, therefore, a denial of all trading privileges to respondent for a period of 60 days should be imposed.

*Mr. Benj. M. Holstein* for complainant. *Mr. H. H. Johnson*, of Johnson and White, Lexington, Mississippi, for respondent. *Mr. John J. Curry*, Referee.

*Decision by Thomas J. Flavin, Judicial Officer*

**PRELIMINARY STATEMENT**

This is a disciplinary proceeding under the Commodity Exchange Act (7 U. S. C., Chapter 1) instituted by a complaint issued under section 6 (b) of the act (7 U. S. C. 9) on December 19, 1949, by the Secretary of Agriculture, hereinafter called the complainant or the Government.

The respondent is an individual doing business in his own name and in the name of The Wilkes Company. The complaint, as amended at the hearing, charged that on three specified dates the respondent willfully failed to report transactions and market positions in cotton futures on the New York Cotton Exchange, a contract market, which

transactions and positions were required to be reported under section 4i of the act (7 U. S. C. 6i) and sections 3.10, 3.11, 3.12, and 3.21 of the rules and regulations (17 CFR 3.10, 3.11, 3.12, 3.21). The answer filed by the respondent admitted the failure to report, but denied that such failure was willful. As a matter of affirmative defense, the answer alleged that the respondent was without the services of his bookkeeper and was extremely busy at the time in question, and that the failure to report due to oversight. It was also alleged that the respondent had been in reporting status for only a few days.

A hearing was held in New Orleans on March 8, 1950. John J. Curry, Office of Hearing Examiners, Department of Agriculture, was assigned as referee and presided at the hearing. The respondent appeared in his own behalf. Benjamin M. Holstein of the Solicitor's Office appeared as counsel for the Government. After the hearing the Government filed suggested findings of fact, conclusions and order. The respondent filed a document urging that the complaint be dismissed for the reason that no willfulness was shown on his part.

Ronald C. Callander, Assistant Chief of the Trading and Reports Division, Commodity Exchange Authority, testified for the Government that it had been necessary to call the respondent's attention to reporting requirements on many occasions prior to the dates mentioned in the complaint. Copies of letters to that effect addressed to Mr. Wilkes by the Commodity Exchange Authority were introduced in evidence (tr. pp. 15-18; Government exhibit 29). Mr. Callander also testified that reports covering the transactions of November 1949 specified in the complaint were not received until January 9, 1950, and that the respondent was delinquent with respect to reports covering transactions executed after the complaint was issued (tr. pp. 11-15).

Mr. William Dawkins Espey, supervisor in charge of the New Orleans office of the Commodity Exchange Authority, testified that he had called the respondent on the telephone on June 6 or June 7, 1949, and had advised him of the necessity of filing reports on time as required by the regulations. This conversation was confirmed by a letter from Mr. Espey to the respondent dated June 7, 1949 (tr. pp. 20-24; Government Exhibit 31).

The respondent testified that he did not realize the importance of reporting requirements, that he was engaged in farming and was operating a cotton gin and warehouse, and that he was without adequate help (tr. pp. 24-25). With respect to his existing delinquency, he testified that he had engaged the services of a certified public accountant who was supposed to file the necessary reports and that he (the respondent) was under the impression that this was being done (tr.

pp. 18-19). He admitted his prior delinquencies and the receipt of the above-mentioned letters and telephone call from the Commodity Exchange Authority (tr. pp. 26-27).

The referee issued a report proposing findings of fact and conclusions substantially in line with the allegations of the complaint and proposing a suspension of the trading privileges of the respondent for 60 days. The respondent did not except to the referee's report.

#### **FINDINGS OF FACT**

1. The respondent, Claud Wilkes, is an individual residing in Durant, Mississippi, and doing business in his own name or in the name of The Wilkes Company.

2. The New York Cotton Exchange at all times material to these findings was a duly designated contract market under the Commodity Exchange Act.

3. On November 3, 1949, as the result of purchases of 2,000 bales of July 1950 cotton futures contracts executed on the New York Cotton Exchange for the account of the respondent by Merrill Lynch, Pierce, Fenner and Beane, registered futures commission merchants, hereinafter called Merrill Lynch, the respondent's net long position in July 1950 cotton futures contracts on the New York Cotton Exchange, as reflected on the books of Merrill Lynch, reached 6,000 bales. The respondent thereupon became subject to the requirement contained in section 4i of the act and sections 3.10, 3.11, 3.12 and 3.21 of the rules and regulations, that he report to the Commodity Exchange Authority not later than the following business day with respect to such transactions and with respect to the open contracts in all cotton futures then held or controlled by him on all exchanges. The respondent had been specifically informed and was fully aware of the provisions of the aforesaid sections of the act and regulations, but failed to submit the required report until January 9, 1950.

