

Commodity Futures Trading Commission
CEA CASES

NAME: IRVING WEIS AND COMPANY, IRVING WEIS, AND ALEXANDER CYCLEMAN

CITATION: 7 Agric. Dec. 180

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(Agric. Dec. 1715)

In re IRVING WEIS AND COMPANY, IRVING WEIS, AND ALEXANDER CYCLE MAN. CEA Doc. No. 39. Decided March 5, 1948.

Suspension of Registration as Futures Commission Merchant and Floor Broker -- Denial of Trading Privileges -- Wilful Violation of Act

Evidence reviewed and held to show that violations of section 4 of the Commodity Exchange Act and section 1.37 of the regulations thereunder were wilful and justified suspension of registration as a futures commission merchant and floor broker and denial of trading privileges for a period of 10 days. *

* Reference to other points involved in this case will be found in Index-Digest in this issue of Agriculture Decisions. -- Ed.

Books and Records -- Purpose of Regulatory Requirements of Keeping Correct Written Records

The keeping of correct records is prescribed by the Commodity Exchange Authority so that by inspection of such records it may be ascertained whether or not the act was violated, and not merely for the purpose of enabling specific records to be produced upon specific demand by the administrators of the act when they are engaged in an investigation of particular acts because of information obtained from other sources. *

* Reference to other points involved in this case will be found in Index-Digest in this issue of Agriculture Decisions. -- Ed.

Books and Records -- Written Records of Futures Commission Merchant Showing Failure to Comply With Regulatory Requirements

Where a basic record such as a contract or financial ledger kept by a futures commission merchant shows a customer's account in a natural name other than that of the true owner of the account with no indication of that fact on the ledger, and such futures commission merchant presents the ledger to a representative of the Commodity Exchange Authority for examination without advising the representative of that fact, such presentation is a representation that the account is owned by the person whose name appears on the ledger, and the mere existence, in a card file maintained by the futures commission merchant but not called to the representative's attention, of certain index cards which list the true owner of the account, does not constitute compliance with section 4 of the Commodity Exchange Act and section 1.37 of the regulations thereunder, requiring each futures commission merchant to maintain a written record showing the true name of each person for whom a futures contract is executed. *

* Reference to other points involved in this case will be found in Index-Digest in this issue of Agriculture Decisions. -- Ed.

Books and Records -- What Constitutes Written Record Kept by Futures Commission Merchant

The written record showing the true parties to a futures contract, required to be kept by a futures commission merchant under section 4 of the Commodity Exchange Act and section 1.37 of the regulations thereunder, is the record which the futures commission merchant represents as such. *

* Reference to other points involved in this case will be found in Index-Digest in this issue of Agriculture Decisions. -- Ed.

Evidence -- Failure of Futures Commission Merchant to Keep Correct Written Records -- Improper Preparation of Index Cards

Evidence reviewed and held to show that certain index cards purporting to disclose the true name of the owner of an account were not made out and kept on file contemporaneously with the opening of the account, as claimed by respondents, but were prepared and placed in the file at some later date. *

* Reference to other points involved in this case will be found in Index-Digest in this issue of Agriculture Decisions. -- Ed.

Books and Records -- Evidence -- Failure of Futures Commission Merchant to Keep Correct Written Records -- Conflicting Records Failing to Disclose Owner of Account

Evidence reviewed and held to show that certain index cards maintained by respondent in a card file and purporting to show the name of the owner of an account, were conflicting and did not in fact constitute a record of the true name of the person for whom the account was carried, as required by section 4 of the Commodity Exchange Act and section 1.37 of the regulations thereunder. *

* Reference to other points involved in this case will be found in Index-Digest in this issue of Agriculture Decisions. -- Ed.

Mr. Benjamin M. Holstein for complainant. *Messrs. Harold H. Corbin and Edward J. Bennett*, of Corbin, Bennett & Delehanty, New York City, for respondents. *Mr. John B. Poindexter*, 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), initiated by a complaint issued on May 7, 1946, by Clinton P. Anderson, Secretary of Agriculture, alleging in substance that Irving Weis, Irving Weis and Company, and Alexander Cycleman, hereinafter called respondents, during the period from June 14 to November 20, 1945, made, executed, and confirmed the execution of contracts of sale of commodities for future delivery on or subject to the rules of Boards of Trade and did not evidence such contracts by a record in writing showing the true parties to such contracts and their addresses. The respondents filed an answer denying the material allegations of the complaint.

