Commodity Futures Trading Commission
CEA CASES

NAME: DANIEL J. SHELLEY, JOHN M. ROWLEY, AND SAM H. LAMANTIA (LA MANTIA)

CITATION: 22 Agric. Dec. 352

DOCKET NUMBER: 96

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NOTE: SOMETIMES SPELLED AS LAMANTIA AND SOMETIMES AS LA MANTIA

(No. 8296)

In re DANIEL J. SHELLEY, JOHN M. ROWLEY, AND SAM H. LAMANTIA. CEA Docket No. 96. Decided April 2, 1963.

Reconsideration -- Order of Modification -- Full and Complete Records

Prior order amended upon reconsideration as requirement of full and complete records not breached by placing of incorrect name on trading card where floor broker need not make a record of name of opposite floor broker.

Decision by Thomas J. Flavin, Judicial Officer

DECISION AND ORDER UPON RECONSIDERATION

In this proceeding under the Commodity Exchange Act (7 U.S.C. ch. 1), the complainant filed a petition for reconsideration of the final decision and order entered January 30, 1963 (22 Agric. Dec. 8 (22 A.D. 8)). Respondent Rowley also filed such a petition. Respondents Shelley and LaMantia did not petition for reconsideration or rehearing and the sanctions ordered against them went into effect as ordered. The order of January 30, 1963, was stayed as to respondent Rowley.

Complainant's petition for reconsideration submits that the Judicial Officer misinterpreted the basis of the referee's (hearing examiner's) recommended dismissal of the complaint's charges against respondents of engaging in offsetting trades, of cheating or defrauding customers and of executing trades in a noncompetitive manner.

On this part of the case the referee concluded:

"The evidence is amply sufficient to support a suspicion that the trades were prearranged. If they were, they constituted noncompetitive trades, offsetting, accommodation trades, etc., as charged in the complaint. However, while an overwhelming set of circumstances is a sound basis for a finding of guilt, it is concluded that the circumstances shown by the record here are not sufficient to warrant sanctions on respondents on this issue."

The decision of the Judicial Officer stated that the outcome of this part of the case hinged largely if not entirely upon the evaluation of the testimony of the respondents and that the Judicial

Officer was not in a position to disagree with the referee who saw and heard the respondents testify. Complainant's petition for reconsideration claims that the referee's recommended dismissal in this connection was simply because he believed that "prearrangement" had to occur among the respondents for violation of the act as charged, that such is not necessarily the case and that the Judicial Officer should find for the complainant or rule that "prearrangement"

is not necessary and remand the case to the referee to reconsider his recommended decision in the light of such ruling.

We do not read the referee's report as narrowly as does complainant. We think that all the referee meant was that upon the evidence he could not find that there was "arrangement" or an "understanding" among the respondents. We don't think he was saying that there had to be some measurable passage of time, such as a day or an hour, between the arrangement and the execution thereof, and certainly the final decision is not authority for any such proposition. It is apparently possible for such an arrangement to be agreed upon or understood at practically the same time the executions of the trades are taking place but even in such a case it seems to us that there would be a silent meeting of the minds of the traders prior to the completion of the execution although prior by only an instant. It may well be that this is all the referee had in mind when he used the prefix "pre" to the word "arrangement." At any rate, we do not believe any useful purpose would be served at this stage by sending the case back to the referee and we cannot, for the reasons given in the decision of January 30, 1963, find that respondents violated the act on the charges involved.

Rowley's petition for reconsideration involves section 1.35 of the regulations (17 CFR 1.35) under the act. The final decision found that by writing "Sam," meaning respondent LaMantia, on his trading card when the purchases were made from respondent Shelley, Rowley breached section 1.35 of the regulations under the act requiring each member of a contract market to ". . . keep full, complete and systematic records of commodity futures transactions . . . made by or through him . . . ."

It is undisputed that the regulation in question has not been administratively construed or applied to require that a floor broker or floor trader make a record of the name of the floor broker or trader on the opposite side of a transaction. Rowley therefore asks the pertinent question as to whether Rowley can

be found to have failed to keep "full, complete and systematic records" simply by making a record, even if false, of the name of the opposite floor broker when he was not required to record the name of such broker.

Upon reconsideration, we conclude that Rowley did not breach section 1.35 of the regulations. The mandate therein is the keeping of *full* and *complete* records rather than correctness of whatever records are kept even though not required. Since Rowley did not have to make a record of the name of the opposite floor broker under the regulations, the writing of "Sam" on the trading cards instead of Shelley's name did not add up to a failure to keep *full* and *complete* records.

Accordingly, the order of January 30, 1963, is modified by deleting therefrom any mention of respondent Rowley.

Copies hereof shall be served upon the parties and the contract markets.

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