Commodity Futures Trading Commission
CEA CASES

NAME: GEORGE SIROTA AND SONS, GEORGE SIROTA, NORMAN L. SIROTA, BENJAMIN SIROTA, HARRY A. ASPINWALL, AND DYKE CULLUM

CITATION: 12 Agric. Dec. 825

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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AGRICULTURE DECISIONS

(No. 3563)

In re GEORGE SIROTA AND SONS, GEORGE SIROTA, NORMAN L. SIROTA, BENJAMIN SIROTA, HARRY A. ASPINWALL, AND DYKE CULLUM. CEA Docket No. 54. Decided July 31, 1953.

Suspension of Registration -- Wilfully Evading Reporting Requirements -- Wilful Failure to Make Reports -- Refusal of Trading Privileges

For wilfully evading the reporting requirements of the act and the regulations thereunder, the registration under the act of the respondent partnership as a futures commission merchant is suspended for 10 days; the registrations under the act of N. L. S., B. S. and H. A. as floor brokers are suspended for 10 days on the ground that these respondents were involved in the violations; and for wilful failure to make reports required by the act and the regulations thereunder, all contract markets shall refuse all trading privileges to respondent D. C. for a period of 10 days.

Evil Intent as Not Essential Element in Violation of Act

Violations of the act and regulations need not possess as an indispensable ingredient, which the respondents apparently argue, some sort of malevolence, evil intent, or motive to hide someone else's violation of the act.

Meaning of Term Wilfulness

Wilfulness means "no more than that the person charged with the duty knows what he is doing" and it "does not mean that, in addition, he must suppose that he is breaking the law."

Mr. Benjamin M. Holstein for Commodity Exchange Authority. *Mr. Donald Marks* of Baer, Marks, Friedman, Berliner & Klein, of New York, New York, and *Mr. Ben I. Melnicoff,* of Washington, D. C., for respondents George Sirota and Sons, George Sirota, Norman L. Sirota and Benjamin Sirota. *Mr. Thomas A. Sully,* of New York, New York, for respondent Harry A. Aspinwall. *Mr. Roy St. Lewis,* of Washington, D. C., for respondent Dyke Cullum. Mr. John J. Curry, Referee.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1). The respondent firm, George

Sirota and Sons, is a registered futures commission merchant under the act. George, Norman L. and Benjamin Sirota are partners in the firm and each is registered as a floor broker under the act. Dyke Cullum is a trader who was a customer of George Sirota and Sons at the times pertinent to the proceeding and Harry A. Aspinwall is a registered floor broker under the act. Aspinwall acted as the agent or solicitor for George Sirota and Sons, however, and brought to George Sirota and Sons and serviced the trading accounts involved in the proceeding.

Broadly outlining the situation presented in the proceeding for an understanding of what is to follow, the respondent partnership carried three trading accounts over a period of some months in 1950 in the names of (1) "Dyke Cullum," (2) "Kiki Cullum," and (3) "Jessica K. Jones." n1 The complaint alleges that on or about June 23, 1950, five long contracts of September 1950 soybean oil futures belonging to respondent Dyke Cullum were placed in the Kiki Cullum and Jessica K. Jones accounts so that the respondent Dyke Cullum's long position in the September future would not appear to be in reporting status. A charge of violating section 4i of the act and also the regulations under the act in this connection is made against the respondent partnership and respondent Dyke Cullum.

n1 This account was apparently originally opened as the "J. K. Jones" account, changed a few hours later to "Jessica K. Jones" and later described on the contract ledger for the account as "Joycette K. Jones." It will be referred to as the "Jessica K. Jones" account.

The complaint also charges misuse of customer's funds by the respondent partnership in that $ 3,500 of a deposit of $ 10,500 by respondent Dyke Cullum to margin his account was used to margin the account of Jessica K. Jones.

A further charge is made against the respondent partnership and against respondent Aspinwall in connection with the Jessica K. Jones account. The complaint alleges violation of section 4 of the act and violation of section 1.37 of the regulations under the act by failure to keep written records of the true parties to futures contracts because this account was opened without authority or consent of Miss Jones and because the trades entered in the account were for the benefit of a person other than Miss Jones. The complaint also alleges additional violations of section 4 of the act and section 1.37 of the regulations by the respondent partnership because of the five September contracts mentioned above being entered in the Kiki Cullum and Jessica K. Jones accounts when they should have been entered in the Dyke Cullum account.

To make it abundantly clear, then, respondent Dyke Cullum is charged only with wilful failure to make reports required by section 4i of the act and sections 10.10, 10.11 and 10.21 of the regulations. Respondent Aspinwall is charged only with violation of section 4 of the act and section 1.37 of the regulations in connection with the opening of, and the trading in, the Jessica K. Jones account. The Sirota respondents are charged (1) with wilful failure to make reports in connection with respondent Dyke Cullum's holdings in the September 1950 soybean oil future in violation of section 4i of the act and sections 10.4, 10.5, 10.6 and 10.20 of the regulations, (2) with misuse of customer's funds in violation of section 4(d) (2) of the act and section 1.20 and 1.22 of the regulations, (3) with failure to make a written record of the true names of parties to futures contracts in violation of section 4 of the act and section 1.37 of the regulations (a) by virtue of the Jessica K. Jones account and (b) by virtue of placing five September soybean oil contracts of respondent Dyke Cullum in the Kiki Cullum and Jessica K. Jones accounts.