After several postponements, a hearing was held in New York, New York, beginning of October 8, 1946, before John B. Poindexter, Referee. Benjamin M. Holstein, Office of the Solicitor, Washington, D. C, appeared on behalf of the Commodity Exchange Authority, hereinafter referred to as complainant. Harold H. Corbin and Edward J. Bennett of Corbin, Bennett & Delehanty, New York, New York, appeared on behalf of respondents. At the conclusion of the presentation of the complainant's case, respondents made a motion to dismiss which was denied by the referee. Both sides presented evidence, cross-examined witnesses, and introduced exhibits. Following the hearing, both sides also filed suggested findings of fact, conclusions and order and supporting briefs. The referee

issued his report on July 25, 1947, proposing that respondents be found to have violated the act as alleged and recommending a suspension of respondents' trading privileges on their own account and a suspended suspension of the registration of Irving Weis and Company as a futures commission merchant and the registration of Irving Weis as a floor broker.

The proceeding involves the handling by respondents of the trading of Reuben McGuigan, sometimes known as E. L. McGuigan and Louis J. Burnstein. In a former proceeding, 5 Agric. Dec. 249 (5 A.D. 249) (1946), 5 Agric. Dec. 525 (5 A.D. 525) (1946), McGuigan was found to have violated the act by assuming market positions for himself in commodity futures after which he sent out to traders telegrams advising purchases or sales which favorably affected his position.

FINDINGS OF FACT

1. Respondent Irving Weis and Company is a partnership composed of respondents Irving Weis and Alexander Cycleman, and also Joseph Mark and Morris Weis, having its place of business in New York, New York. At all times mentioned herein, the partnership

was registered under the Commodity Exchange Act as a futures commission merchant.

2. Respondent Irving Weis, Lawrence, Long Island, New York, a member of the partnership, is a member of the New York Cotton Exchange and at all times material herein was registered under the Commodity Exchange Act as a floor broker.

3. Alexander Cycleman, an individual residing at Cedarhurst, Long Island, New York, is a member of the partnership of Irving Weis and Company.

4. The New York Cotton Exchange, the New Orleans Cotton Exchange, and the Board of Trade of the City of Chicago were, prior to November 30, 1944, duly designated as contract markets under the act and have been contract markets continuously since that time.

5. In the early part of November 1944, one Reuben McGuigan, also known as E. L. McGuigan and Louis J. Burnstein, became indebted to the respondents in the sum of \$ 300 as the result of an unpaid check, signed with the name "Edith Adelson" as maker, which the respondents had cashed for McGuigan. As a result of such indebtedness, the respondents opened an account in their financial ledger in the name of Edith Adelson with nothing to indicate that any other person had any interest in the account. By April 17, 1945, McGuigan had paid in cash the amount of the check. An examination of respondents' books and records was made by representatives of the Commodity Exchange Authority in December 1944 but respondents did not furnish any information to the effect that any person other than Edith Adelson had any interest in the account.

6. During the period from the opening of the account in November 1944 to March 31, 1945, there was no trading in commodity futures in the account. Another examination of respondents' books and records was made by representatives of the Commodity Exchange Authority commencing about April 1, 1945, and continuing for two or three weeks. Respondents did not furnish any information to the effect that any person other than Edith Adelson had any interest in the account.

7. During the latter part of May 1945, McGuigan told respondent Cycleman that he wished to open a trading account with respondent Irving Weis and Company in the maiden name of his wife, Edith Adelson. According to Cycleman's testimony, McGuigan explained that he was running a market news report and that he didn't want people to know what he was doing in the market who did not pay for his report. Cycleman gave McGuigan a blank power-of-attorney form to be signed by McGuigan's wife. McGuigan returned some days later with a document bearing the signature "Edith Adelson." The signature was not witnessed. McGuigan showed Cycleman some

papers purporting to show the true signature of Edith Adelson including a power of attorney over a bank account in Edith Adelson's name and Cycleman then witnessed the signature "Edith Adelson." This document was a trading authority and did not authorize respondents to pay any funds out of the account to McGuigan.

