

Commodity Futures Trading Commission
CEA CASES

NAME: EDWARD R. BYER

CITATION: 13 Agric. Dec. 873

DOCKET NUMBER: 62

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DOCUMENT TYPE: DENIAL OF MOTION TO QUASH COMPLAINT

AGRICULTURE DECISIONS

BEFORE THE SECRETARY OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

(No. 4032)

In re EDWARD R. BYER, *et als.* CEA Docket No. 62. Decided September 10, 1954.

**Denial of Motion to Quash Complaint and Dismiss the Proceedings --
Constitutionality of Act**

Where motion to quash the complaint and dismiss the proceeding asserts that certain sections of the act are unconstitutional due to invalid delegation of power, failure to grant due process, and being based on an unconstitutional act, *held*, an agency charged with administering a statute cannot be expected to hold the statute unconstitutional, and the motion is, therefore, denied.

**Denial of Motion to Quash Complaint and Dismiss the Proceedings -- Regulation
under the Act**

Where motion to quash the complaint and dismiss the proceeding alleges that regulations under the Commodities Exchange Act are void because they are arbitrary and not reasonably necessary, but where such regulations were issued pursuant to authority in the act, and after notice, hearing and findings, the motion is denied.

**Denial of Motion to Quash Complaint and Dismiss the Proceedings --
Administrative Procedure Act**

Where motion to quash the complaint and dismiss the proceeding claims failure of compliance with section 9 (b) of the Administrative Procedure Act in that the licensee was not afforded an opportunity to demonstrate or achieve compliance before proceedings were instituted for the withdrawal, suspension, revocation, or annulment of its license but where the complaint repeatedly alleges that the violations are wilful, *held*, the case comes within the exceptions set forth in section 9 (b) of that act, and the motion is dismissed.

Mr. Benj. M. Holstein for Commodity Exchange Authority. *Mr. Mitchell Edelson*, of Chicago, Illinois, and *Messrs. Clark M. Clifford* and *William H. Dorsey, Jr.*, of *Clifford and Miller*, of Washington, D. C., for respondent *Edward R. Byer*. *Messrs. Johnston, Thompson, Raymond & Mayer*, of Chicago, Illinois, for respondent *Joel Starrels*. *James T. McKerr* and Company, *Mr. James T. McKerr*, and *Mr. Charles J. McKerr*, of Chicago, Illinois, respondents, *pro se*. *Mr. Arnold F. Shaw*, of Donohue & Kaufmann, of Washington, D. C., for respondent *Gilbert D. Mathy*. *Mr. G. Osmond Hyde*, Referee.

Decision by Thomas J. Flavin, Judicial Officer

DENIAL OF MOTION TO QUASH COMPLAINT

On August 20, 1954, G. Osmond Hyde, referee in this disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1), certified to the Judicial Officer motions to quash the complaint and dismiss the proceeding filed by the respondents. The respondents have moved to quash the complaint and dismiss the proceeding or to require that the complaint be made more specific or for a bill of particulars and that time to answer the complaint be extended a reasonable time after disposition of the other motions. The motions filed by respondent Byer contain grounds in support of the motions which have been adopted in the motions filed by the other respondents. The respondents have asked for oral argument upon their motions.

Consideration will be given herein and disposition made only of the respondents' motions to quash the complaint and dismiss the proceeding. Oral argument thereon is denied.

The motions filed by respondent Byer contend that the complaint should be quashed and the proceeding dismissed because of the failure of the complaint to state a cause of action and for failure to comply with the Administrative Procedure Act.

The motions assert that sections 4a, 4b, 4c, and 4i of the act are unconstitutional as invalid or improper delegations of legislative power; that section 6(b) of the act is unconstitutional as an invalid delegation of legislative power, as an improper bestowal of judicial power upon the Secretary of Agriculture and as otherwise violative of due process; and that the rules and regulations under the act fall because they are based upon an unconstitutional statute.

These charges of the unconstitutionality of provisions of the act, some of which provisions are not involved in the proceeding, must, of course, fail in this proceeding. The respondents cannot expect an agency charged with administering a statute to hold the statute unconstitutional. *Panitz et al. v. District of Columbia*, 112 F. 2d 139 (C.A. D.C.); *In re Great Western Distributors Inc., et al.*, 10 Agric. Dec. 783, 825 (10 A.D. 783, 825) (1951). And at any rate, we find no merit in the charges.

The motions further contend that 17 CFR 150.1 fixing position limits and daily trading limits in grains under contracts for sale for future delivery on or subject to rules of contract markets is unreasonable and void in that it arbitrarily and unnecessarily interfered with the business of persons trading in such grains

and is not reasonably necessary to effectuate the act. These regulations of the Commodity Exchange Commission were issued pursuant to authority in the act and after notice, hearing, findings, etc. Obviously, it takes more than the allegations made in motions to overthrow such regulations.

The motions further allege a number of technical defects in the complaint. None of these have any substance. The complaint clearly states a cause of action against each and all respondents.

The motions further urge failure of compliance with that part of section 9 (b) of the Administrative Procedure Act which provides for opportunity to demonstrate or achieve compliance before proceedings are instituted for the withdrawal, suspension, etc., of any *license*. If this provision of the Administrative Procedure Act applies to this proceeding, specific exceptions are made for "wilfulness" and cases "in which public health, interest or safety requires otherwise" The complaint in this proceeding repeatedly alleges that the violations charged are "wilful."

After examining all the bases advanced in the motions to quash the complaint and dismiss the proceeding, such motions are denied.