On November 28, 1950, an answer was filed on behalf of respondents George Sirota and Sons, George Sirota, Norman L. Sirota, and Benjamin Sirota. The answer admits that Harry A. Aspinwall was an authorized agent of the firm and that the firm carried accounts in the names Dyke Cullum, Kiki Cullum and Jessica K. Jones on the dates and in the quantities claimed, but denies failure to report or failure to maintain proper written records. Respondent Harry A.

Aspinwall filed a separate answer in which he denied the allegation that he was authorized to act as an agent for the respondent partnership in the acceptance of commodity futures orders and denied the charge of failure to evidence futures contracts by a proper written record. Respondent Dyke Cullum also filed a separate answer in which he denied failure to report as charged.

John J. Curry, Officer of Hearing Examiners, United States Department of Agriculture, was assigned as referee and presided at the hearing which began in New York, New York, on January 30, 1951, and continued intermittently thereafter with sessions in New York and Washington, D. C., until March 16, 1951. Respondents George Sirota and Sons, George Sirota, Norman L. Sirota and Benjamin Sirota were represented by Donald Marks of Baer and Marks, New York, New York, and Ben I. Melnicoff of Washington, D. C. Respondent Harry A. Aspinwall was represented by Thomas A. Sully, New York, New York. Respondent Dyke Cullum was represented by Roy St. Lewis, Washington, D. C.

Benjamin M. Holstein, Office of the Solicitor, United States Department of Agriculture, represented the complainant. After the hearing, suggested findings of fact, conclusions and orders, and briefs in support thereof, were filed by all parties to the proceeding. The referee issued a report recommending that the respondents be found to have violated the act as charged in the complaint except for the charge against the respondent partnership of misusing customer's funds which the complainant dropped after the hearing for lack of sufficient evidence. All respondents filed exceptions to the referee's report and oral argument was held before Judicial Officer in Washington, D. C., on February 26, 1953.

The Hearing Record

Although the hearing record is lengthy, much of the evidence does not have a direct bearing upon the issues projected by the complaint but deals with disputes between respondent Dyke Cullum and the other respondents. Cullum had a joint-venture deal with the Sirotas involving the purchase and sale of twenty tank cars of cottonseed oil as well as a regulated futures account in his own name. Differences between Cullum and the Sirotas as to the handling of the joint venture both in itself and considered together with the Dyke Cullum, the Kiki Cullum and the Jessica K. Jones futures trading accounts led to Cullum and the Sirotas taking their troubles to the Commodity Exchange Authority. A good deal of the hearing record is devoted to the airing of these differences rather than to the issues raised by the complaint.

Evidence Concerning Failure to Report

Douglas B. Bagnell, Chief of the Compliance and Trade Practice Division, Commodity Exchange Authority, testified that, during the investigation preceeding the filing of the complaint, respondents Ben Sirota and George Sirota told him that respondent Dyke Cullum had given instructions for placing the five September soybean oil contracts in the Kiki Cullum and Jessica K. Jones accounts after these contracts had first been placed in the respondent Dyke Cullum's account. Bagnell said that the position of the Sirotas at that time was that the five contracts belonged to respondent Dyke Cullum, that they should have combined these five with the existing twelve contracts in Dyke Cullum's account and reported accordingly, but they had overlooked doing so perhaps due to a labor shortage in the office (tr. pp. 56-65).

Bagnell also testified that Cullum told him during the course of the investigation that George Sirota persuaded him, Cullum, to

switch five long July soybean oil contracts to September, that he, Cullum, did not want to do this because he, Cullum, already was twelve contracts long for September and that adding five more would put him two contracts over the reporting status, and that George Sirota suggested placing the five contracts in

the Kiki Cullum and Jessica K. Jones accounts. Bagnell said that Dyke Cullum admitted that he was conscious of the reporting requirements and knew that he, Cullum, should have filed the required reports (tr. pp. 16-17).

Mr. Charles E. Robinson, in charge of the Trading and Reporting Section of the New York office of the Commodity Exchange Authority, testified for the complainant that respondent Cullum filed no reports. He also testified that the first reference to any reports by the respondent partnership occurred on July 19, 1950, when respondent Benjamin Sirota called in person at the New York office of the Commodity Exchange Authority and informed Mr. Robinson that the positions in the Dyke Cullum, Kiki Cullum and Jessica K. Jones accounts should have been combined and reported, but that the firm had overlooked doing so because of labor difficulties. The reports were subsequently filed (tr. pp. 358, 359, 366, 367).

Evidence Concerning Failure to Maintain Record Showing True Names of Parties

Bagnell testified that, during the course of the investigation preceding the filing of the complaint, respondent Cullum denied opening the "J. K. Jones." account and said that respondent Aspinwall suggested to him, Cullum, that Aspinwall open an account in the name of Jessica K. Jones, a pseudonym for Joycette K. Jones, secretary or clerk of the United States Senate Committee on Agriculture and Forestry, for the purpose of making some money for the election campaign of Senator Elmer Thomas, then chairman of the committee. Bagnell testified that Cullum said that Aspinwall was trying to land a job with the committee and that Aspinwall thought that his chances would be enhanced by this move. Bagnell further testified that Cullum told him that he, Cullum, expressed the opinion that Miss Jones would not approve but to go ahead and see if he could work it out. Cullum, according to Bagnell, said that this was how the Jessica K. Jones account was instituted and he stated also, according to Bagnell, that the Kiki Cullum account belonged to his daughter and that he had nothing to do with the trading in either account (tr. pp. 72-75).