8. Thereafter, on June 14, 1945, McGuigan produced a check for \$ 1,200 at the office of respondents, signed the check "Edith Adelson by Reuben McGuigan" in the presence of Cycleman, and delivered the check to Cycleman for the purpose of financing transactions in commodity futures contracts in the account opened for McGuigan in the name of Edith Adelson.

9. During the period between June 14, 1945, to November 14, 1945, at the direction of McGuigan, respondent Irving Weis and Company executed numerous transactions in cotton futures contracts on the New York and New Orleans Cotton Exchanges and also transactions in grain futures contracts on the Board of Trade of the City of Chicago for McGuigan. Records of these transactions were entered by respondent Irving Weis and Company in the usual course of business in its contract and financial ledgers under the account opened by McGuigan in the maiden name of his wife Edith Adelson. The heading of this account, as shown at the top of the page of the contract ledger maintained by respondent Irving Weis and Company, was as follows:

Name: Adelson, Edith

Address: 36 Alhern Avenue, Ocean Side, Long Island

10. There was nothing on the face of the ledger sheets under which transactions in the Edith Adelson account were recorded to indicate that Edith Adelson was not the actual owner of said account or that any other person had any interest in the account.

11. All funds accruing to the Edith Adelson account as a result of the transaction described in Finding of Fact 9 above were paid by the respondents in the form of cash delivered to McGuigan in person, or in the form of checks made payable to Edith Adelson and delivered by the respondents to McGuigan.

12. On September 1, 1945, and November 8, 1945, respondents made cash payments of \$ 50 and \$ 100, respectively, to Reuben McGuigan. In connection with the payment of September 1, 1945, respondents noted on the voucher that the sum in question had been paid to Edith Adelson and was to be charged to her account. In connection with the payment of November 8, 1945, respondents accepted a receipt which they knew had been signed by McGuigan with the name Edith Adelson.

13. From June 25, 1945, to November 9, 1945, respondents issued 28 checks, payable to Edith Adelson, in the aggregate amount of

\$ 41,039.75. These checks were delivered to McGuigan in person, who endorsed each of them by signing the name Edith Adelson. Nineteen of these checks, in the total amount of \$ 5,728.75, were then further endorsed by the respondent with the notation "Please pay cash to bearer" or "Please pay cash on demand", followed by the signature of respondent Cycleman or Joseph Mark, a partner in the respondent partnership, thus authorizing McGuigan to receive cash. The remaining nine checks were otherwise negotiated by McGuigan, in some cases with the aid of the respondents.

14. On November 15, 1945, respondents, at the request of McGuigan, closed the account then being carried in the name of Edith Adelson and, on the following day, opened another account for him under the name of Louis J. Burnstein. In connection with the closing of the Edith Adelson account, McGuigan executed a memorandum to the respondents (Government's Exhibit No. 5) directing them to

credit to the Louis J. Burnstein account a balance of \$ 19,500 which had accrued to the Edith Adelson account. The respondents knew that this memorandum had been prepared by McGuigan and that he had signed Edith Adelson's name thereto. In connection with the opening of the new account, McGuigan executed a customer's card form for the respondents' records (Government's Exhibit No. 4), which he dated back to July 20, 1939, and upon which, with the knowledge of respondents, he signed a fictitious name (Louis J. Burnstein) and gave a non-existent address. The customer's card was executed at the offices of the respondents and delivered to and accepted by respondent Cycleman.

15. From November 16, 1945, through November 23, 1945, the respondents executed and entered in the account carried in the name of Louis J. Burnstein numerous transactions in cotton futures contracts on the New Orleans Cotton Exchange, and numerous transactions in grain futures contracts on the Board of Trade of the City of Chicago. These transactions were consummated pursuant to orders given by McGuigan and were entered by the respondents in the account carried in the name of Louis J. Burnstein, with no indication that any person other than the said Louis J. Burnstein had any interest in the said account.

