

Commodity Futures Trading Commission
CEA CASES

NAME: SECRETARY OF AGRICULTURE V. SIDNEY E. WOLFF

DOCKET NUMBER: 19

DATE: FEBRUARY 21, 1941

DOCUMENT TYPE: DECISION AND ORDER

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. CE-A 19

Secretary of Agriculture, Complainant, v. Sidney E. Wolff, Respondent.

Proceedings, Findings of Fact, Conclusions, and Order.

PROCEEDINGS

On April 27, 1940, complaint was issued by the Acting Secretary of Agriculture, pursuant to the provisions of the Commodity Exchange Act (7 U. S. C. and Supp. V, §§ 1-17a), against Sidney E. Wolff. It was alleged that Wolff, the respondent, was registered as a floor broker for the years 1938, 1939, and 1940; that he was a member of the New York Cotton Exchange, a contract market; that he had bucketed cotton futures orders of his customers; that he had taken the other side of such orders without prior consent of the customers; that he had offset such orders against other such orders;

and that he had made a wash sale in cotton futures. He was notified that a hearing would be held in New York on May 14.

The complaint was served on the respondent by registered mail on May 2, 1940. At his request, the hearing was continued to June 4, in Washington, and was again continued to June 25, in New York. It was held on June 25, 26, 27, and 28, in New York, and on September 16, in Washington, before Jack W. Bain, the referee designated by the Assistant Secretary. Charles W. Bucy, Office of the Solicitor, Department of Agriculture, appeared for the Government, and J. H. Gilbert, of the firm of Gilbert & Brandeis, New York, for the respondent.

The 21 transactions described in paragraphs 2 and 3 of the complaint were referred to by letter at the hearing and in papers filed thereafter, the items in paragraph 2 running from A to O, and those in paragraph 3 running from P to U, inclusive. For convenience, they are so referred to herein.

The respondent conceded that he had taken the other side of trades executed by him for J. Kahn & Company, his customer, in eleven instances as alleged in items A to J and M of the complaint, but claimed that he had the customer's prior consent to do so. As to three other trades, items L, N, and O, involving customers other than J. Kahn & Company, he conceded that he had taken the other side of the customers' trades, but contended that he had not violated the

law because he had arranged with another broker to execute one end of each trade for him. He conceded that he had made the six offsetting trades, items P to U, but claimed that he had complied with the requirements of section 4b(D) of the act. He conceded that, as alleged in paragraph 4 of the complaint, he had agreed to buy 200 bales each from the two named brokers at the opening price, and had sold 100 bales at the opening, but denied that this constituted a wash

sale. These concessions covered all trades set out in the complaint except item K, wherein the respondent is charged with having confirmed a trade which had not been made.

Fred F. Kuhlman, Assistant Secretary of the New York Cotton Exchange, called as a witness by the Government, produced three telegrams presented by the respondent to a committee of the exchange. These concern item K, and are all dated September 20, 1938. One, stamped 10:19 a.m., from J. Kahn & Company to the respondent, reads: "SELL FIVE DEC COHEN." Another, a carbon copy of an original in pencil, stamped 10:22 a.m., from Wolff to Kahn, reads: "SOLD 5 DEC WHY SELL NEAR MONTHS JUST BEFORE NOTICE DAY PREFER SELLING MAY OR MARCH SHALL I SWITCH." The third, stamped 10:34 a.m., from Kahn to Wolff, is: "YOURS SWITCH TO MAY." The witness also produced correspondence between the exchange and Kahn relating to the extent of the respondent's authority in executing Kahn's trades, and exchange records of offsetting trades made on September 6 and 26, 1938, on which the trades of items P to U did not appear.

The Government called the following five witnesses to testify concerning items L, N, and O: J. George R. Graham, of James E. Bennett & Company; T. E. Farrell, of George H. McFadden & Brother; Richard Wylie, of Carl M. Loeb, Rhoades, & Company; Edward J. Kerr, of George F. Jones & Company; and John M. Williams, of Royce & Company. According to them, the respondent was the broker who executed both sides of these trades, and had not been authorized to take the other side of any of them.

