

Commodity Futures Trading Commission
CEA CASES

NAME: DAVID PETER BAKAS

DOCKET NUMBER: 75-5; 224

DATE: SEPTEMBER 5, 1975

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NOTE: FORMERLY CEA DOCKET # 224. SUMMARY AND EXCERPT OF DOCUMENT IS AVAILABLE IN THE CCH COMMODITY FUTURES LAW REPORTER, P20,080 [1975-1977 TRANSFER BINDER].

UNITED STATES OF AMERICA

BEFORE THE COMMODITY FUTURES TRADING COMMISSION

In re: David Peter Bakas, Respondent

CFTC Docket No. 75-5

(Formerly Styled CEA Docket No. 224)

Decision

Preliminary Statement

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. §§ 1 et seq., hereinafter referred to as the "Act"), which was instituted by a complaint and notice of hearing filed on March 27, 1974) by the Assistant Secretary of Agriculture. The complaint-alleges that Respondent, a registered floor broker under the Act, acting as a futures commission merchant (1) solicited and accepted orders for the purchase and sale of commodity futures on or subject to the rules of the MidAmerica Commodity Exchange and accepted money in the approximate amount of \$ 15,000 from 19 persons to margin, guarantee, or secure trades without having registered as a futures commission merchant under the Act; (2) converted the sums received from such persons to his own use and failed to hold them in a separate account; and (3) knowingly made false and deceptive statements to such persons concerning the use of the monies advanced to him in violation of section 4b, 4d and 9 of the Act (7 U.S.C. 6b, 6d and 13) and section 1.20 of the regulations issued under the Act (17 CFR 1.20).

After extensions of time Respondent, through his attorney, filed an answer on June 10, 1974, in which he admitted being a registered floor broker under the Act but (1) denied that he acted as a futures commission merchant with respect to monies received by him from individuals; (2) denied that he converted the monies received from individuals for the purpose of trading in commodity futures for their individual accounts to his own use; (3) denied that he made false and deceptive statements to the persons from whom he received the money concerning its use; and (4) generally denied any violation of the Act or Regulations issued pursuant thereto. By way of affirmative defense Respondent avers that the money received by him from several persons was for investment purposes, and pooled in a common account for trading purposes for the benefit of all such persons under a profit-sharing arrangement with the full understanding and knowledge of such persons. Additionally, Respondent pleads that the losses to each such investor as a result of his trading activity were repaid in full by Respondent, that no investor lost any money as a result of his trading transactions, and that Respondent was in fact selling a participation in a profit-sharing agreement.

Oral hearing on the matter was held in Chicago, Illinois, on October 22, 1974, before Administrative Law Judge John G. Liebert.

Complainant was represented by Michael D. Weiner, Esq., Office of the General Counsel, United States Department of Agriculture, and Respondent was represented by Everett E. Nicholas, Jr., Esq., Robbins, Nicholas and Lifton, 29 South LaSalle Street, Chicago, Illinois. Following the conclusion of the hearing the parties were afforded an opportunity to file proposed findings of fact and briefs.

On October 23, 1974, Congress amended the Commodity Exchange Act by enactment of the Commodity Futures Trading Commission Act of 197 (Pub. Law 93-463, October 23, 1974, 88 Stat 1389-). The amendments were made effective on April 21, 1975. Among the amendments were those which provide:

"Sec. 411. All operations of the Commodity Exchange Commission and of the Secretary of Agriculture under the Commodity Exchange Act, including all pending administrative proceedings, shall be transferred to the Commodity Futures Trading Commission as of the effective date of this Act and continue to completion. All rules, regulations, and orders heretofore issued by the Commodity Exchange Commission and by the Secretary of Agriculture under the Commodity Exchange Act to the extent not inconsistent with the provisions of this Act shall continue in full force and effect unless and until terminated, modified, or suspended by the Commodity Futures Trading Commission.