16. On November 23, 1945, respondents at the request of McGuigan closed the account then being carried in the name of Louis J. Burnstein and opened another account in the name of McGuigan. In closing the Burnstein account, respondents made out a check for the balance in the account payable to Louis J. Burnstein, Irving Weis and Company negotiated or endorsed the check. About the same time, at McGuigan's request, respondents opened an account in the name of Reuben McGuigan

with a credit to McGuigan of approximately the same amount as the payment to him in the name of Burnstein. McGuigan traded in this account until January 15, 1946, at which time the account showed a credit of \$ 31,451.75. On January 15, 1946, this amount was paid to McGuigan by respondents and the account was closed.

17. Reuben McGuigan was at all times the sole owner of the accounts carried in the names of Edith Adelson and Louis J. Burnstein. This fact is admitted by the respondents. All transactions in these accounts were consummated by respondents pursuant to orders given by McGuigan and all funds accruing to the accounts as the results of such transactions were paid by the respondents to McGuigan.

18. Beginning on or about October 27, 1945, and continuing for a period of two or three weeks thereafter, representatives of the Commodity Exchange Authority examined the respondents' books and records, including the aforesaid account being carried in the name of Edith Adelson and noted that the account showed a number of the transactions described in paragraph 9 above. Throughout the entire period of this examination, the representatives of the Commodity Exchange Authority were not furnished with any information to the effect that these transactions were carried out in accordance with orders given by McGuigan or that Edith Adelson was not the true owner of the account.

19. On the morning of November 20, 1945, Robert L. Caldwell, Chief Accountant, New York office of the Commodity Exchange Authority, visited the office of respondents to ascertain whether respondents were carrying an account for McGuigan. The Commodity Exchange Authority representatives had been keeping McGuigan's activities under observation for some time and were trying to find out if he was trading in commodities subject to the act. They had discovered from outside sources a connection between, McGuigan and Edith Adelson Mr. Caldwell asked Mr. Cycleman if Weis and Company was carrying an account for McGuigan. Cycleman said, "No, we do not have an account for E. L. McGuigan but we do have an account for his wife, Edith Adelson." Caldwell asked if McGuigan controlled the account and Cycleman said "Yes" and produced the trading authority mentioned in Finding of Fact 7.

20. On the afternoon of November 20, 1945, Caldwell made another visit to respondents' office. During that visit Cycleman told Caldwell that McGuigan had opened an account in the name of Louis J. Burnstein. This is the account described in Finding of Fact 14 as opened in the name of Burnstein on November 16, 1945. On November 26, 1945, Caldwell talked to Weis and Cycleman about the question as to whether payments made out of the Adelson account were

made to the order of Edith Adelson. In confirmation of information given orally by Cycleman to Caldwell, Cycleman, after consultation with Irving Weis, signed the following statement:

"In accordance with letter of June 1, 1945 signed by Edith Adelson, the firm of Irving Weis & Co. is authorized to accept, enter and execute orders for the purchase and sale of stocks, bonds, grains, cotton and other commodities when such orders are given by E. L. McGuigan. However, no authorization permitting the withdrawal of funds by E. L. McGuigan has been executed. Accordingly, all checks which were charged to the regulated commodity account of Edith Adelson during the period June 1, 1945 to November 15, 1945 were drawn to her order. All payments of cash which were charged to this account during the same period were made to Edith Adelson."

About 30 minutes after the statement was given to Caldwell, respondent Irving Weis sought its return but abandoned the attempt when he found that photostats of the statement had already been made.

21. On January 4, 1946, Mr. Caldwell and Mr. Douglas B. Bagnell, Chief, Commodity Exchange Supervision Division, Commodity Exchange Authority, conferred with Cycleman about the signature on the trading authority mentioned in Finding of Fact 7. On January 6, 1946, a disciplinary complaint was filed against McGuigan resulting in the decision and order against him referred to in the Preliminary Statement. Subsequently, on January 25, 1946, Cycleman and Weis visited the office of Commodity Exchange Authority in New York and during the course of the visit produced two 3 x 5 cards, copies of which are in evidence as Government Exhibits 8 and 9. One bears the typed name and address at the top, "Adelson, Miss Edith, 36 Al-bern Ave., Ocean Side, L. I." Underneath this are numbers 1 to 8 arranged vertically. There is nothing entered on the lines so numbered except the typed name E. L. McGuigan after number 6. Under the numbers is a typed heading "Comments" with no entry. The other card contains the typed name and address "Rueben L. McGuigan, 15 Moore St. N. Y. C." at the top and under this appears "Internal Market Forecast Bureau" followed by the designation "Trade Names" after which appear "Edith Adelson" and "Louis J. Burnstein." After the name "Edith Adelson" is the symbol "P/A." Following the word "Instructions" is the language "Keep mail and conformations for him at office." Existence of these cards had not been mentioned by respondents to any representatives of the Commodity Exchange Authority at any prior time. Cycleman informed Caldwell on January 25, 1946, that these cards had been in the Weis and Company files since June 1945. On October 9, 1946, the day of the hearing in this proceeding, respondents produced for the first time a third card headed "Louis J. Burnstein." This was not introduced in evidence.

