

Commodity Futures Trading Commission
CEA CASES

NAME: KERMIT W. QUAINANCE, "Q" COMMODITIES CO., AND EARL B. HOGLUND

CITATION: 32 Agric. Dec. 1109

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(No. 15,219)

In re KERMIT W. QUAINANCE, "Q" COMMODITIES CO., and EARL B. HOGLUND. CEA Docket No. 176. Decided May 29, 1973, with respect to *Quaintance* and "Q" *Commodities*.

Failure to account separately for monies received from, or accruing to, customers -- Funds -- Commingling of, and conversion to own use -- "Customers Accounts Receivable" -- Failure to make complete and correct written records in -- Required reports -- False entries in some, failure to submit others -- Use of insufficient funds checks to falsify financial record -- Denial of trading privileges for five years

Where the stipulation of respondents Kermit W. Quaintance and "Q" Commodities Co. has been accepted, the Order herein is issued with respect to said two respondents, and they are denied trading privileges for a period of five years. The proceeding is still pending with respect to respondent Earl B. Hoglund.

Richard W. Davis, for complainant.

Respondents *pro se*.

Decision by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1), instituted by a complaint and notice of hearing issued on July 12, 1971, by the Assistant Secretary of Agriculture. The respondents are charged with violating sections 4, 4d(2), 4g, 4i, 6(b), and 9(a) of the said Act (7 U.S.C. 6, 6d(2), 6g, 6i, 9, 13(a) and sections 1.20, 1.32, 1.35, 1.37, 17.00, 18.00, 18.01 of the regulations of the Secretary of Agriculture issued under the said Act (17 CFR 1.20, 1.32, 1.35, 1.37, 17.00, 18.00, 18.01).

No hearing has been held in this proceeding. Final disposition of this matter has been held in abeyance pending final disposition of a criminal indictment, in the United States District Court, District of Minnesota, against these respondents involving some of the acts alleged herein. On May 8, 1973, respondents Kermit W.

Quaintance and "Q" Commodities Co. filed a stipulation under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they (1) admit the facts hereinafter set forth in paragraphs 1 and 2 of the Findings of Fact, (2) admit, for the purposes of this proceeding and for such purposes only, the remaining facts set forth in the Findings of Fact and (3) waive the report of the referee and consent to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondent "Q" Commodities Co., a corporation organized and existing under the laws of the State of Minnesota, at all times material to this complaint, was entitled to membership privileges on the Minneapolis Grain Exchange and the Chicago Board of Trade, both duly designated contract markets under the Commodity Exchange Act, and was engaged as a registered futures commission merchant under that Act.

2. Respondent Kermit W. Quaintance, at all times material to this complaint, was president and sole stockholder of respondent "Q" Commodities Co., was a member of the Minneapolis Grain Exchange and the Chicago Board of Trade, and was a floor broker registered with the Secretary of Agriculture in accordance with the provisions of the Commodity Exchange Act.

3. On or about January 31, 1968, February 8, 1968, August 30, 1968 and December 13, 1968, respondents "Q" Commodities Co. and Kermit W. Quaintance engaged in soliciting and accepting orders for the purchase or sale of commodities for future delivery and did not separately account for money received by them from their customers to margin, guarantee, and secure the trades or contracts of such customers, or accruing to such customers as the result of such trades or contracts and commingled it with the funds of "Q" Commodities Co. to the extent of more than \$ 34,000, \$ 6,000, \$ 400,000, and \$ 400,000 respectively.

4. During the period from about March 15, 1968, to about December 24, 1968, respondents "Q" Commodities Co. and Kermit W. Quaintance, in making and executing contracts of sale of commodities for future delivery, which were or might have been used for (a) hedging transactions in interstate commerce in such commodities or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering such commodities sold, shipped, or received in interstate commerce for the fulfillment thereof, did not,

for such contracts as were recorded in the books and records of "Q" Commodities Co. in the financial ledger account identified as "Customers Accounts Receivable," make records in writing which showed the names of the parties thereto.

5. On or about July 24, 1968, respondent "Q" Commodities Co. submitted a report on Report Form 102 CEA, "Identification of 'Special Accounts'", required by regulations promulgated by the Secretary of Agriculture under the Commodity Exchange Act (17 CFR 17.01), which contained false entries in Item 1 and in response to questions a and b in Item 1, in that Kermit W. Quaintance, and not E. B. Hognlund as indicated, was the person actually responsible for the direction of futures trading in the account reported on.