Bagnell also testified concerning an interview with Miss Joycette K. Jones, who did not appear as a witness at the hearing, and Bagnell's memorandum of the interview dated September 22, 1950, was received in evidence without objection as Government Exhibit 16. The memorandum states:

"I asked Miss Jones what she knew and what she was willing to tell me concerning the account carried in her name on the books of Sirota in New York. She said she knew nothing about it.

"I then told her that on May 8, 1950, there had been a telephone call from her phone number, Atlantic 2930, at about 1 p.m. to Sirota's office and asked her what she would tell me about that phone call. She said she was at home ill on May 8 and that the night before Dyke Cullum had told her that she would get a phone call the next day from Sirota and had told her to give her name and give her address as care of Buck Jones, Odessa, Texas. She said that the next morning Harry Aspinwall called her from New York but that she did not give him the information as she was uncertain what it was all about. She then called Dyke Cullum in Chicago and he told her to call Sirota's office and give them the name and address. She then called Sirota's office and asked for Aspinwall. She was told that he was not in and the call was transferred to some one else whose name she did not get. She gave this person the name and address, as instructed by Dyke.

"Some weeks later she was called by phone from Sirota's office and asked to put up additional margin in her account. She informed the person calling that she knew nothing about any account.

"She stated that at no time had she ever given any orders in this account and had never received any money or put up any money. She said that a number of statements were mailed to her at the Odessa address and that she accepted and

opened them at first. She said that they were little slips of paper, apparently confirmations of trades. She said that recently she had stopped accepting this mail and that it had been returned unclaimed to Sirota."

Respondent Dyke Cullum testified that George Sirota sought to recruit him for a "team" consisting of the Sirotas, Aspinwall and Ralph Moore, which was to control the soybean oil market and to get advance information from the United States Department of Agriculture and the ECA as to the Federal Government's plans with respect to the purchase and marketing of soybean oil (tr.

pp. 498-501). He testified also that George Sirota wanted him to participate in the Jessica K. Jones account, that the account was opened by Aspinwall and the Sirotas to make money for Senator Thomas' campaign and that he, Cullum, had no responsibility for the account or that of Kiki Cullum (tr. pp. 523-53).

On the other hand, respondent Aspinwall testified that he was instructed over the telephone on May 8, 1950, by respondent Cullum to place certain trades in a "J. K. Jones" account and that Cullum assured him that Miss Jones would telephone to confirm the trades and give her name and address (tr. pp. 1787-1789). The testimony on behalf of the Sirotas in this connection was to the effect that Miss Jones did telephone and gave "Jessica K. Jones, c/o Buck Jones, Clark-Downes Equipment Company, Odessa, Texas," as the name and address of an account being opened (tr. pp. 1642-1643). There was evidence that no original deposit in this account was made although Miss Jones was asked to make such a deposit by a letter from the respondent partnership on May 8, 1950. On the other hand, there was evidence that Cullum furnished margin for the account on two occasions. One occasion was the $ 3,500 which the complaint alleged was placed in the Jessica K. Jones account without authority from Dyke Cullum. The testimony of the respondents other than Cullum was that the Dyke Cullum regulated account needed $ 7,000 margin and the Jessica K. Jones account $ 3,500 margin, that Aspinwall brought a letter to Cullum in Washington, D. C., showing the status of both accounts and that Cullum gave Aspinwall a check for $ 10,500 to cover margin for both accounts. The other occasion testified to was in connection with the liquidation of the joint venture in the twenty cars of spot cottonseed oil when Cullum was given a check from the Sirotas for his investment and profit and Cullum in turn gave the Sirotas a check for margin in his regulated account, the Kiki Cullum account and the Jessica K. Jones account. There was also evidence that Cullum gave the trading orders in the Jones account and received duplicates of the confirmations of trades.

Misuse of Customer's Funds

Respondent Cullum testified that he did not authorize the Sirotas to credit $ 3,500 of his money to the Jessica K. Jones account and that he protested this action to no avail (tr. pp. 15-16, 33-36, 38-40, 512-513, 566-577, 836-839). He stated that on May 20 Aspinwall came to his office in Washington and asked him for $ 10,-500 margin, pursuant to which he issued him a check for $ 10,500

(Government Exhibit 6). Cullum claimed that the margin was meant only for his own account (tr. p. 513).

As pointed out above, however, there was evidence on behalf of the Sirotas that $ 3,500 of Cullum's check for $ 10,500 was intended by Cullum to margin the Jessica K. Jones account, and there was also evidence that Cullum's subsequent check for $ 40,-000 was intended by him to margin all three accounts, the Dyke Cullum account, the Kiki Cullum account, and the Jessica K. Jones account.

FINDINGS OF FACT

1. Respondent George Sirota and Sons is a partnership consisting of George Sirota, Norman L. Sirota, and Benjamin Sirota, doing business at 60 Beaver Street, New York, New York. The firm deals in edible oils and other commodities

for its own account and for the account of customers. The firm was, at all times hereinafter mentioned, and is now a registered futures commission merchant under the Commodity Exchange Act and a member of the New York Produce Exchange, a duly designated contract market under the Commodity Exchange Act.

2. Respondents George Sirota, Norman L. Sirota, and Benjamin Sirota are members of the respondent partnership and each is a registered floor broker under the Commodity Exchange Act.