22. Respondent Weis and Company maintains a card index file of about 2,000 cards containing information on customers. About 500 accounts on regulated commodities under the act are carried. No finding of fact is made to the effect that respondents made out the 3 x 5 cards described in the previous finding contemporaneously with the opening of the Adelson and Burnstein accounts and that these cards were thereafter kept in the card index file. On the contrary, it is found that the cards were made out at some later date. The reasons for this finding are given under the heading "Conclusions." It is also pointed out there that even if the cards were made out and kept as claimed, they did not meet the requirements of the act and the regulations.

23. In making audits or examinations, it is customary for representatives of complainant to ask registrants for their contract ledgers showing all

transactions in regulated commodity accounts of their customers. Where the face of the contract ledger lists a code number or trade name other than a natural name as the customer or owner of the account, the auditors have instructions from the Commodity Exchange Authority to make inquiry concerning the actual and true owner of the account. It is not customary or usual for a ledger or any other record in a brokerage firm to show an account in a natural name which is not the true name of the owner of the account. Of 500 customers of respondent Weis and Company trading in regulated commodities under the act, only the trading for McGuigan was carried on the ledgers in natural names other than the true name of the owner of the account. Cycleman admitted that in the absence of prior suspicion as to the ownership of the Adelson account, a Government auditor would take the name of Edith Adelson or any other natural name on the ledger as the name of the true owner of the account (Tr. p. 254). Respondents also knew that the Commodity Exchange Authority examined their books and records about twice a year.

24. Section 4 of the act requires futures contracts to be ". . . evidenced by a record in writing which shows the date, the parties to such contract and their addresses" Section 1.37 of the regulations issued under the act provides as follows:

"SEC. 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." (17 CFR 1.37).

CONCLUSIONS

Most of the facts outlined in the Findings of Fact are not disputed by respondents. It is uncontroverted, for example, that respondents handled McGuigan's trading in futures contracts, that the contract and financial ledgers of respondent Weis and Company carried McGuigan's account in the name of Edith Adelson and later in the name of Louis J. Burnstein, and that no indication was given on the ledgers to the effect that these were not the names of the true owners of the accounts.

Respondents defend by taking the position that neither the act nor the regulations require the true name of the owner of an account to appear on any *particular* record, that respondents made out and kept in a card index file the 3 x 5 cards described in Finding of Fact 21, that these sufficed to meet the requirements of the act and the regulations, and that these would have been forthcoming if a Government auditor or investigator had asked for them.

Even if it should be assumed that respondents made out and kept the cards when they claim they did -- an assumption which is not in accordance with what we view as the facts -- respondents' defense is unsuccessful. The basic records, that is the contract and financial ledgers, carried the McGuigan account in natural names, Adelson and Burnstein, without any indication that these names were not the true names of the owner of the accounts. Respondents continuously refer to these names as "trade names" for McGuigan, they imply that this was a usual and permissible practice for traders, that respondents should not regard the use of such natural names as irregular or improper, and that it is the duty of a Government inspector to inquire as to whether natural names are the true names of the owners of accounts. Of course this line of argument is of absolutely no merit. The evidence on which Finding of Fact 23 is based shows without question that it is only for some illegitimate purpose that trading is done by a person in a natural name other than his own. Of 500 accounts in regulated commodities carried by respondent Weis and Company, only McGuigan's accounts were carried in a natural name other than that of the owner of the account.