6. On each day from about August 1, 1968, to about August 30, 1968, respondent Kermit W. Quaintance held open contract positions in wheat futures on the Minneapolis Grain Exchange of 200,000 bushels or more in a single future. By reason thereof, respondent "Q" Commodities Co. was required to submit reports to the Commodity Exchange Authority on Report Form 201 CEA, "Grain Futures: Net Position of Special Accounts," as prescribed by regulations promulgated by the Secretary of Agriculture under the Commodity Exchange Act (17 CFR 17.00), and respondent Kermit W. Quaintance was required to submit reports to the Commodity Exchange Authority on Report Form 203 CEA, "Grain Futures Transactions, Deliveries and Open Contracts," as prescribed by section 4i of the Commodity Exchange Act and by section 18.00 and 18.01 of the regulations thereunder (17 CFR 18.00, 18.01). Respondents "Q" Commodities Co. and Kermit W. Quaintance failed to submit these required reports.

7. During the period from about June 18, 1968, to about December 13, 1968, respondent Kermit W. Quaintance knowingly and willfully converted to his own use money, in an amount in excess of \$ 400,000 received by him from his customers to margin, guarantee and secure their trades or contracts or accruing to such customers as the result of such trades or contracts.

8. During the period from about May 6, 1968, to about September 12, 1968, respondents "Q" Commodities Co., and Kermit W. Quaintance, by the use of checks drawn against insufficient funds, willfully falsified the financial ledger record of the account of Earl B. Hoglund in the books of "Q" Commodities Co., required by regulations of the Secretary of Agriculture under the Commodity

Exchange Act (17 CFR 1.35). By carrying over the false credit entries thus created into the daily segregation record maintained by "Q" Commodities Co., required by regulations of the Secretary of Agriculture under the Commodity Exchange Act (17 CFR 1.32), respondents willfully falsified that record.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that respondent Kermit W. Quaintance willfully violated sections 4, 4d(2), 4g, 4i, 6(b) and 9(a) of the Commodity Exchange Act (7 U.S.C. 6, 6d(2), 6g, 6i, 9, 13(a)) and sections 1.20, 1.32, 1.35, 1.37, 18.00 and 18.01 of the regulations of the Secretary of Agriculture under the said Act (17 CFR 1.20, 1.32, 1.35, 1.37, 18.00, 18.01) and that "Q" Commodities Co. willfully violated sections 4, 4d(2), 4g, 4i, and 6(b) of the said Act (7 U.S.C. 6, 6d(2), 6g, 6i, 9) and sections 1.20, 1.32, 1.35, 1.37, and 17.00 of the said regulations (17 CFR 1.20, 1.32, 1.35, 1.37, 17.00). The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation and the terms of the proposed order and they believe that the entry of such an order without further proceedings would constitute a satisfactory disposition of this case, serve the public interest and effectuate the purposes of the Commodity Exchange Act. The complainant, therefore, recommends that the stipulation be accepted and the proposed order be issued, terminating this proceeding as to respondents Kermit W. Quaintance and "Q" Commodities Co. It is concluded that the complainant's recommendation should be adopted.

ORDER

Effective immediately, respondents Kermit W. Quaintance and "Q" Commodities Co. shall cease and desist from:

1. Failing to separately account for money received from commodity futures customers to margin, guarantee, and secure the trades or contracts of such customers, or accruing to such customers as the result of such trades or contracts and commingling it with their own funds.
2. Failing to make records in writing of the parties to contracts of sale of commodities for future delivery.
3. Failing to submit reports on open contract positions in commodity futures as required by Section 41 of the Commodity Exchange

Act and the regulations of the Secretary of Agriculture thereunder.

4. Falsifying records required by regulations of the Secretary of Agriculture under the Commodity Exchange Act.

Effective immediately, respondent "Q" Commodities Co. shall cease and desist from making false entries in reports required by regulations promulgated by the Secretary of Agriculture under the Commodity Exchange Act.

Effective immediately, respondent Kermit W. Quaintance shall cease and desist from knowingly and willfully converting to his own use money received from commodity futures customers to margin, guarantee and secure the trades or contracts of such customers, or accruing to such customers as the result of such trades or contracts.

Effective on the thirtieth day after the date of entry of this order, respondents Kermit W. Quaintance and "Q" Commodities Co. are prohibited from

trading on or subject to the rules of any contract market for a period of five years and all contract markets shall refuse all trading privileges to the said respondents during this period. Such prohibition and refusal shall apply to all trading done and positions held directly by the said respondents or any of them, either for their own accounts or as the agents or representatives of any other person or firm, and also to all trading done and positions held indirectly through persons or firms owned or controlled by the said respondents or either of them, or otherwise.

A copy of this Decision and Order shall be served on each of the parties and on each contract market.

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