

Commodity Futures Trading Commission
CEA CASES

NAME: H. SACKS & SONS AND JULIUS SACKS

CITATION: 17 Agric. Dec. 424

DOCKET NUMBER: 80

DATE: MAY 27, 1958

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(No. 5447)

In re H. SACKS & SONS, a partnership, and JULIUS SACKS. CEA Docket No. 80.
Decided May 27, 1958.

Violation of Reporting Provisions -- Denial of Trading Privileges -- Consent Order

Respondents admitted violating the reporting requirements of the act and consented to an order denying them trading privileges on all contract markets for a 30-day period.

Mr. Benjamin M. Holstein, for Commodity Exchange Authority. Respondents *pro se*.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. 1952 ed., Chapter 1), instituted by a complaint and notice of hearing issued under section 6(b) of the act (7 U.S.C. 1952 ed., § 9) on March 6, 1958, by the Assistant Secretary of Agriculture. The complaint charges that the respondent partnership failed to submit reports concerning its transactions in potato futures on 34 occasions within a period of approximately five months, in violation of section 4i of the act (7 U.S.C. 1952 ed., § 6i) and sections 6.10, 6.11, 6.12, and 6.21 of the rules and regulations thereunder (17 CFR 6.10, 6.11, 6.12, 6.21). The complaint alleges that these violations were wilful because the respondents had previously been fully informed of the reporting requirements and had also been informed in writing that their continued delinquency in

connection with reporting requirements could result in formal action.

No hearing has been held. On May 8, 1958, the respondents filed a document under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they admit the facts alleged in the complaint, waive hearing on the charges, and consent to the entry of the order hereinafter set forth.

FINDINGS OF FACT

1. Respondent H. Sacks & Sons was at all times material herein and is now a partnership with offices and principal place of business located at East Quogue, Long Island, New York. The said partnership enjoys membership trading privileges on the New York Mercantile Exchange. Respondent Julius Sacks was at all times material herein and is now a member of the respondent partnership, and controlled and was responsible for execution of the partnership transactions hereinafter described. The said Julius Sacks was at all times material herein a member of the New York Mercantile Exchange.

2. The New York Mercantile Exchange has been at all times material herein and is now a duly designated contract market under the Commodity Exchange Act.

3. On each day during the period from September 20, 1957, through February 12, 1958, the respondent partnership had a net short or net long open contract position in potato futures on the New York Mercantile Exchange which ranged from 25 carlots to 57 carlots in a single future. By reason of the fact that such quantities were equal to or in excess of 25 carlots, said respondent partnership was in reporting status and was required to report to the Commodity Exchange Authority with respect to all transactions executed and all open contract positions held for its account in all potato futures on all boards of trade (exchanges) during the said period, and with respect to all such transactions by reason of which said respondent's position was reduced below reporting levels, as provided in section 4i of the Commodity Exchange Act (7 U.S.C. 1952 ed., § 6i) and sections 6.10, 6.11, 6.12, and 6.21 of the rules and regulations thereunder (17 CFR, 6.10, 6.11, 6.12, 6.21).

4. On thirty-four (34) business days within the period specified in paragraph 3 hereof, while respondent partnership was

in reporting status as therein described, and on the business day immediately thereafter, February 13, 1958, when respondent's position was reduced below 25 carlots, transactions in potato futures on the New York Mercantile Exchange were executed for its account, but said respondent partnership has failed and refused to report to the Commodity Exchange Authority with respect to such transactions, as required under the aforesaid provisions of the Commodity Exchange Act and the rules and regulations.

5. On numerous occasions dating as far back as September 23, 1948, and continuing up to October 8, 1957, officials of the Commodity Exchange Authority not only informed said respondent of the reporting requirements under the Commodity Exchange Act and regulations but also found it necessary to communicate with said respondent, in writing and by telephone, directing attention to respondent's (a) failure to file reports required to show reportable transactions and positions in potato futures on contract markets; (b) filing of reports showing cumulative trades and positions for an entire month instead of filing a report for each day on which trades or transactions were made while in a reporting status, as required by the regulations; and (c) filing incorrect reports. Respondent partnership was also informed in writing by the Administrator of the Commodity Exchange Authority of its delinquencies in submitting reports, that such delinquencies were a continuing violation of the law, and that continuing failure in this regard could result in the institution of formal proceedings directed toward denial of trading privileges on contract markets. On one occasion, respondent Julius Sacks wrote a letter to the New York office of the Commodity Exchange Authority with respect to the filing of daily reports. In the circumstances, respondents H. Sacks & Sons and Julius Sacks were fully aware of their obligations under the Commodity Exchange Act and the rules and regulations with respect to the filing of required reports, and that failure to submit such reports constituted a knowing and wilful violation of section 4i of the Commodity Exchange Act and sections 6.10, 6.11, 6.12, and 6.21 of the rules and regulations thereunder.

CONCLUSIONS

Section 4i of the Commodity Exchange Act provides as follows:

Sec. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the Secretary of Agriculture . . . (2) whenever such person shall directly or indirectly have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture . . .

Section 6.10 of the rules and regulations provides as follows: Sec. 6.10 Persons holding or controlling open contracts of specified size; reports on Form 603. Every person who holds or controls open contracts in any one potato future on any one contract market which equal or exceed the amount fixed by the Secretary of Agriculture (in sec. 6.21 hereof) for reporting purposes under section 4i(2) of the Commodity Exchange Act shall report to the Commodity Exchange Authority on Form 603. Such report shall be made daily: . . .

With respect to potato futures, the amount fixed by the Secretary of Agriculture for reporting purposes under these provisions is 25 carlots (17 CFR 6.21). Other sections of the rules and regulations prescribe the time for filing reports and the information to be furnished (17 CFR 6.11, 6.12).

The respondents have admitted the facts alleged in the complaint, which have been adopted as the findings of fact in this proceeding. It thus appears that they failed to file reports on 35 occasions when they were required to do so. The failure to file complete, correct, and accurate reports when and as required is contrary to and constitutes a violation of the provisions of the act and the regulations. The number of instances involved and the fact that the respondents were given prior warning justify the conclusion that these violations were wilful. The complainant has recommended that the stipulation which the respondents have submitted under section 0.4(b) of the rules of practice be accepted and that the order to which they have consented be issued. It is so concluded.

ORDER

Effective November 3, 1958, all contract markets shall refuse

all trading privileges to H. Sacks & Sons and Julius Sacks, for a period of thirty (30) days, such refusal to apply to all trading done and positions held by them or either of them, and also to all trading done and positions held indirectly through persons owned or controlled by them or either of them, or otherwise.

A copy of this decision and order shall be served on the respondents and on each contract market.

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