The respondent, on his own behalf, testified to his long participation in the cotton trade and his friendly relations with the Kahn firm, whose president and other officials had formerly been with the respondent's firm. He was in charge of Kahn's New York futures business, and had the fullest consent to act for it. He had no prior authority in connection with the L, N, and O transactions, involving the October future, but he got Henry Royce to act as broker on one side of the latter two, on September 20, 1938. It was his practice, when he had no authority and wanted to take the other side, to get another broker to act for him. He considers this legal. As to item K, he had given a verbal message, and the telegraph company had written "sold" when it should have been "quote", in his September 20 telegram to Kahn. As it was sent by the company, the telegram is contradictory. When he saw the telegrams, he knew there was some error, and took the situation to the proper committee to see

if there might be a violation of the rule on commissions. He was required to pay the commission on a switch from December to May, and was suspended for one day. He had not bought the December future. There was no switch. In using his discretion to buy a different future from that ordered, he would not act as principal, nor would this be a switch. As to the offset trades, items P to U, such trades are reported by yelling to the reporters, and, in the commotion attendant upon heavy trading in the ring, are frequently missed. Concerning the alleged wash sale, the respondent made a trade at 9.40 to give an opening price. There had been a bid at 9.38, but this was out of line. His trade went through regularly, without any challenge by the committee which challenges opening trades deemed unfair or out of line. It was not a "wash sale", which is dishonest, to conceal something, generally surreptitious, and not intended to be consummated. His trading cards show a trade with Henry Royce on September 3, 1938, and with James Royce on September 20.

James J. Clarkin, reporter for the exchange, called by the Government on rebuttal, testified that there are four reporters in the ring, and that, according to the rules of the exchange, a broker making an offset trade must report to one of them, giving his name, the date, the price, the quantity, the delivery month, and the time. The reporter can refuse to allow a report of a trade only when too much time has elapsed.

Henry Royce, called in rebuttal by the Government, testified that he did no trading on September 3, 1938, and made no trade in October cotton on September 20. His brother, James Royce, also called by the Government, testified that he had not made a trade with the respondent in October cotton at 8.10 on September 3, 1938, nor at 8 on September 20.

The respondent said he, in the rush of trading, had possibly put down the wrong names where his cards showed the trades with the Royces.

The New York session of the hearing closed. Thereafter, nine letters attesting the good character and reputation of the respondent were sent in and made part of the record.

At the session held in Washington, Robert Mayer, president of J. Kahn & Company, called by the respondent, testified to the friendly relations between his firm and the respondent over a long period. The respondent had what practically amounted to a general power of attorney to act for Kahn, until August 1939, when his authority was curtailed at his own request. It was the firm's understanding that, in having authority to sell a different future from that ordered, the respondent automatically had authority to become principal in the future ordered, being responsible to the firm for the trade ordered, even though he had executed a different trade. His statement, in correspondence, that the respondent was not specifically authorized to act as principal, is correct.

At the close of the hearing, the respondent was given until September 23, 1940, to file his motion to dismiss. It was filed September 26. The Government was given until October 1 to answer it, and filed a statement in opposition to it on October 2. The referee denied the motion on October 5, and gave the parties until October 28 to file suggested findings and briefs, later extending the time, at respondent's request, to November 11. Suggested findings were filed by the Government on November 8. The respondent filed findings on November 13, and a brief on November 14.

The referee's report, containing proposed findings of fact and conclusions and a recommended order, was served by registered mail upon the respondent on December 2, 1940. He filed exceptions to the report, a brief in support of the exceptions, and a request for oral argument before the Secretary. On January 2, 1941, he was notified that oral argument was set for January 22, but on January 21, at his request, it was postponed to January 31. On January 30, he filed a waiver of oral argument.

Since the referee made his report, the respondent's registration for 1940 has expired and he has registered for the year 1941.

FINDINGS OF FACT

1. Sidney E. Wolff, the respondent, an individual, of

New York, New York, registered with the Secretary of Agriculture as a floor broker for the years 1938, 1939, 1940, and 1941, and his registration has not heretofore been suspended or revoked.

2. The respondent was, between September 1, 1938, and January 31, 1940, a member of the New York Cotton Exchange, a contract market.

