

Commodity Futures Trading Commission
CEA CASES

NAME: WILLARD E. PLATT, GEORGE F. FREY, JR., OLIVER M. HIBBERD, PATRICK M. SHEA, HENRY C. GATLIN, F & G COMMODITIES, AND RALPH N. PETERS & CO.

CITATION: 24 Agric. Dec. 248

DOCKET NUMBER: 112

DATE: MARCH 16, 1965

DOCUMENT TYPE: SUPPLEMENTAL ORDER

(No. 9673)

In re WILLARD E. PLATT, GEORGE F. FREY, JR., OLIVER M. HIBBERD, PATRICK M. SHEA, HENRY C. GATLIN, F & G COMMODITIES, AND RALPH N. PETERS & CO. CEA Docket No. 112. Decided March 16, 1965.

Prior order amended -- Finding of fact -- Standing -- Application to dismiss -- Irreparable injury -- Denied (re Willard E. Platt)

In proceeding involving several co-respondents, prior consent order as to one respondent is amended to delete names of co-respondents in finding of fact, and application to dismiss pending cases of co-respondents because of alleged irreparable injury resulting from and prejudgment in aforementioned consent order, denied.

Decision by Thomas J. Flavin, Judicial Officer

SUPPLEMENTAL ORDER

In this proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), the complaint charges violations of the act by seven respondents. Respondents Platt, Frey, Gatlin and Ralph N. Peters & Co. waived hearing, admitted the facts alleged in the complaint and consented to the entry of decisions and orders against them. Respondent F & G Commodities is apparently defunct and the case against this respondent is being handled as a default. Respondents Hibberd and Shea filed answers denying the charges and a hearing as to these respondents has been postponed due to the illness of respondent Hibberd.

The complaint charges the execution of "wash" or "fictitious" sales of futures in violation of the act and other violations of the act and regulations in connection with the execution of the transactions.

The "Decision and Order With Respect To Willard E. Platt" was entered on February 4, 1965. The document recites that no hearing has been held with respect to any of the respondents but that this respondent had filed a stipulation in which he admitted the facts stated in the "Findings of Fact." The admissions of fact by respondent Platt included the facts set out in Finding of Fact 4 which is *verbatim* the admission contained in paragraph (4) of the stipulation filed by respondent Platt. This finding is as follows:

4. On December 18, 1962, respondent Willard E. Platt in his capacity as floor broker received from respondent F & G Commodities an order or orders to purchase and to sell for the same account 19 tank cars of the May 1963 soybean oil future on the Chicago Board of Trade. Acting with knowledge that respondent Oliver M. Hibberd had purchased 17 tank cars of May 1963 soybean oil futures at 8.94 cents per pound from respondent Patrick M. Shea, respondent Platt filled part of the order (17 cars) by means of purported transactions with respondents Hibberd and Shea. In so filling such order or orders, respondent Platt, with the consent of respondents Hibberd and Shea, made entries on trading cards, which he turned in

to respondent F & G Commodities purporting to show a sale of 12 tank cars of May 1963 soybean oil futures at 8.94 cents per pound to A. E. Staley Manufacturing Co. as opposite clearing member and a sale of five tank cars of May 1963 soybean oil futures at 8.94 cents per pound to John E. Brennan & Co. as opposite clearing member, the names of such opposite clearing members having been given to him by respondent Hibberd, the purchase of 17 tank cars of May 1963 soybean oil futures at 8.94 cents per pound from Hayden, Stone & Co., Inc., as opposite clearing member, such name having been given to him by respondent Shea. At the time respondent Platt so filled the order or orders it was understood by respondent Platt that respondents Hibberd and Shea would alter, or so cause to be altered, the records pertaining to the transaction between respondents Hibberd and Shea so as to reflect that respondents Hibberd and Shea traded with respondent

Platt rather than with each other. The remainder of the order or orders received by respondent Platt from respondent F & G Commodities was filled by respondent Platt by a purchase of one tank car of the May 1963 soybean oil future at 8.96 cents per pound from William E. Casselman, a sale of one tank car of the same future at the same price to Joseph J. Drowinski, a purchase of one tank car of such future at 8.95 cents per pound from Oliver M. Hibberd, and a sale of one tank car of the same future at the same price to Lawler J. Joyce.