3. Respondent Harry A. Aspinwall is a member of the Chicago Mercantile Exchange and the New York Mercantile Exchange. He is a registered floor broker under the act and he engaged in the activity of floor broker on the New York Mercantile Exchange. At the time of the transactions hereinafter described, he was also authorized by the respondent partnership to act as its agent in the solicitation of business, including futures transactions to be executed on the New York Produce Exchange.

4. Respondent Dyke Cullum, Hibbs Building, Washington, D. C., is an individual who traded in commodity futures as a customer of the respondent partnership.

5. Kiki Cullum, Houston, Texas, is the daughter of Dyke Cullum. Joycette K. (or Jessica K.) Jones is an individual who for some time previous to May 8, 1950, was Clerk of the United States Senate Agriculture and Forestry Committee.

6. In December 1949, respondent Dyke Cullum opened a futures trading account with the respondent partnership as the result of solicitation by respondent Aspinwall. During succeeding

months, respondent Cullum did considerable trading in this account, mainly in soybean and cottonseed oil futures. On April 22, 1950, over the telephone from Washington, D. C., to Aspinwall in New York City, Cullum ordered the purchase of five October soybean oil contracts and told Aspinwall to place two of the contracts in a "Kiki Cullum" account. Shortly thereafter the respondent partnership received a customer's agreement executed by Miss Kiki Cullum and a letter from Miss Cullum confirming the purchase of the two contracts. Both of these documents were dated April 22, 1950. Miss Kiki Cullum also made an original margin deposit of $ 2,000 in the account.

7. On May 8, 1950, as the result of a telephone call from Dyke Cullum to respondent Harry Aspinwall in New York City, an account was opened by the respondent partnership in the name of "J. K. Jones" and five purchases of September soybean oil futures were entered in the account. A few hours after the opening of the account, the name of the account was changed to "Jessica K. Jones" because of a telephone call to the respondent partnership by Miss Joycette K. Jones, who gave a name which was understood to be "Jessica K. Jones" and the address "c/o Buck Jones, Clark-Downes Equipment Company, Odessa, Texas," as the name and address of an account being opened. At a later time, the name "Jessica" was lined out on the Sirotas' contract ledger and replaced by "Joycette." The firm's financial ledger carried the account in the name "Jessica K. Jones" and throughout the life of the account the respondent firm in confirmations of trades and in correspondence described the account as the "Jessica K. Jones" account, or the "J. K. Jones" account.

8. Upon the opening of the Jessica K. Jones account, the respondent partnership sent a letter to Jessica K. Jones at the Texas address asking for an original margin deposit in the account, but no reply was made and no such deposit was received by the respondent partnership. The usual customer's agreement was not executed by Miss Jones. Respondent Aspinwall knew that "J. K. Jones" or "Jessica K. Jones" was really "Joycette K. Jones" and that she was Clerk of the United States Senate Committee on Agriculture and Forestry. Between May 8, 1950, and August 9, 1950, seven contracts of September soybean oil, five contracts of July cottonseed oil and eleven contracts of December cottonseed oil were purchased and sold and the transactions entered in the

Jessica K. Jones account. Trading orders for these transactions were given by respondent Dyke Cullum and the respondent partnership

sent confirmations to Miss Jones at the Texas address and duplicates to Dyke Cullum.

9. Following the opening of the Kiki Cullum account with the purchase of two contracts of October soybean oil on April 22, 1950, the following contracts were purchased and sold and placed in the Kiki Cullum account as the result of trading orders from respondent Dyke Cullum and with duplicates of the confirmations sent to Dyke Cullum:

8 July cottonseed oil

6 September cottonsed oil

19 December cottonseed oil

1 July soybean oil

1 August soybean oil

3 September soybean oil

6 October soybean oil

10. After the opening of the Kiki Cullum and the Jessica K. Jones accounts, the respondent Dyke Cullum would usually telephone from Washington, D. C., to respondent Harry Aspinwall at Aspinwall's office in New York City and give Aspinwall trading orders. Aspinwall would either call respondent Ben Sirota on another telephone to relay the orders or would have respondent Ben Sirota connected with him and Cullum on a three-way telephone hook-up. Aspinwall would notify Cullum over the telephone of the execution of the orders and often Cullum would then tell Aspinwall which account, that is, the Dyke Cullum account, the Kiki Cullum account, or the Jessica K. Jones account, was to take the trades. Aspinwall would then give the instructions from Cullum to the Sirota firm.

11. Respondent George Sirota and Sons and respondent Harry A. Aspinwall knew that the transactions entered in the Jessica K. Jones account between May 8 and August 9, 1950, as described above, were for the benefit and account of a person other than Jessica K. Jones or Joycette K. Jones. These respondents treated and dealt with the Jessica K. Jones account as though it were the account of respondent Dyke Cullum, but there was no indication on the books and records of George Sirota and Sons that any person other than Jessica K. Jones had any interest in the account.

12. On June 23, 1950, respondent Dyke Cullum, for the purpose of switching forward a long position in July soybean oil, directed George Sirota and Sons to sell five contracts of July soybean oil and purchase five contracts of September soybean oil for his account. Respondent George Sirota and Sons then entered the

purchase of five September contracts in the account of respondent Dyke Cullum but subsequently, at the instructions of respondent Cullum, deleted such entry and entered three contracts of the said purchase in the Kiki Cullum account and two contracts in the Jessica K. Jones account. Prior to this purchase, respondent Dyke Cullum had bought and was holding twelve contracts of September soybean oil on the New York Produce Exchange and the additional five contracts purchased on June 23 made his total long position seventeen contracts.