"Section 412. Pending proceedings under existing law shall not be abated by reason of any provision of this Act but shall be disposed of pursuant to the applicable provisions of the Commodity Exchange Act, as amended, in effect prior to the effective date of this Act."

This case was heard prior to April 21, 1975, and Jurisdiction for purposes of this Decision is retained in accordance with the cited statutory provisions.

Findings of Fact

1. During the period June 2, 1972, through September 25, 1973, Respondent was a member of the MidAmerica Commodity Exchange, Chicago, Illinois, and during the period July 6, 1973, through December 31, 1973, he was registered as a floor broker under the Act. He was not, however, registered at any time under the Act as a futures commission merchant. The MidAmerica Commodity Exchange is a duly designated contract market under the Act.

2. In June 1972, Respondent commenced actions in the name of Bakas Trading Company, Inc., which was ostensibly formed for the purpose of trading on the MidAmerica Commodity Exchange; he was President of that Company. Respondent admitted that on or about April 1972, through June 1973, he solicited or accepted money, both personally and in the name of Bakas Trading Company, from 19 persons, in the aggregate amount of approximately \$ 15,000, pursuant to an agreement to invest the money received in commodity futures trading activities. Some if not all of these persons signed a typewritten agreement prepared by Respondent which set out the nature of the arrangements between the parties. This agreement is as follows:

BAKAS TRADING COMPANY, INC.

1200 East Algonquin Road

Schaumburg, Illinois

60172

MANAGED COMMODITY ACCOUNT AGREEMENT

AGREEMENT made this day of 19 , by and between , hereinafter referred to as the 'Client' Bakas Trading Company, Inc., 1200 East Algonquin Road, Schaumburg, Illinois 60172 hereinafter referred to as the 'Corporation.'

It is mutually agreed between the parties as follows:

1. The 'Client' agrees to open an account in his or her own name with a brokerage firm or firms to be designated by the 'Corporation,' and to deposit in such account such sum or sums of money or collateral as may be agreed upon from time to time by the parties hereto.

2. The 'Client' agrees that he will duly execute a power or powers of attorney giving to the 'Corporation' power and authority to place orders for the buying and selling of commodity futures contracts for his account from the date of this agreement to the termination thereof in accordance with the terms and provisions of this agreement as hereinafter set forth.

3. The records of the brokerage firm or firms selected by the 'Corporation' to make the trades as herein mentioned shall be deemed the record of all transactions of the parties hereto and the parties agree to accept such records. The 'Client' hereby gives to the 'Corporation' the right to inspect all the records of the brokerage firm or firms in which the account of accounts are held, and the parties agree to notify the same to forward to the 'Corporation' duplicate statements, notices, verifications, and all records concerning such account or accounts.

4. It is understood and agreed that in no event and under no circumstances shall the 'Corporation' be liable for any loss which may be sustained by the 'Client' resulting from any trades made by the

'Corporation' under this agreement, nor shall there be any liability to bear any such losses by offsetting such losses against fees paid or accrued during any prior account period.

5. All charges and commissions of brokers, warehousemen, carriers and insurers incident to each closed trade, and all interest on loans on spot commodities in connection therewith, to the extent that any of them shall have been earned, shall be subtracted from the profit or added to the loss on each trade.

6. The parties agree that there shall be an accounting between them at least once every month as of the First day of each month following the execution of this agreement. Should the billing date fall on a non-business day, the nearest business day will be used. The date of accounting may be changed by mutual consent of both parties. Such an accounting will be based upon all closed transactions and on the closing or market price of all open trades of portfolio holdings as of the date of the accounting.

7. The net profit or loss accruing to the account of the 'Client' shall be determined under the procedures outlined in page one, after due allowance has been made for the charges and the deductions incurred as specified in paragraph '5' hereof. The brokerage firm or firms will thereby derive under the aforementioned procedures, the cash equity or liquidation value of the 'Client' account. This sum shall be subtracted from the total net monies deposited in said account during each monthly period in ascertaining the net profit or loss therein.

