

Commodity Futures Trading Commission
CEA CASES

NAME: BERKSHIRE FOODS, INC., HAROLD W. FOX, AND EARL E. BARNES

CITATION: 19 Agric. Dec. 3

DOCKET NUMBER: 91

DATE: JANUARY 18, 1960

DOCUMENT TYPE: DECISION AND ORDER

(No. 6320)

In re BERKSHIRE FOODS, INC., HAROLD W. FOX, AND EARL E. BARNES. CEA Docket No. 91. Decided January 18, 1960.

Manipulation of Egg Prices -- Stipulation -- Consent Order

Respondents consented to an order directing all contract markets to refuse trading privileges to each respondent for a specified period, suspending the registration of Berkshire Foods, Inc., as a futures commission merchant for six months, and revoking the registration of Harold W. Fox as a floor broker.

Mr. Benj. M. Holstein, for Commodity Exchange Authority. *Cunningham & Coughlin*, of Chicago, Illinois, for respondents.

Decision by Thomas J. Flavin, Judicial Officer

INTRODUCTION

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. 1958 ed., §§ 1-17a), instituted by a complaint and notice of hearing under section 6(b) of the act (7 U.S.C. 1958 ed., § 9) issued by the Assistant Secretary of Agriculture on November 27, 1959. Respondent Berkshire Foods, Inc., is a registered futures commission merchant and a member of the Chicago Mercantile Exchange, a contract market. Respondent Harold W. Fox is its vice-president, and respondent Earl E. Barnes is an associate broker of the firm.

The complaint charges that the respondents attempted to manipulate and did in fact manipulate the prices of egg futures on the Chicago Mercantile Exchange and of cash eggs in interstate commerce. These charges are based upon allegations to the effect that the respondents and their customers purchased substantial quantities of November 1958 egg futures and developed concentrated positions in such future near the close of trading in November 1958; that such positions constituted a substantial proportion of the total open interest and exceeded available deliverable supplies; that most of such futures were liquidated during the last two trading days at increased prices; that other traders related to respondent Fox and trading through a registered futures commission merchant other than the respondent corporation made similar purchases and liquidations; that during the same period respondent Berkshire demanded and received excessive prices for cash eggs sold to short traders for delivery against the

November 1958 future; that the respondents acted for the purpose and with the intent of raising prices by means of a squeeze, and with the expectation that the firm's customers would be influenced by the respondents and would follow their lead; that such customers were in fact so influenced and did in fact follow the respondents' lead; and that the acts of the respondents brought about a squeeze and caused prices of the November 1958 egg future and prices of cash eggs in Chicago to be at artificial and manipulated levels during November 1958.

No hearing has been held. On January 11, 1960, the respondents submitted a stipulation under section 0.4 (b) of the rules of practice (17 CFR 0.4(b)), which admits jurisdictional facts, waives hearing, and consents to the entry of the order hereinafter set forth.

FINDINGS OF FACT

1. Respondent Berkshire Foods, Inc., an Illinois corporation with offices and a place of business at 4600 South Packers Avenue, Chicago 9, Illinois, is now and was at all times material to the complaint herein a registered futures commission merchant under the Commodity Exchange Act and a clearing member of the Chicago Mercantile Exchange, a duly designated contract market.

2. During November 1958, respondent Berkshire Foods, Inc., in its capacity as a registered futures commission merchant, carried commodity futures accounts for customers who traded and held positions in the November 1958 egg future on the Chicago Mercantile Exchange, and during November 1958, respondent Berkshire Foods, Inc., also traded and held positions in such future on the Chicago Mercantile Exchange for its own or house account.

3. Respondent Harold W. Fox, residing at 7318 Ridge Avenue, Chicago, Illinois, is now and was at all times material to the complaint herein a vice-president of respondent Berkshire Foods, Inc., a member of the Chicago Mercantile Exchange, and a registered floor broker under the Commodity Exchange Act.

4. During November 1958, respondent Harold W. Fox made trades on the Chicago Mercantile Exchange in the November 1958 egg future for the accounts of customers of respondent Berkshire Foods, Inc., and managed and controlled the trading in such future for the house account of respondent Berkshire Foods, Inc.