13. Respondent George Sirota and Sons was aware of the fact that the purchase of five contracts of September soybean oil on June 23, described in Finding of Fact 12, represented the switching forward of a July position held by respondent Dyke Cullum, that respondent Cullum held a long position of twelve contracts in September soybean oil on the New York Produce Exchange prior to such purchase,

and that the additional five contracts executed for his account gave him a total long position of seventeen contracts.

14. Section 4i of the act (7 U.S.C. § 6i) requires reports in accordance with rules and regulations of the Secretary of Agriculture whenever a person shall directly or indirectly have or obtain a long or short position in a future of a commodity equal to or in excess of such amount as shall be fixed by the Secretary of Agriculture. Sections 10.10, 10.11, and 10.21 of the rules and regulations under the act (17 CFR 10.10, 10.11, 10.21) require reports from *any person* who holds or controls open contracts equal to or in excess of 900,000 pounds of oil (soybean or cottonseed) which is the equivalent of 15 contracts or carlots. Sections 10.4, 10.5, 10.6, and 10.20 of the regulations require each futures commission merchant to report positions in a customer's account whenever such positions equal or exceed 15 contracts of soybean oil futures (17 CFR 10.4, 10.5, 10.6, 10.20).

15. Pursuant to the requirements of the regulations mentioned in Finding of Fact 14 above, reports were due from the respondent Dyke Cullum on 14 days during the period from June 23, 1950, to August 10, 1950, and from the respondent partnership on every business day during this period. Respondent Dyke Cullum filed no such reports although he was aware of the reporting provisions and of the fact that he was obligated to make such reports regardless of the names of the accounts in which the contracts were carried. No reports of Cullum's holdings were made by the respondent partnership until after July 18, 1950, when as a result

of a controversy between Cullum and the other respondents, the Sirotas and Cullum went to the Commodity Exchange Authority. The respondent partnership knew the reporting requirements of the regulations and knew that the five September contracts purchased for Cullum put him in reporting status.

16. On May 22, 1950, the account carried on the books of George Sirota and Sons in the name of Dyke Cullum needed approximately $ 7,000 for margin and the account carried in the name of Jessica K. Jones needed approximately $ 3,500 for margin. On that date, respondent Dyke Cullum delivered to respondent Harry A. Aspinwall a check for $ 10,500. This sum was intended by respondent Dyke Cullum to cover the margin needed in both accounts and was so credited by George Sirota and Sons.

17. On July 18, 1950, after liquidation of the spot oil transaction involving 20 tank cars of cottonseed oil, the respondent Cullum paid to respondent George Sirota and Sons the sum of $ 40,000 to cover margin requirements for the Dyke Cullum account, the Kiki Cullum account, and the Jessica K. Jones account, knowing at the time that the said sum was given for the purpose of margining all three accounts.

18. The transactions described in the foregoing Findings of Fact could have been used for hedging transactions in interstate commerce in cottonseed oil or soybean oil or the products or byproducts thereof, or determining the price bases of contracts in interstate commerce in such commodities, or for delivering such commodities in interstate commerce.

CONCLUSIONS

I

It is admitted that respondent Dyke Cullum held a long position of twelve contracts of September soybean oil prior to his purchase of five additional long contracts on June 23, 1950, which brought his long position to seventeen contracts, or two over the reporting limit. Respondent Cullum does not dispute the fact that he failed to file the required reports nor does he dispute the fact that he intentionally failed to file. His defense is only that he was persuaded to put the five contracts in the Kiki Cullum and Jessica K. Jones accounts by Aspinwall and the Sirotas and that since neither Kiki Cullum nor Jessica K. Jones authorized the placing of these contracts in their accounts,

the purchase of the five contracts was never consummated and respondent Cullum was, therefore, never in reporting status. This defense has no merit. The purchase was

made on the New York Produce Exchange with George Sirota and Sons taking the other side of the transaction and was entered on the firm's books and records. Whether Kiki Cullum or Jessica K. Jones approved the placing of the contracts in their accounts is wholly immaterial insofar as this violation is concerned. Respondent Cullum admits that the trades were made and that they belonged to him. Cullum himself described the arrangements as "shady" (tr. pp. 705, 706). Therefore, we must conclude that respondent Dyke Cullum wilfully violated the act and the regulations as charged in the complaint when he failed to report the purchase and the resulting market position.

II

Proceeding to the charge against the respondent partnership of wilfully failing to file reports, George Sirota and Sons became obligated to report Dyke Cullum's long September soybean oil position of seventeen contracts as of June 23, 1950, if it knew that the five contracts purchased on that day belonged to Dyke Cullum. The evidence is clear that the firm knew this. The purchase of five Septembers for Cullum was to replace five Julys of Cullum and was accomplished after considerable discussion between Cullum and the Sirotas as to what the premium would be for July over September. The purchases were first entered in Dyke Cullum's account and later "lined out" after the firm received instructions from Cullum to place three of the contracts in the Kiki Cullum account and two in the Jessica K. Jones account.

