Commodity Futures Trading Commission
CEA CASES

NAME: HAROLD GOLDSTEIN

CITATION: 33 Agric. Dec. 1230

DOCKET NUMBER: 208

DATE: SEPTEMBER 26, 1974

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(No. 16,017)

In re HAROLD GOLDSTEIN. CEA Docket No. 208. Decided September 26, 1974.

Branch office manager of futures commission merchant -- unauthorized establishment of additional bank account -- Customers' funds -- commingling of and conversion to own use -- Sanction

Where respondent, in his capacity as branch office manager of a futures commission merchant had control over customers' accounts, wilfully violated the Act and regulations by commingling customers' funds with his own and converting such funds to his own use, respondent is ordered to cease and desist from such violations. Respondent is denied trading privileges on any contract market for a period of 20 years, as stated in the Order herein.

Darrold A. Dandy, for complainant.

Walter Klein, Los Angeles, Cal., for respondent.

Decision by Harry S. McAlpin, Administrative Law Judge.

DECISION AND ORDER

PRELIMINARY STATEMENT

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1), hereafter sometimes referred to as the Act, instituted by a Complaint and Notice of Hearing issued by an Assistant Secretary of Agriculture and filed on February 27, 1973.

The complaint charges that the respondent, while manager of the Fort Lauderdale office of the Siegel Trading Company, Inc. converted to his own use customers' funds in wilful violation of Section 4b, 4d, and 9 of the Commodity Exchange Act, as amended (7 U.S.C. 6b, 6d and 13) and Section 1.20 of the regulations thereunder (17 C.F.R. 1.20). In his answer, respondent denies the allegations of the complaint and states that he had no control over the customers' accounts in question, that before the funds allegedly were misused he had been transferred from the Fort Lauderdale office of the Siegel Trading Company, Inc., and that the secretary in charge of deposits for the Siegel Trading Company, Inc., inadvertently deposited the funds in question to incorrect accounts but that the error was corrected and proper credit was given within several days thereafter.

An oral hearing was held in Los Angeles, California on August 22-23, 1973, before Harry S. McAlpin, Administrative Law

Judge. The complainant was represented by Darrold A. Dandy and Earl L. Saunders, Office of the General Counsel, United States Department of Agriculture. Respondent was represented by Walter Klein, Attorney at Law, Levy, Van Bourg & Hackler, Los Angeles, California. Ten witnesses testified and twenty-two exhibits were introduced for the complainant. Respondent testified in his own behalf.

At a prehearing conference held the day before the oral hearing, it was agreed by the parties that the principal issue in this proceeding is whether the respondent made personal use of his customer's funds. The specific questions were whether he was manager of Siegel Trading Company, Inc. in Florida at the times involved and whether the monies involved were put through the wrong accounts through error which error was corrected and proper credit given several days later. It was stipulated by the parties that the respondent signed the contract with Siegel Trading Company, Inc., and further that the signature of the respondent on checks and other documents among the exhibits are his genuine signature.

FINDINGS OF FACT

After careful consideration of the entire record, including the proposed finding of fact, conclusion and arguments of the parties, and based upon that evidence determined to be most creditable and persuasive, and upon the admissions and stipulations of the parties, the reasonable inferences drawn therefrom, and the pertinent and applicable law, we make the specific findings of fact below. It will be noted that these findings confirm and adopt the substance of the findings proposed by the complainant, which we find to be compatible with our own and supported by the record.

1. Siegel Trading Company, Inc., (hereinafter referred to as Siegel), is now and was at all times material herein a registered futures commission merchant under the Commodity Exchange Act, with its home office located in Chicago, Illinois, and maintaining various branch offices including an office in Fort Lauderdale, Florida and one in Los Angeles, California.

2. In December 1970, the respondent, Harold Goldstein, (hereinafter referred to as the respondent) entered into an agreement with Siegel to manage its Fort Lauderdale branch office and did manage such office from on or about February 1, 1971 until discharged by Siegel on or about June 16, 1971.

Pursuant to such agreement the respondent was personally obligated to pay all costs of operating the branch office in Fort Lauderdale, including the rent, telephone, secretarial help, postage, market price quoting machine, sales personnel, advertising, and all other expenses of operating the branch office.

3. Prior to January 1, 1971, and at all times material herein, Siegel maintained a customer's segregated funds bank account at the Coral Ridge National Bank in Fort Lauderdale, Florida pursuant to Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) with Joseph Siegel, individually, or Robert O'Grady and Alvin Winograd as cosigners, being the only persons authorized to make withdrawals therefrom. Siegel has never authorized nor established any other bank account in conjunction with its Fort Lauderdale branch office.