Obviously then, any Government auditor or inspector would take the Adelson and Burnstein accounts to be those of Adelson and Burnstein. Respondents knew this to be the case and knew that their books and records were examined about twice a year by representatives of the Commodity Exchange Authority. Yet they presented the ledgers to the Government auditor without even a hint as to the true owner of the Adelson account. The record in writing required to be kept by the act and the regulations of the true owner of an account is the record represented by the futures commission merchant to be the record of the true owner of the account. Respondents without

any doubt represented the Adelson and Burnstein accounts as accounts owned by persons with these names, not McGuigan, when they turned over their ledgers to the Government representative and gave no indication that these natural names were not the names of the true owner of the accounts. If they had some cards showing McGuigan's ownership of the accounts which they did not produce or give any indication of, they did not thereby comply with the act and the regulations.
n1

n1 In a practically identical situation, an employer was found to have made "false records" in violation of the Fair Labor Standards Act when its payroll records presented to the Government inspector showed payment to employees of time and a half for overtime in compliance with the Fair Labor Standards Act, although the employer presented the defense that its cash receipts books showed the true situation of "kickbacks" from employees of part of the wages paid. *United States v. Selman-Reinstein, Inc., et al.*, 52 F. Supp. 208 (D. Minn. 1943).

A further and different fatal infirmity in respondents' defense is that even if the cards were made out and kept as claimed, they do not constitute a record of the true name of the person for whom the accounts were carried.

The card headed "Adelson, Miss Edith" would indicate apparently that there was a customer or account owner by that name and the name E. L. McGuigan on this card after the number 6 had the meaning, apparently under a secret code of respondents, that E. L. McGuigan "controlled" the account. The existence of this card and the card headed by the name of Burnstein which was not introduced in evidence cancel out the effect respondents attribute to the card headed "E. L. McGuigan" which it is claimed shows McGuigan as the true owner of the Adelson and Burnstein accounts. Even this card has the symbol "P/A" after the so-called trade name "Edith Adelson" indicating apparently that there was a power-of-attorney control by McGuigan over the Adelson account rather than outright ownership of the account by McGuigan.

Finally, we cannot agree with respondents and the referee that the 3 x 5 cards were made out by respondents contemporaneously with the opening of the Adelson and Burnstein accounts and were kept in the card index file.

At the hearing, Mr. Weis' knowledge as to when these cards were made out was only that he had a "distinct impression" that the cards "have been in the file."
n2 Mr. Cycleman upon direct examination was asked by his counsel, "Now, was there some record made of the trade name, or whatever you call the designation, by McGuigan of Edith Adelson?." His answer was, "Yes, an index card is immediately made up when an account is opened, and the information necessary to that account is put on it." n3 On cross-examination, Cycleman did not know

who made out the cards -- himself, one of the boys in the office or a stenographer. n4 However, at the hearing he misspelled "Reuben" and "Forecast" as these words were misspelled on one of the cards in evidence. When questioned as to how the card headed "Rueben L. McGuigan" could have been in the files since the opening of the Adelson account when it carried the wording "Trade Names" and "Louis J. Burnstein" when the Burnstein account was not opened until

November 16, 1945, Cycleman's reply was, "All I can say is that there is an addition by adding the name Louis J. Burnstein or a new card might be made out where the full information is added to it. n5 Cycleman had told Caldwell and Bagnell on January 26, 1946, that the cards had been in the file since June 1945. n6 Cycleman personally handled everything else about McGuigan's trading and it seems strange that he should know so little about the cards except that they were made out and kept in the card index file from the opening of the accounts. Cycleman's unsatisfactory testimony on this and other matters, the fact that the two cards in evidence were not produced until after several investigatory interviews with Cycleman, the fact that the card headed "Burnstein" was not produced until about ten months later, led to Finding of Fact 22 to the effect that the cards offered were not made out and kept on file from the time of the opening of the Adelson and the Burnstein accounts but were prepared some time later.

n2 Tr. p. 183.

n3 Tr. p. 233.

n4 Tr. pp. 248, 264.

n5 Tr. p. 290.

n6 Tr. pp. 63, 103, 146.