8. The parties hereto may terminate this agreement at any time without cause, subject, however, to the following provisions:

A. The Managed Commodity Account Agreement may be cancelled at any time by the 'Client' or the 'Corporation' upon the receipt by either party of a written notice so cancelling the Management Agreement.

B. Upon termination of this agreement, all open trades shall be immediately closed.

C. Upon termination of this agreement, the cash equity of the 'Client' account shall be immediately determined and remitted as of the nearest business day.

In Witness Whereof, the parties have hereto set their hands and seals on the day and year first above written.

'Client'

BAKAS TRADING COMPANY, INC.

PRESIDENT

3. Respondent admitted that he put the funds received from these so-called "Clients" to his own use and traded on the Exchange with these funds in commodity futures in his own name; he did not hold these funds in a separate account, nor did he open any accounts in the name or names of the "Clients". He further admitted that he made untrue statements to these "Clients" concerning the use of their funds and the profits being derived from their investments.

4. Respondent stipulated and agreed that the transactions in commodities for future delivery referred to herein, if executed on behalf of the "Clients" as referred to in the "Managed Commodity

Account Agreements" and as made by him for his own account, could have been used for (a) hedging transactions in interstate commerce in such products or byproducts thereof, or (b) determining the price basis of transactions in interstate commerce in such commodities, or (c) delivering any such commodities sold, shipped, or received in interstate commerce for the fulfillment of such futures contracts.

5. Evidence adduced at the hearing discloses that Respondent lost all of the money given by the "Clients". When pressed by the "Clients" for monthly accounting statements and for payment of alleged profits and/or return of the funds, he used many excuses and means of deferring both accounting and payment, going to the extent, in some instances, of issuing checks which were returned for insufficient funds. Finally, several of his "Clients" engaged attorneys who worked out repayments or settlement agreements with Respondent.

6. Although Respondent pleaded in his answer that the "Clients" had knowledge that their funds were to be invested in his name for their common account and risk, no evidence was introduced to support this contention. To the contrary, three of the "Clients" testified that the "Managed Commodity Account Agreement" which each had signed constituted their understanding of the purpose and intended use of their funds. It is clear from their testimony that these persons were without experience in commodity trading and trusted Respondent

to handle their funds for purposes of trading in commodity futures. All specifically denied any intention or understanding that they understood they were engaging in any kind of a profit-sharing venture in which the trading in commodity futures was to be done by Respondent in his own name. They testified that they understood that he was a broker managing their money by making investments for them at his discretion in their separate accounts for which service he was to receive a commission. After the three witnesses testified with respect to their understanding of their arrangements with Respondent, Respondent's attorney conceded that if the remaining "Clients" were called to testify that their testimony would probably be the same. No further evidence on this point was taken. Examination of the "Agreement" clearly discloses that it was not the intent of the parties as expressed therein that Respondent would trade, nor was he authorized to trade, in any manner other than through separate accounts established for each of the "Clients". We find, therefore, that Respondent used the "Clients" money in an unauthorized manner and wilfully violated the trust placed in him by them in a flagrant manner. Specifically, he converted the funds to his own use and failed to hold them in separate accounts. Additionally, he made false and deceptive statements to the "Clients" concerning such alleged accounts and the activities he was conducting with their funds.

7. Section 1.3(p) of the General Regulations Under the Commodity Exchange Act (17 CFR 1.1 et seq.), defines a "futures commission merchant" as follows:

" (p) Futures commission merchant. This term means individuals, associations, partnerships, corporations, and trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom."