4. Despite the lack of such authorization, the respondent established the following additional bank accounts at the Coral Ridge National Bank in Fort Lauderdale, Florida:

Account Name	Date Established	Authorized Signature (s)
(a) Goldstein, Harold d/b/a TRADERS Associates	January 20, 1971	Harold Goldstein
(b) Goldstein, Harold or Mrs. Harold	January 20, 1971	Harold Goldstein or Mrs. Harold Goldstein
(c) Data Trends, Inc.	February 5, 1971	Harold Goldstein or Roland Samuelson
(d) Samstein, Inc.	March 19, 1971	Harold Goldstein or Roland Samuelson
(e) Samstein, Inc. d/b/a Siegel Trading	March 25, 1971	Harold Goldstein or Roland Samuelson

Account Name Date Authorized Established Signature (s)
Co. of Ft. Lauderdale

Respondent established "Samstein, Inc., d/b/a Siegel Trading Company of Fort Lauderdale" to pay the operating expenses of the Fort Lauderdale branch office of Siegel Trading Company, Inc.

5. On or about June 4, 1971, Richard T. Price contacted Joseph J. Tedesco, account executive employed by the respondent in Siegel's Fort Lauderdale office for the purpose of opening an account to trade in regulated commodities. While the respondent was present in the office, Mr. Price deposited $ 1,000 in cash as initial margin for his account and was given a receipt acknowledging his deposit with Siegel Trading Company, Inc. Mr. Price's $ 1,000 initial margin was deposited into "Traders Associates" bank account at the Coral Ridge National Bank on

June 4, 1971, instead of being deposited in Siegel's segregated bank account at the same bank. No deposits were made into the "Traders Associates" account at the Coral Ridge National Bank following the June 4, 1971 deposit of Mr. Price's $ 1,000 and the respondent subsequently drew checks on this account to pay commissions owed to various individuals and to deposit funds in "Samstein, Inc." account with the Brokerage firm of Fenton-Levine. Fenton-Levine is a west coast commodity firm dealing in non-regulated commodities. Although Mr. Price began trading within a week after opening his account with Siegel, such account had not been credited with his initial $ 1,000 deposit. On June 14, 1971 the respondent drew check no. 175 on the "Traders Associates" account for $ 1,000 made payable to Siegel Trading Company, Inc. to credit Mr. Price's account; however, such check was returned by the bank for insufficient funds in that account. Siegel, who had credited Prices' regulated commodity account June 25, 1971 with $ 1,000 for "Florida deposit 622" and charged it July 2, 1971 with $ 1,000 for "Florida check returned NSF 623" allowed trading without further margin in the account until September 2, 1971, at which time they closed out Mr. Price's existing trades and notified him by telegram of this action "due to lack of margin". On September 3, 1971, Mr. Price contacted Mr. Tedesco to gain further clarification as to why his account had insufficient margin. Mr. Tedesco informed Mr. Price that "Mr. Goldstein as manager of the office had taken responsibility upon himself for the deposit of (Price's) money from the secretary who normally does that sort of thing and that he had taken the money and gone to California." Finally on December 23, 1971 on the advice of counsel Siegel credited Mr. Price's regulated commodity account with $ 1,000.

6. In mid-April 1971, Mr. LeRoy V. Peart attended a commodity trading seminar at Siegel's Los Angeles office at which time he met Mr. Harold Goldstein and Mr. Roland Samuelson. At the time of this seminar or shortly thereafter, Mr. Peart decided to reactivate his account by sending a check to Siegel's Los Angeles office. The check in question was his personal check No. 452 dated April 12, 1971, for $ 1,500 made payable to the order of "The Siegel Trading Co." Mr. Peart testified that he never intended to engage in any limited partnership but eventually decided to permit Roland Samuelson and Harold Goldstein to manage his account under a "managed account" and signed a power of attorney authorizing Samuelson to execute trades in his account. Further, on April 21, 1971, Peart made out his personal

check No. 461 payable to the order of "The Siegel Trading Co." for $ 8,500, thus completing the minimum deposit of $ 10,000 required for a managed account. Mr. Peart testified that when he received his April 19, 1971 monthly statement from Siegel, he noted that his account had not been credited with his initial $ 1,500 margin deposit despite the fact that he had received the cancelled check. Examination of Mr. Peart's account disclosed that $ 8,500 was credited to his regulated commodity account on April 28, 1971, but no $ 1,500 item was credited to his account until May 19, 1971. The $ 1,500 credit in the Peart account on May 19, 1971 was based upon a check dated May 17, 1971, drawn on the "Samstein, Inc.," account at the Coral Ridge National Bank, Fort Lauderdale, Florida, by Harold Goldstein. This check was returned "NSF" and Mr. Peart's account was debited for $ 1,500. Finally, on June 16, 1971, on advice of counsel, Siegel credited Mr. Peart's regulated commodity account for $ 1,500 and charged a like amount to Goldstein's commission account.