5. Respondent Earl E. Barnes, whose address is 403 Gas and Oil Building, Oklahoma City, Oklahoma, is now and was at all times material to the complaint herein an agent and an associate

broker for respondent Berkshire Foods, Inc., and in such capacities solicited and accepted orders from customers for the purchase and sale of eggs for future delivery, including the November 1958 future, and forwarded such orders to respondent Berkshire Foods, Inc., for execution on the Chicago Mercantile Exchange.

CONCLUSIONS

Section 0.4(b) of the rules of practice under the Commodity Exchange Act (17 CFR 0.4(b)) provides as follows:

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

The facts admitted by the said respondents and set forth in the findings of fact are sufficient to subject each of them to the jurisdiction of the Secretary of Agriculture.

The complainant has filed a recommendation which recites that it has carefully considered the stipulations and the terms of the proposed order. It is the view of the complainant that the proposed sanctions would be adequate, and that the prompt entry of such an order without further proceedings would constitute a satisfactory disposition of this case, serve the public interest, and effectuate the purposes of the Commodity Exchange Act. The complainant

therefore recommends that the stipulation and waiver be accepted and that the proposed order be issued, terminating this proceeding. It is so concluded.

ORDER

The registration of Berkshire Foods, Inc., as a futures commission merchant is suspended for a period of six (6) months. Such suspension shall become effective February 1, 1960, *provided that* the final five months of the said period of suspension

shall not become effective unless, after complaint, notice and hearing in accordance with established procedure, Berkshire Foods, Inc., shall be found to have violated the Commodity Exchange Act within one year from the date of entry of this order, in which event the Secretary of Agriculture may, without further notice to the said Berkshire Foods, Inc., issue a supplemental order making effective forthwith the five-month remainder of the said period of suspension of registration.

Effective February 1, 1960, all contract markets are hereby directed to refuse all trading privileges to Berkshire Foods, Inc., for a period of six (6) months, such refusal to apply to all trading done and positions held by the said Berkshire Foods, Inc., directly or indirectly, *provided that* such refusal shall not apply to trading in cash butter.

Effective February 1, 1960, the registration of Harold W. Fox as a floor broker is revoked.

Effective February 1, 1960, all contract markets are hereby directed to refuse all trading privileges to Harold W. Fox for a period of one year, such refusal to apply to all trading done and positions held by the said Harold W. Fox directly or indirectly.

Effective February 1, 1960, all contract markets are hereby directed to refuse all trading privileges to Earl E. Barnes from the said date through December 31, 1960, such refusal to apply to all trading done and positions held by the said Earl E. Barnes directly or indirectly.

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

(No. 6321)

In re BENEDICT K. GOODMAN. CEA Docket No. 81. Decided January 20, 1960.

Petition for Reconsideration -- Dismissal

The decision and order of October 12, 1959 (18 Agric. Dec. 1121 (18 A.D. 1121)), are reinstated and the order shall become effective March 1, 1960.

Decision by Thomas J. Flavin, Judicial Officer

ORDER DISMISSING PETITION FOR RECONSIDERATION

In this proceeding under the Commodity Exchange Act. (7 U.S.C. Chapter 1) a decision and order were entered October 12, 1959, to the effect that respondent had violated the Commodity Exchange Act and contract markets were directed to refuse all trading privileges to respondent for a period of 20 days. Respondent filed a petition for reconsideration November 12, 1959, after an order staying the effectiveness of the sanction had been entered October 27, 1959. Complainant filed an answer to the petition for reconsideration December 7, 1959.

Respondent's petition for reconsideration does not persuade us that any further procedures should be employed in the proceeding or that any change should be made in the decision and order of October 12, 1959. Moreover, we cannot accede to respondent's request that if the decision upon reconsideration be adverse to him, there be no publicity or service upon contract markets until

respondent has decided whether or not he will seek court review. The act requires that notice of any order to contract markets to refuse trading privileges ". . . shall be sent forthwith by registered mail to the offending person and to the governing boards of said contract markets" (7 U.S.C. 9).

Accordingly the decision and order of October 12, 1959, are reinstated and the order shall become effective March 1, 1960.

LOAD-DATE: June 8, 2008