On the basis of the testimony and evidence adduced, together with the admissions of Respondent, we find that Respondent held himself out to be a person knowledgeable in commodity futures trading and that he was in a position to trade or cause trades to be made in commodity futures. He induced the 19 persons to turn over funds to him on the representation that he would cause accounts to be set up and trades to be made in commodity futures for them and that he would cause an accounting to be made of their profits and losses for a commission. He undertook to do the whole business. In the circumstances, we find that Respondent held himself out to be, and in fact acted or purported to act as, a futures commission merchant which under agency interpretation and policy decisions brought him under the reach of the Act. (See *In re David L.*

Hofer, 29 Agric.Dec. 1334, 1342 (29 A.D. 1334, 1342) (1970); *In re J. M. Leak*, 7 Agric.Dec. 528, 530 (7 A.D. 528, 530) (1948); *In re David Laiken*, 24 Agric.Dec. 1460 (24 A.D. 1460) (1965).

Conclusions

The relevant sections of the Act are:

" Sec. 4b. It shall be unlawful (1) for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person, or (2) for any person, in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof --

(A) to cheat or defraud or attempt to cheat or defraud such other person;

(B) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

(C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition

or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or

(D) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

* * * (7 U.S.C. 6b.)

" Sec. 4d. It shall be unlawful for any person to engage as futures commission merchant in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless --

(1) such person shall have registered, under this Act, with the [Secretary of Agriculture] Commission as such futures commission merchant and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, whether a member or nonmember of a contract market, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: Provided, however, That such money, securities and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with the clearinghouse

organization of such contract market, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers or resulting market positions, with the clearinghouse organization of such contract market or with any member of such contract market, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage and other charges, lawfully accruing in connection with such contracts and trades: Provided, further, That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States, such investments to be made in accordance with such rules and regulations and subject to such conditions as the [Secretary of Agriculture] Commission may prescribe.

It shall be unlawful for any person, including but not limited to any clearing agency of a contract market and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant." (7 U.S.C. 6d.)

Sec. 9. (a) It shall be a felony punishable by a fine of not more than \$ 10,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any futures commission merchant, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to his own use or the use of another, any money, securities, or property having a value in excess of \$ 100, which was received by such commission merchant to margin, guarantee, or secure the trades or contracts of any customer of such commission merchant or accruing to such customer as the result of such trades or contracts. The word 'value' as

used in this paragraph means face par, or market value, or cost price, either wholesale or retail, whichever is greater.

(b) * * *

(c) Except as provided in paragraphs (a) and (b) of this section, it shall be a misdemeanor punishable by a fine of not more than \$ 10,000 or imprisonment for

not more than one year, or both, together with the costs of prosecution, for any person to violate the provisions of section 4, section 4a, section 4b, section 4c, section 4d, section 4e, section 4h, section 4i, or section 8b, or to fail to evidence any contract mentioned in section 4 of this Act by a record in writing as therein required. "(7 U.S.C. 13)

The relevant section of the Regulations is:

"§ 1.20 Customers' money, securities, and property to be segregated and separately accounted for.

(a) All money, securities, and property received by a futures commission merchant to margin, guarantee, or secure the trades or contracts of commodity customers and all money accruing to such customers as the result of such trades or contracts shall be separately accounted for and be segregated as belonging to such customers. Such money, securities, and property, when deposited with any bank, trust company, clearing organization of a contract market, or another futures commission merchant, shall be deposited under an account name which will clearly show that they are customers' money, securities, and property, segregated as required by the Commodity Exchange Act. Each registrant shall obtain and retain in his files for the period provided in § 1.31, an acknowledgement from such bank, trust company, clearing organization of a contract market, or futures commission merchant, that it was informed that the money, securities, and property deposited therein are those of commodity customers and are being held in accord with the provisions of the Commodity Exchange Act. Under no circumstances shall any portion of commodity customers' money, securities,

or property be obligated to the clearing organization of a contract market, or to any member of a contract market, a futures commission merchant, or any depository except to margin, guarantee, secure, transfer, adjust, or settle trades and contracts made on behalf of such commodity customers. Nor shall any such money, securities, or property be held, disposed of, or used as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant. * * *" (17 CFR 1.20.)