Respondents, then, violated section 4 of the act and section 1.37 of the regulations issued under the act. Any objections or exceptions of respondents inconsistent with this conclusion are overruled. The violations found are not trifles. The very foundation of proper and effective administration of the act is the making and keeping of correct and informative records. The keeping of correct records is prescribed so that inspection may reveal violations and, not as respondents imply, merely for the purpose of production of specific records upon specific demand by the administrators of the act when they are engaged in an investigation of particular accounts because of information obtained from other sources.

The importance of making and keeping a permanent record of the true owners of accounts is well illustrated in this case. While the Commodity Exchange Authority had been watching for trading by McGuigan, respondents were carrying his account in the names of Adelson and Burnstein. McGuigan was thus enabled to engage in violations of the act.

Respondents intended to obscure the fact that McGuigan was trading. Their only explanation of the activities in question is that they were helping McGuigan to conceal his trading activities from Weis and Company's customersmen because McGuigan was running a market news report and did not want people who did not pay for his report to learn how he was trading. This explanation is offered to justify even the drawing of checks to Edith Adelson and Louis J. Burnstein and respondent Weis and Company's endorsement of the checks so that McGuigan could get the money. It also is supposed to be the reason for the making out of a customer's card by McGuigan signed "Louis J. Burnstein", a fictitious name, and the giving of a non-existent address. And yet at the same time, McGuigan was a frequent visitor at respondent's office and used it as a place for picking up messages left for him. Respondents admit too that McGuigan had a reputation for unreliability and that his credit was "no good." n7 Respondents' attitude of complete innocence is not convincing. They assisted and intended to assist McGuigan in hiding his trading from anyone, including the Commodity Exchange Authority, who might want to know whether McGuigan was trading. This conclusion is supported by the conduct of respondents during the investigation into McGuigan's trading. This conduct, to say the least, was equivocal. Whereas now, in this proceeding, respondents say that they knew all along that the Adelson and Burnstein accounts were McGuigan's, they certainly were not so frank and communicative during the investigation. Cycleman even

signed a statement, which he now admits was wrong, to the effect that checks and money from the Adelson account went to Edith Adelson.

n7 Tr. pp. 212, 213, 271.

Although the referee found the allegations of the complaint fully proved, he did not agree with complainant's suggestion of a ten-day suspension for the trading privileges of respondents and the registrations of Irving Weis and Company as a futures commission merchant and Irving Weis as a floor broker. He proposed a three-day suspension of respondents' trading privileges on their own accounts and a suspended three-day suspension of the registrations of Irving Weis and Company and Irving Weis. His latter proposal was based upon two factors, namely, that an effective suspension of the registrations would be too harsh in view of the volume of business done by Irving Weis and Company and that complainant asked only for a suspended suspension in another pending case in which he was referee. *In re Ira Haupt and Company et al.*, CEA Docket No. 38. Neither of these two factors should be considered controlling. While it is no doubt in order to weigh the consequences of an effective suspension of a registration in

what is regarded as a border-line case, we do not consider this proceeding to be in that category. What has been said above shows that the violations found are serious and were purposeful, not merely technical. It surely is not the intent of the act to provide suspensions for only those registrants who do a small volume of business nor would such a policy be fair administration of the act. The second basis of the referee's recommendation is irrelevant because the other proceeding mentioned presents a case of an entirely different nature.

It is never pleasant to order sanctions such as a suspension of registration against anyone. But there is a duty under the act to do so in appropriate cases and from the findings and conclusions above, it follows that this is an appropriate case. Ten-day suspensions of respondents' trading privileges and registrations should be ordered under sections 4g and 6 (b) of the act (7 U. S. C. §§ 6g and 9).

ORDER

Effective on the 30th day after the date of this order, the registration of Irving Weis and Company as a futures commission merchant under the Commodity Exchange Act and the registration of Irving Weis as a floor broker under the Commodity Exchange Act are suspended for a period of ten (10) days.

Effective also on the 30th day after the date of this order, all contract markets shall refuse all trading privileges thereon to Irving Weis, Irving Weis and Company, and Alexander Cycleman for a period of ten (10) days.

A copy of this decision and order shall be sent by registered mail to each respondent and to each contract market under the act.

LOAD-DATE: June 8, 2008