3. A contract of sale of cotton for future delivery on the New York Cotton Exchange could be used for hedging a transaction in interstate commerce in cotton, or for fixing the price basis thereof.

4. On September 1, 1938, in executing an order from J. Kahn & Company, his customer, for the sale, on the New York Cotton Exchange, of 200 bales of cotton for future delivery in December, the respondent willfully and knowingly became the buyer of the cotton, or took the other side of the order, for his own account.

5. On September 2, 6, 10, and 20, 1938, the respondent in like manner took the other side of similar orders from the same customer, except that the amount and delivery months were not always the same, and that some orders were for buying instead of selling.

6. The respondent did not have the consent of J. Kahn & Company to take the other side of the orders mentioned in findings 5 and 6 prior to their execution.

7. The respondent had the consent of J. Kahn & Company to

execute an order in a delivery month different from that specified in the order. When he did this, he would confirm the trade as if executed in the month ordered, thereby becoming responsible to the customer for, or "becoming the principal" on, the trade as ordered and confirmed rather than as executed.

8. On September 20, 1938, the respondent confirmed, by telegram to J. Kahn & Company, his customer, a sale of 500 bales of New York December cotton futures at 7.94 cents per pound, but he had not executed such sale on the exchange.

9. On September 3, 1938, the respondent sold 100 bales of New York October cotton futures at 8.10, for the account of a customer, which cotton futures he bought for his own account, without the prior consent of the customer.

10. On September 20, 1938, the respondent sold 500 bales of New York October cotton futures at 8, 300 bales for the account of one customer and 200 bales for another, which cotton futures he bought for his own account, without the prior consent of either customer.

11. J. Kahn & Company was not the customer involved in any transaction mentioned in findings 9 and 10.

12. On September 6, 1938, the respondent received orders from customers to buy 300 bales of New York December cotton futures at 8.04, 100 bales of New York December cotton futures at 8.11, and

100 bales of New York July cotton futures at 8.05, and filled these orders by offsetting them against orders to sell received from another customer.

13. On September 26, 1938, the respondent received orders from customers to buy 100 bales of New York October cotton futures at 7.75, 100 bales of New York July cotton futures at 7.74, and 100 bales of New York October cotton futures at 7.73, and filled these orders by offsetting them against orders to sell received from other customers.

14. The respondent did not report as offsetting trades the transactions mentioned in findings 12 and 13 to reporters of the New York Cotton Exchange, although the rules of the exchange pertaining to such trades require that they be reported as such when made.

15. On January 30, 1940, the respondent, prior to the opening of trading in the New York October cotton future, agreed with two other brokers to buy 200 bales in such future from each of them at the opening price. At the opening, he sold 100 bales in the future at 9.40, this trade establishing the low of the opening range of 9.40-9.42. Pursuant to the agreement, he bought the 400 bales mentioned, at 9.41. His sale of 100 bales partly determined the price he would pay for the 400 bales, and offset,

or washed out, 100 of the 400 bales he would have had after performing his agreement.

CONCLUSIONS

Findings 4, 5, 6, 9, and 10 show that the respondent took the other side of customers' trades without their prior consent. This was done in violation of Section 4b(D) of the Commodity Exchange Act. A customer cannot, by consent, legalize bucketing, and when the respondent became responsible to the customer for a trade not executed, as described in findings 7 and 8, he violated another provision of section 4b(D). The sale of 100 bales at the opening, in connection with the purchase of 400 bales, as set out in finding 15, constitutes the type of transaction inhibited by section 4c(A) of the act. Because of these violations, the respondent's registration should be revoked, and it need not be here determined whether his violations of the reporting rules of the exchange, shown in findings 12, 13, and 14, constitute violations of section 4b(D) of the statute.

ORDER

IT IS ORDERED that the registration of Sidney E. Wolff as a floor broker for the year 1941 be, and it is hereby, revoked.

IT IS FURTHER ORDERED that a copy hereof be sent by registered mail to the respondent, and that this order shall become effective 10 days after its date.

(SEAL)

Done at Washington, D. C., this 21st day of February 1941. Witness my hand and the seal of the Department of Agriculture.

/s/ Grover B. Hill

Assistant Secretary of Agriculture.

LOAD-DATE: June 11, 2008