Whether or not Dyke Cullum "owned" the Kiki Cullum n2 or Jessica K. Jones accounts, he gave the trading orders in these two accounts and "controlled" them. Respondent Benjamin Sirota testified that the Sirotas treated Cullum as if he had a power of attorney in the Kiki Cullum and Jessica K. Jones accounts. Section 10.04(b) of the regulations provides:

"(b) *Accounts belonging to or controlled by the same person.* For the purpose of reporting on Form 1001, all accounts which belong to or are controlled by the same person shall be considered one account. All accounts required to be reported on Form 1001 shall be known as 'special accounts' and the report thereon shall show the net position, as of the close of the market on the day covered by the report, of each such

account in each future in which there are open contracts equal to or in excess of such specified amount."

n2 The complaint does not charge the Sirotas or Aspinwall with any violations of the act or regulations with respect to the Kiki Cullum account except in connection with the three September soybean oil contracts of Dyke Cullum placed in the Kiki Cullum account.

Section 1.3(j) of the regulations provides:

"(j) *Controlled account.* An account shall be deemed to be controlled by a person if such person by power of attorney or otherwise actually directs trading for such account."

It is plain, then, that under the regulations there is no validity in the defense of the Sirotas to the effect that they had to follow Cullum's instructions, that they had a right to assume that Cullum "gave" the five contracts to Kiki Cullum and Jessica K. Jones, etc. In fact, the Sirotas admit that they should have combined these five contracts with Cullum's twelve September long soybean oil contracts for reporting purposes, but they say that they did not deliberately participate in a plan to avoid reporting status for

Cullum. Their belated acknowledgement of their duty in this respect came after a break with Cullum. The evidence is that the Sirotas knew that Cullum had twelve September long contracts in the account in his name, they knew he switched five July for five September long contracts, they knew he gave the trading orders in the Kiki Cullum and Jessica K. Jones accounts and was running these accounts as well as the one in his own name, and they readily complied with his instructions to place the five September contracts, switched from Julys, in the Kiki Cullum and Jessica K. Jones accounts. Too, they had been warned by the Commodity Exchange Authority in a letter dated June 6, 1950 (Government Exhibit 17), that their reports, including the types of reports involved here, were inaccurate and unsatisfactory. Unquestionably, the Sirotas aided Cullum in giving the appearance of not being in reporting status. All these facts add up to make the weight of the evidence as being to the effect that the firm wilfully failed to make the reports required by the regulations.

III

We come next to the charges of violating section 4 of the act and section 1.37 of the regulations against respondents Aspinwall and George Sirota and Sons by virtue of the transactions entered in the Jessica K. Jones account (excluding the two September soybean oil purchase contracts of June 23). The complaint alleges that these respondents confirmed the execution of contracts in commodity futures and wilfully failed to evidence such contracts by a record in writing showing the true names of the parties to such contracts in violation of section 4 of the act and section 1.37 of the regulations.

Section 4 of the act makes it unlawful for ". . . any person to

deliver for transmission . . . any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of any commodity for future delivery on or subject to the rules of any board of trade in the United States . . . except . . . if such contract is evidenced by a record in writing which shows the date, *the parties to such contract* and their addresses . . ." (Emphasis supplied.)

Section 1.37 of the regulations provides (17 CFR 1.37):

"Customer's name, address, and occupation recorded; record of guarantor or controller of account. Each futures commission merchant and each member of a contract market shall keep a record in permanent form which shall show for each commodity futures account carried by him the true name and address of the person for whom such account is carried and the principal occupation or business of such person as well as the name of any other person guaranteeing such account or exercising any trading control with respect to such account. Such record shall be open to inspection by any authorized representative of the Commodity Exchange Authority."

These respondents urge that section 4 of the act applies only to contracts between the members of the New York Produce Exchange because the contract "slips" made up from the floor brokers' cards at the end of the day are the only documents which show the "parties" to the futures contracts since the opposite party to each trade is lost when the contract has been cleared and the clearing house substituted. The same contention was made and overruled in *Irving Weis and Co.* v. *Brannan et al.*, 171 F. (2d) 232 (C.C.A. 2d, 1948).

As far as the Sirota respondents are concerned, there can be no doubt that they did not comply with section 1.37 of the regulations. While it is not too clear as to whether these respondents take the position in this proceeding that Cullum "owned" the Jessica K. Jones account, they have maintained that Cullum had authority to trade in the account and was financially responsible for it. Indeed, they insist in their brief (p. 22) filed after the close of the hearing that the hearing record evidence establishes that Cullum ". . . caused the Jessica K. Jones account to be opened, that he gave the orders for trades in that account and purported to exercise full authority over the account; that he

knew the results of all the trading in the account; and that the account either belonged to him or was under his control at all times."

Consequently, then, under either situation, that is whether the Sirotas believed that Cullum owned the Jessica K. Jones account

or believed that he merely controlled it, the Sirota respondents should have shown in their records the connection of Cullum with the Jessica K. Jones account. This they did not do.

Aspinwall disclaims violation of section 1.37 of the regulations on the ground that the regulation applies only to the futures commission merchant or member of the contract market who carries the accounts. He says that he was merely the solicitor or agent for the Sirota firm which carried the account and that, consequently, he cannot be charged with violation of this section of the regulations. Aspinwall participated in the setting up of the Jessica K. Jones account and serviced this and the Dyke Cullum and Kiki Cullum accounts. We conclude that this section of the regulations reaches him also.