7. Mr. Richard E. Hoyenga attended a seminar conducted by Key Commodities in late April or early May of 1971, where he opened an account with Siegel for the purpose of trading in regulated commodities. Mr. Hoyenga testified that he opened this account with Siegel because Key Commodities was in the process of getting organized and was not able to handle the trades in his account; therefore, the actual transactions were to be handled through Siegel. A short time after this seminar, Mr. Hoyenga gave a $ 2,000 cashiers check dated April 5, 1971, to a representative of Key Commodities payable to "Siegel Trading Co.". Mr. Hoyenga testified that he did not receive a statement from Siegel indicating that his account had been credited with $ 2,000. In a letter written to Siegel's Chicago office, Mr. Hoyenga stated that on April 5, 1971, he had sent Siegel a check which had been cashed but had not been credited to his regulated commodity account at Siegel. Examination of Mr. Hoyenga's regulated commodity account discloses a credit and a debit of his $ 2,000 margin on June 9, and June 8, 1971, respectively for the deposit and the return of his $ 2,000 margin. The credit was made to Mr. Hoyenga's account by Siegel on advice of counsel. In making the credit, Siegel debited Goldstein's commission account.

8. The respondent endorsed the commission checks issued to him by Siegel to be credited to the said customer's accounts as reimbursement for the monies wrongfully withheld from said customer's accounts.

9. The trades in commodities for future delivery entered into the accounts of Mr. Price, Mr. Peart and Mr. Hoyenga, if executed, could have been used for (a) hedging transactions in such commodities or the products or byproducts thereof, or (b) determining the price basis of transactions in interstate commerce in such commodities, or (c) delivering such commodities sold, shipped or received in interstate commerce for the fulfillment thereof.

10. On April 20, 1971, both Peart's check for $ 1,500 and Hoyenga's check for $ 2,000 were included in a total deposit of $ 5,500 made to the "Siegel Trading Co. of Fort Lauderdale" bank account at the Coral Ridge National Bank in Fort Lauderdale, which was not the official and authorized Siegel Trading Co. account, resulting in a balance of $ 6,440.87 in that account. (Deposit slip was dated April 19, 1971.) The following day, April 21, 1971, $ 5,000 was withdrawn from this account by Harold Goldstein and deposited into the "Samstein, Inc." account with the same bank. The funds in both the "Siegel Trading Co. of Fort Lauderdale" account and the "Samstein Inc." account were used to pay salaries and commissions and make other disbursements for which Harold Goldstein was personally liable.

11. After receiving a letter and copy of his check from Mr. Hoyenga, the Assistant Comptroller of Siegel's home office in Chicago noted that Hoyenga's check was deposited in the "Siegel Trading Co. of Fort Lauderdale" account at Coral Ridge National Bank. Since Siegel did not maintain such an account nor did it authorize any such account for the deposit of customer's margin in conjunction with its Fort Lauderdale office the companys' comptroller called the bank and learned that the signatures required for this account were those of the respondent and Roland Samuelson. During his investigation the Comptroller was told by Roland Samuelson that he was unaware of whose funds were deposited into this account and that the respondent made all of the deposits and that he, Samuelson, knew nothing about customer's money.

CONCLUSIONS

Based on the above findings of fact, we conclude that the respondent was the manager of Siegel Trading Company in Fort Lauderdale, Florida at the times herein involved; that the monies of customers herein involved were not put into the wrong accounts

by error, but were wilfully and knowingly commingled by the respondent with funds of his own, and were misused and converted by him to his own use to pay obligations for which he was personally responsible; all of which represent a wilful violation of Sections 4b, 4d and 9 of the Act (7 U.S.C. 6b, 6d and 13) and of Section 1.20 of the regulations thereunder.

Any proposed findings and/or conclusions of the parties which are not adopted or covered herein are hereby denied, based on the evidence of record.

Because of the serious nature, as attested by complainant's witnesses, of the respondent's wilful violations, we conclude that the purposes of the Commodity Exchange Act will properly be effectuated by issuing the order recommended by the complainant.

ORDER

1. Effective immediately upon the date this decision becomes final, the respondent, Harold Goldstein, shall cease and desist from:

(a) cheating and defrauding or attempting to cheat or defraud any person 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 persons;

(b) failing to treat and deal with customer's funds as belonging to such customers as required by Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) and the regulations thereunder, including but not limited to Section 1.20 of such regulations (17 C.F.R. § 1.20);

(c) failing to hold customer's funds in segregated accounts as required by Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) and the regulations thereunder;

(d) embezzling, stealing, purloining, or with criminal intent converting to his own use or the use of another, any money, securities, or property which was received by the respondent to margin, guarantee or secure the trades or contracts of any person or accruing to such person as the result of such trades or contracts.

2. The respondent, Harold Goldstein, is prohibited from

trading on or subject to the rules of any contract market for a period of twenty (20) years and contract markets shall refuse all trading privileges to him during this period, such prohibition and refusal to apply to all trading being done and all positions held by him directly or indirectly. Such denial of trading privileges shall become effective on the 30th day after this order becomes final. *

* The Decision and Order became final September 26, 1974. -- Ed.

This is an initial decision which will become final without further proceeding in 35 days after service hereof unless appealed by either party within 30 days as provided in the Rules of Practice as Amended (17 C.F.R. § 0.16 and 0.18).

LOAD-DATE: June 9, 2008