As found herein Respondent committed violations of the Act and the Regulation as charged. The fact that the "Clients" were eventually repaid their money, either entirely or by settlement agreement, does not mitigate the offenses, (eg. In re Charles B. Grady, 8 Agric.Dec. 1241, (8 A.D. 1241) (1949). Indeed, the evidence is clear that this was done by Respondent only to avoid legal action. Respondent has failed to present any evidence or legal precedent which would support his defenses as set forth in his answer. Respondent filed no proposed findings or brief. There remains only a determination of an appropriate sanction.

The violations involved in this case are serious. Conversion, deception, and failure to protect customer funds strike deeply against the essential trust relationship of broker and client which the Act seeks to maintain. Respondent's scheme continued for over a year. The violations were wilful and flagrant, and there is no room for a presumption that he was or may have been unaware of the requirements of the Act and the Regulation. He was a registered

floor broker and of necessity had to be familiar with the law and regulations applicable to trading in commodity futures. We conclude that the protection of public confidence in the market system demands a severe sanction for these violations.

Respondent was registered as a floor broker but not as a futures commission merchant, therefore, it is not possible to suspend or revoke any license as a futures commission merchant as a result of his violations of the Act which all relate to activities of a futures commission merchant. However, in order to

have an effective sanction the CEA has recommended that Respondent be denied all trading privileges for a period of time and be required to cease and desist from the instant kinds of violations. Such sanctions are consistent with the administrative policy of the CEA following determinations of wilful and flagrant violations of the Act. He deem such sanctions to be presently appropriate.

The foregoing findings and conclusions have been made after full consideration of the entire record and all evidence received. All motions, objections, proposed findings and arguments presented by the parties and inconsistent with this Decision are denied or found to be without persuasive merit.

Order

1. The Respondent, David Peter Bakas, shall cease and desist from:

a. Engaging as a futures commission merchant within the meaning of the Commodity Exchange Act without being registered, as required by section 4d(1) of the Act (7 U.S.C. 6d(1)) and the regulations thereunder;

b. Failing to treat and deal with the customers' funds that he receives as a futures commission merchant as belonging to such customers as required by section 4d(2) of the Act (7 U.S.C. 6d(2)) and the regulations thereunder;

c. Failing to hold his customers' funds in segregated accounts as required by section 4d(2) of the Act (7 U.S.C. 6d(2)) and the regulations thereunder;

d. Converting to his own use money received to margin, guarantee, or secure the trades or contracts of any customer or accruing to such customer as the result of such trades or contracts;

e. Making or causing to be made any false report or statement in connection with any order to make, or the making of any contract of sale of any commodity made, or to be made, on or subject to the rules of any contract market.

2. Respondent, David Peter Bakas, is prohibited from trading on or subject to the rules of any contract market for a period of five (5) years, and all contract markets shall refuse trading privileges to the Respondent during this period. Such prohibition and refusal shall apply to all trading done and positions held directly by the Respondent, either his own account or the agent or representative of any other person or firm, and also to all such trading done and positions held indirectly through persons or firms owned wholly or in substantial amount by Respondent or in any way subject to his direction or control, wholly or substantially.

3. The cease and desist provisions of this order, set forth in paragraph 1 above, shall become effective on the date this Decision and Order becomes final. The denial of trading privileges to the Respondent, set forth in paragraph 2 above, shall become effective on the 20th day after the date this Decision and Order becomes final.

Pursuant to the amended Rules of Practice governing proceedings under the Commodity Exchange Act, this Decision and Order becomes final without further procedure 35 days after service thereof, unless appealed to the Commodity Futures Trading Commission by a party to the proceedings within 30 days after service, as provided in § 0.16 and § 0.18 of the amended Rules of Practice (17 CFR 0.1 et seq.).

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

[SEE SIGNATURE IN ORIGINAL]

John G. Liebert
Administrative Law Judge
Referee

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LOAD-DATE: August 6, 2008