But even if we may not be correct in our view of the applicability of section 1.37 of the regulations to Aspinwall, section 4 of the act itself was breached by both Aspinwall and the Sirota respondents. Aspinwall accepted orders from Cullum by telephone to execute trades, he confirmed the execution of trades by telephone and relayed directions to the Sirotas from Cullum as to the accounts in which the trades should be placed. Such activities under the circumstances constitute violations of section 4 of the act when Aspinwall knew that Jessica K. Jones or Joycette K. Jones was not the owner of the Jessica K. Jones account. Of course, the Sirota respondents also violated section 4 of the act as well as section 1.37 of the regulations by reason of the execution, confirmation, etc., of contracts, and the carrying of an account in the name of Jessica K. Jones when it was plain, and they knew, that she was not the party to the contracts and was not the owner of the account.

These respondents would have us conclude, however, that they believed that Miss Jones was the owner of the account in her name and that Cullum merely had some kind of oral permission or authority from Miss Jones to trade the account *plus* financial responsibility. This defense is no answer to the charge of violating section 1.37 of the regulations which required these respondents to make a record of the fact that Cullum controlled this account.

In any event, though, the respondents ask us to consider them so naive as to believe that a person owned an account for which the person supplied no customer's agreement, no funds, no trading orders, no power of attorney for anyone else to trade the account, and for which the person gave an address at which they knew she was not living at the time the account was opened. They admit that Cullum opened the account, gave the trading orders and

furnished the funds. They stated in a letter to the Commodity Exchange Authority on July 20, 1950 (Sirota Exhibit 1), that Dyke Cullum ". . . has opened another account in a different name." This was the Jessica K. Jones account which had been opened as far back as May 8, 1950. In the face of these facts, we cannot accept as true the respondents' pleas that they believed Miss Jones to be the owner of the account.

It is true, of course, as invoked by these respondents, that Miss Jones made a telephone call to the Sirota firm giving the name and the address for the account and that Miss Jones did not repudiate at least the first confirmations of trades sent to the Texas address. These respondents place much stress upon these aspects of the case and they also claim that they tried to get a power of attorney n3 executed by Miss Jones in favor of Cullum. These items of attempting protective coloration were merely half-gestures to give some semblance of regularity to the account and were recognized by Aspinwall and the

Sirotas as such. Aspinwall himself testified as to his misgivings when he got instructions from Cullum over the telephone to place trades in "J. K. Jones" account. n4

n3 The Jessica K. Jones account was opened on *May 8, 1950,* but no deposit in the account was made until Cullum made a deposit of $ 8,500 on *May 22, 1950,* and Cullum Exhibit 1 shows Aspinwall and the Sirota firm asking *Cullum* on *June 26, 1950,* to have "Buck" (apparently Miss Jones' brother) execute a power of attorney in Cullum's favor.

n4 "Q Now, we will move along to the date of the opening of the Jones account, which was May 8, 1950. Do you recall the circumstances relating to the opening of the Jones account?

"A Yes.

"Q Will you tell us for the record what happened in that connection?

"A On that day, Dyke called me and said he wanted to do some trading, and we talked generally about the market conditions, so I called down to the floor and asked them what the market was and got the last trade from Bernie. I proceeded then to tell Dyke what the last trades were. He asked me to get the bid and asked, and I got that for him, which I immediately transmitted to him on the telephone, and then he said, 'Pick up a certain quantity of oil,' which I immediately transmitted to Bernie, waiting for a report, I mean, as to whether or not it was executed. It was executed, I transmitted the information to Dyke, and we talked a second. He said, 'Put that in the Jones account.' And I said, 'Jones?' I said, 'What Jones?' He said, 'J. K. Jones.' I said 'Dyke,' I said, 'Jones?' He said, 'J. K. Jones, Yes.' He said, 'Everything will be taken care of.' He said, 'You know how Kiki Cullum's account was handled.' and he said, 'Don't worry about it.' I said, 'Okay, Dyke, you know damn good and well what this whole CEA thing is about, so you ought to know what you are doing.'

"Q And then what happened?

"A I hung up -- he hung up." (Tr. pp. 1787-1788)

IV

The action of the Sirota respondents in placing three of the five September soybean oil contracts of Cullum in the Kiki Cullum account and two of these contracts in the Jessica K. Jones account

also amounted to violations of section 4 of the act and section 1.37 of the regulations. These respondents knew that the contracts were Cullum's and, therefore, they wilfully violated these sections of the act and the regulations.

V

The Sirota respondents and Aspinwall seek escape from liability for the violations found by claiming that they did not participate in any plan to conceal Cullum's trading and that they should not be found to have violated wilfully either section 4i of the act and the reporting regulations or section 4 of the act and section 1.37 of the regulations. The facts demonstrate that the Sirota firm did not make the required reports, that Jessica K. Jones was not the true owner of the account in this name and that the Sirota records had no indication that any other person was trading the account, and that the Sirota firm placed in this and in another account contracts which they knew belonged to Dyke Cullum. They obscured the truth as to the facts of Cullum's trading and as to the operation of the Jessica K. Jones account. Aspinwall was the Sirota firm's agent and the Sirotas are responsible under section 2 of the act for the activities of Aspinwall.

Throughout the proceeding, the Sirotas and Aspinwall seem to press the theory that they should be exonerated if they are successful in proving that they only did what Cullum told them to do. This avenue of escape would not be open for them in any event but the evidence is unmistakable that they took the risk, with knowledge, of playing along with a trader whom they regarded as influential in Washington, D. C., circles. If the fates had been kind, the facts might never have been known and this proceeding might not have been born. For several reasons, however, the arrangements soured and the protestations now of gullible innocence lack conviction.