4. On November 8 and November 9, 1949, on which dates the respondent was in reporting status by reason of his position in July 1950 cotton futures contracts as described in Finding of Fact 3, purchases of December 1949 cotton futures contracts and March 1950 cotton futures contracts, respectively, were executed on the New York Cotton Exchange for the respondent's account by Merrill Lynch. Under the provisions of section 4i of the act and sections 3.10, 3.11, 3.12 and 3.21 of the rules and regulations, these transactions were required to be reported to the Commodity Exchange Authority not later than the following business day. The respondent had been specifically informed and was fully aware of the provisions of the aforesaid sections

of the act and regulations, but failed to submit the required report until January 9, 1950.

5. Between March 25, 1947, and August 19, 1949, the respondent received approximately 25 letters and one long distance telephone call from the Commodity Exchange Authority calling his attention to transactions and positions which he had failed to report, advising him of the necessity of submitting reports as required by the act and the regulations, and requesting that such reports be furnished. On four occasions the respondent was informed that continued failure to observe reporting requirements would result in the institution of formal proceedings under the act.

#### **CONCLUSIONS**

Section 4i of the act (7 U. S. C. 6i) requires a person to file reports in accordance with the rules and regulations whenever such person has a long or short position in any commodity future equal to or in excess of the amount fixed for that purpose by the Secretary of Agriculture. Pursuant to this authority, the Secretary has fixed 5,000 bales or more as the amount which governs in the case of cotton futures, and has specified that such reports shall be filed not later than the morning of the business day following the transaction (17 CFR 3.12, 3.21). The respondent has admitted his failure to report in accordance with these requirements, but denies willfulness as charged in the complaint. Accordingly, the only issue is whether the violations were inadvertent or willful.

In view of the respondent's previous record in the matter of reporting, his denial of willfulness cannot be accepted. In the two years immediately prior to the transactions mentioned in the complaint, it was necessary to call his attention to reporting delinquencies no less than 26 times and to warn him on several occasions that his continued failure would result in action under the law. Although the complaint was served on December 28, 1949, reports of the transactions named therein were not received until January 9, 1950, following which the respondent again failed to report subsequent transactions and was in a delinquent status at the time of the hearing. Under the circumstances, it would be unreasonable to conclude that his failure to report was an oversight, due to the pressure of other business or the lack of adequate help. Mr. Wilkes cannot be held to have overlooked the necessity or the importance of reporting after it had been called to his attention on 26 separate occasions. The only possible conclusion is that his failure to report as charged in the complaint was either deliberate, and therefore willful, or else due

to such gross negligence as to constitute willfulness. In view of such willfulness, the short time during which the respondent may have been in reporting status in connection with the transactions of November 3, 8, and 9, 1949, cannot be considered a mitigating circumstance.

*In re A. Feldstein and Company*, 5 Agric. Dec. 337 (5 A.D. 337), and *In re Raymond G. Brown, Sr., et al.*, 5 Agric. Dec. 745 (5 A.D. 745), were proceedings similar to this proceeding. In both cases, the respondents had knowledge of reporting requirements and failed to report. The sanctions imposed consisted of

a denial of trading privileges for periods of 90 days and 60 days, respectively. In view of the similarity of the facts and circumstances, a denial of trading privileges for a period of 60 days should be imposed in this case.

**ORDER**

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 decision and order shall be served on the respondent and on each contract market.

(No. 2579)

*In re* CLAUD WILKES. CEA Doc. No. 52. Decided October 31, 1950.

**Stay Order -- Prior Order Stayed Pending Petition for Reconsideration**

Order of October 11, 1950 \* stayed pending petition for reconsideration and shall not become effective until further order issued.

\* 9 Agric. Dec. 1194 (9 A.D. 1194), *supra*. -- Ed.

*Mr. Harry B. Kelleher*, of Kelleher, Hurley & Kohlmeyer, New Orleans, Louisiana, for petitioner. *Mr. Benj. M. Holstein* for Commodity Exchange Authority.

*Decision by Thomas J. Flavin, Judicial Officer*

**STAY ORDER**

On October 11, 1950, an order was entered in this proceeding suspending respondent's trading privileges for a period of 60 days. On October 30, 1950, respondent filed a petition to reconsider the order entered. Pending action on the petition for reconsideration, the order of October 11, 1950, is stayed and shall not become effective until a further order is entered in this proceeding.

Copies hereof shall be served upon the parties and the contract markets under the act.

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