After the issuance of the decision and order as to Platt containing the finding above, respondents Hibberd and Shea filed separate petitions to the effect that they have been condemned without a hearing and requesting that the decision and order as to Platt be rescinded or altered to delete references to respondents Hibberd and Shea and that the complaint be dismissed as to them. The petitions claim that these respondents had no opportunity to object to the entry of the finding of fact protested, that no hearing was held, that they have been irreparably injured, that the Secretary of Agriculture has prejudged the cases of respondents Hibberd and Shea by making the contested finding and that they have been deprived of due process of law.

Complainant filed a reply to the petitions.

The decision and order with respect to respondent Willard E. Platt is plainly labelled as such in the heading of the document. Too, the "Preliminary Statement" recites *that no hearing had been held as to any of the respondents* and that respondent Platt had submitted for filing a *stipulation admitting the facts contained in the "Findings of Fact."* So that it is clear from the document that *the findings are merely the recital of Platt's admissions* and that the document is a decision and order with respect *only to respondent Platt*. Of course Finding of Fact 4 has no binding effect, or any effect, as to respondents Hibberd and Shea. The complainant will have to make the case against these respondents at the hearing upon the complaint as to them.

Respondents Hibberd and Shea contend that the complainant's recommendation that the stipulation of Platt be accepted was not served upon them and that they therefore had no opportunity

to object. Platt filed the stipulation n1 in the record on January 25, 1965, and a copy of the stipulation containing the admitted facts set out in the "Findings of Fact" was served upon counsel for each of the two petitioning respondents on January 27, 1965, about eight days before the entry of the consent decision and order. The filing of the stipulation was done, of course, to have an order issued which was based thereon. No objections were received from counsel for either respondent until the petitions were received February 19, 1965. Respondents also attack the decision with its stipulated findings of fact because Platt admitted, in connection with charges other than those involving respondents Hibberd and Shea, matters which he had previously denied in an affidavit filed in connection with an answer filed by respondent F & G

Commodities. As we pointed out above, however, the findings of fact apply *only to respondent Platt* and respondents Hibberd and Shea will have the opportunity to attack any evidence introduced against them in the hearing upon the charges as to these two respondents. We do not see, then, standing on the part of Hibberd and Shea, to challenge the truthfulness of the admissions of fact by Platt when such admissions were made and accepted only for the disposition of the case against Platt.

nl § 0.4(b) of the rules of practice (17 CFR § 0.4(b)) provides that at any time after the issuance of the complaint and prior to the hearing the Secretary may allow a respondent to consent to an order. "In so consenting, the respondent must submit, for filing in the record a stipulation or statement in which he admits at least those facts necessary to the Secretary's jurisdiction and agrees that an order may be entered against him. Upon a record composed of the complaint and the stipulation or agreement consenting to the order, the Secretary may enter the order consented to by the respondent, which shall have the same force and effect as an order made after oral hearing."

Basically, respondents seem to think that there is something wrong or unlawful about the acceptance of an admission of facts from one of several co-respondents in an administrative proceeding *for the sole purpose of disposing of the case against that co-respondent*. We do not understand that to be the case.

The petitions are dismissed except that to make it clear beyond question that the Finding of Fact 4 applies only to respondent Platt, the references to respondents Shea and Hibberd protested by these respondents are deleted and that the finding is amended to read as follows:

"4. On December 18, 1962 respondent Willard E. Platt in his capacity as floor broker received from respondent F & G Commodities an order or orders to purchase and sell

for the same account 19 tank cars of the May 1963 soybean oil future on the Chicago Board of Trade. Respondent Platt filled orders for 17 cars through arrangements with other floor traders. The remainder of the order or orders received by respondent Platt from respondent F & G Commodities was filled by respondent Platt by a purchase of one tank car of the May 1963 soybean oil future at 8.96 cents per pound from William E. Casselman, a sale of one tank car of the same future at the same price to Joseph J. Drowinski, a purchase of one tank car of such future at 8.95 cents per pound from Oliver M. Hibberd, and a sale of one tank car of the same future at the same price to Lawler J. Joyce."

Copies hereof shall be served upon complainant, respondents Hibberd, Shea and Platt and upon the contract markets.

LOAD-DATE: June 8, 2008