Violations of the act and the regulations need not possess as an indispensible ingredient, which the respondents apparently argue, some sort of malevolence, evil intent, or motive to hide someone else's violation of the act. Wilfulness means "no more than that the person charged with the duty knows what he is doing" and it "does not mean that, in addition, he must suppose that he is breaking the law." *Townsend* v. *United States,* 95 F.(2d) 352, 358 (App. D. C. 1938), *cert. denied,* 303 U.S. 664 (1938).

VI

The Sirota respondents and Aspinwall argue that their motions to dismiss following the presentation of the complainant's case at the hearing should have been granted. Their position is that the only evidence presented by the complainant up to that time in the proceeding that could support the charges was heresay evidence, namely the testimony of Bagnell as to his conversations with respondent Dyke Cullum and Miss Joycette K. Jones. Upon objection by counsel for the Sirotas, the referee had ruled that Bagnell's testimony as to Cullum's statements was admitted in evidence but would be stricken if Cullum did not testify during the course of the hearing and thus be available for cross-examination by the other respondents. The insistence by these respondents upon dismissal following testimony by the complainant's witnesses is based upon the proposition that since an administrative finding of fact cannot be supported by hearsay evidence exclusively (citing such cases as *Consolidated Edison Co.* v. *National Labor Relations Board,* 306 U.S. 197, 217 (1939); and *Willapoint Oysters* v. *Ewing,* 174 F.(2d) 676 (C.C.A. 9th, 1949), *cert. denied,* 338 U.S. 860 (1950), these respondents had a right to dismissal of the complaint because the complainant introduced only hearsay evidence to support the charges. As additives to their grievances on this score, they complain because the complainant did not call respondent Dyke Cullum, Kiki Cullum or Miss Jones as complainant's witnesses, and they point out that a result of failure to grant the motion to dismiss is that the complainant may utilize against them on the merits the testimony of another respondent, Dyke Cullum, who is hostile to them.

The proposition that in an administrative proceeding the complaining agency must establish its case before it rests by means of the same quantity and quality of evidence necessary to support findings of fact following the full hearing is somewhat novel and intriguing. The respondents concede that they have been unable to discover any authorities in support of their view. But we do not believe it necessary to examine this point more carefully because there was ample evidence to warrant continuance of the hearing without reference to the testimony of Bagnell concerning his conversations with Cullum and Miss Jones. Bagnell's testimony about his conferences with the Sirotas and Aspinwall were not heresay as to these respondents. According to Bagnell, the Sirotas admitted that they should have combined, for reporting purposes, the five September soybean oil contracts placed in the Kiki Cullum and Jessica K. Jones accounts with the twelve September contracts

in Dyke Cullum's account. The Sirotas also stated, according to Bagnell, that they considered the Kiki Cullum and Jessica K. Jones accounts as belonging to Dyke Cullum and that each of these accounts was opened upon instructions from Cullum and that he gave all the trading orders in these accounts. This

testimony and the supporting exhibits, together with Robinson's testimony concerning failure to report, were more than enough to proceed with the hearing. Insofar as the charge of misusing customer's funds is concerned, that charge was dropped following the hearing. There was adequate reason, too, to continue the hearing with respect to respondent Dyke Cullum.

On the merits, also, the weight of the evidence establishes the violations found against Aspinwall and the Sirotas without reference to Cullum's testimony or Bagnell's testimony as to his conversations with Cullum and Miss Jones. It was appropriate for the complainant to abandon the charge of misusing customer's funds in view of the evidence that Cullum intended to margin the Jessica K. Jones account.

The respondents raised a number of objections, procedural and otherwise, during the course of the proceeding. Some of the respondent Cullum's objections were taken as if he were the complainant in this proceeding rather than a respondent. We do not consider it necessary to discuss and evaluate all the objections and exceptions not specifically mentioned herein. Of course, all requests for findings and all exceptions, objections, etc., that are inconsistent with this decision and order are overruled.

Accordingly, then, sanctions should be ordered. The respondent partnership is responsible under section 2 of the act for the violations found, *Irving Weis and Co.* v. *Brannan, et al supra,* whether or not George Sirota personally participated in or was aware of what was happening. Therefore, the registration of the partnership as a futures commission merchant should be suspended and we think a suspension of 10 days is sufficient. The registrations of Aspinwall, Benjamin Sirota and Norman L. Sirota as floor brokers should also be suspended for 10 days because these respondents were involved in the violations. With respect to George Sirota, we do not appraise the evidence as proving his personal participation in, or awareness of, the violations except that he learned of Cullum's connections with the Kiki Cullum account and the Jessica K. Jones account when the controversy arose over whether the Sirotas should hold Cullum financially responsible for these accounts. It is clear from the evidence too, that Norman L. and Ben Sirota rather than George Sirota conducted the part

of the firm's business dealing with the futures accounts of customers. We refrain, then, from ordering suspension of the registration of George Sirota as floor broker.

The unregistered respondent, Dyke Cullum, should be denied trading privileges on the contract markets for ten days. We do not deem it necessary, however, to impose this sanction also upon the registered respondents in addition to suspensions of their registrations.

ORDER

The registration under the act of George Sirota and Sons as a futures commission merchant is suspended for ten days and the registrations under the act of Norman L. Sirota, Benjamin Sirota and Harry A. Aspinwall as floor brokers are suspended for ten days.

All contract markets shall refuse all trading privileges to Dyke Cullum for a period of ten days.

This order shall become effective on September 1, 1953. A copy hereof shall be served by registered mail upon each respondent and each contract market under the act.

LOAD-DATE: June 8, 2008