

Commodity Futures Trading Commission
CEA CASES

NAME: WEBSTER E. COLLINS

DOCKET NUMBER: 142

DATE: JANUARY 17, 1969

DOCUMENT TYPE: RECOMMENDED DECISION

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: Webster E. Collins, Respondent

CEA Docket No. 142

Recommended Decision

Preliminary Statement

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. 1 et seq.). The complaint, issued by the Assistant Secretary of Agriculture pursuant to section 6(b) of the act (7 U.S.C. 9), alleges that respondent, a trader in wool futures, failed to submit required reports to the Commodity Exchange Authority with respect to transactions and positions in wool futures in accounts which he carried with four different futures commission merchants and which, in the aggregate, were in reporting status, and that he also failed to report concerning transactions and positions in the accounts of his two sons, which accounts respondent allegedly controlled. The complaint charges that respondent thereby wilfully violated section 4i of the act (7 U.S.C. 6i) and the applicable regulations thereunder (17 CFR 15.01, 15.02, 15.03, 18.01, 18.03).

Respondent's answer admits the jurisdictional allegations of the complaint, the transactions and positions in question, and the failure to file reports, but denies any wilful violation of the act or any control over the accounts of his sons, or any obligation to report with respect to such accounts. Concerning his own accounts, respondent states that his failure to report was due to an honest misunderstanding of the reporting requirements. By way of affirmative defense, the answer asserts that respondent was not afforded an opportunity to demonstrate or achieve compliance prior to the institution of the proceeding and that the proceeding is therefore unlawful and void under the rules of practice (17 CFR 0.3(c)). Respondent filed a separate motion to dismiss the proceeding on that ground and renewed the motion orally at the hearing. This motion is pending (Tr. pp. 314-315).

In an oral hearing held in Springfield, Massachusetts, before Benj. M. Holstein, Hearing Examiner, Office of Hearing Examiners, United States Department of Agriculture, both sides introduced oral and documentary evidence in support of their positions. Earl L. Saunders, Office of the General Counsel, United States Department of Agriculture, appeared as counsel for complainant, and Philip J. Ryan, Attorney at Law, Springfield, Massachusetts, represented respondent. After the hearing, suggested findings and conclusions and supporting briefs were submitted by the parties.

Findings of Fact

1. Respondent, Webster E. Collins, an individual whose business address is 170 Lyman Street, Springfield, Massachusetts, is a trader in wool futures with approximately 25 years of experience in that field. Respondent is now and was

at all times material herein a member of the Wool Associates of the New York Cotton Exchange, Inc., a duly designated contract market under the act, hereinafter called the Exchange (Answer, Par. 1; Tr. pp. 197, 205, 273, 282-283). At all times material herein a wool futures contract was a contract calling for the future delivery by the seller and the receipt by the buyer of the grease equivalent of 6,000 pounds (clean content) of wool (Tr. pp. 11-12). All of the wool futures transactions and positions hereinafter described were executed and carried on the Exchange.

2. During the periods hereinafter specified respondent owned and carried in his own name a wool futures trading account with each of the four following futures commission firms: Hayden, Stone Incorporated; Walker & Company; Marriner, Reed & Co., Inc.; and Nichols & Company (Comp. Ex. 3; Tr. pp. 15-16, 195, 202-203). During such periods, respondent's sons, Webster A. Collins and Douglas B. Collins, each had a wool futures trading account in his own name with Hayden, Stone Inc., and respondent exercised control

over these two accounts (Comp. Ex. 4, 5, 10, 11; Resp. Ex. 1; Tr. pp. 93-96, 171-172, 185-187, 203-205, 219, 246, 249-250, 256-258, 282, 305).

3. The regulations promulgated by the Secretary of Agriculture pursuant to section 4i of the act (7 U.S.C. 6i) provide that a trader who "holds or has a financial interest in or controls" one or more accounts "whether carried with the same or with different futures commission merchants", in which there are in the aggregate open contracts in any one wool future on any one contract market which equal or exceed 150,000 pounds (25 contracts) has a reportable position and must, while in such status, file reports with the Commodity Exchange Authority with respect to all transactions executed and open contract positions held in all wool futures in all such accounts. The aforesaid regulations also provide that each futures commission merchant shall report to the Commodity Exchange Authority with respect to any customer's account on his books which shows a position of 25 contracts or more in a single wool future (17 CFR 15.00(b)(c), 15.01, 15.02, 15.03, 17.00, 18.00, 18.01, 18.03). The aforesaid regulations were in effect at all times material herein. Respondent was aware of such regulations and during a number of years prior to 1965, respondent, as required from time to time by reason of the transactions and aggregate market

positions in his own accounts and those of his sons, submitted reports with respect thereto to the Commodity Exchange Authority (Tr. pp. 61-68, 261; Comp. Ex. 8).

4. On each day during the periods from April 22, 1965 to May 3, 1965, both inclusive, and from August 24, 1965 to May 26, 1966, both inclusive, respondent had a reportable position because of the fact that the open contract positions in wool futures on the Exchange in the four trading accounts owned by respondent and carried in his own name ranged, in the aggregate between 26 and 55 contracts in a single future. On approximately 51 days within the said periods transactions in wool futures were executed on the Exchange for one or more of the said accounts but respondent submitted no reports to the Commodity Exchange Authority with respect to such transactions and the resulting positions (Comp. Ex. 3; Answer, Par. IV; Tr. pp. 16, 260-261).

5. When the two controlled accounts carried in the names of respondent's sons, Webster A. Collins and Douglas B. Collins, are considered together with the four accounts carried in respondent's own name, respondent had a reportable position on each day during the periods from April 15 to May 5, 1965, both

inclusive, and from July 20, 1965 to May 26, 1966, both inclusive. During such periods the combined positions in these six accounts ranged between 26 and 83

contracts in a single future. On approximately 70 days within such periods transactions in wool futures were executed on the Exchange for one or more of the aforesaid six accounts, but respondent submitted no reports to the Commodity Exchange Authority with respect to such transactions and the resulting positions (Comp. Ex. 3, 4, 5, 6; Answer, Par. IV; Tr. pp. 260-261).

6. In connection with the transactions described above, it was the practice of respondent to limit his positions with any one futures commission merchant to 24 contracts or less in a single future and he instructed each of the four futures commission merchants with whom he carried a trading account not to permit his account to get into reporting status. His sons followed the same practice of limiting their respective positions with Hayden, Stone Inc., to 24 contracts or less in a single future (Tr. pp. 267-268, 271, 285, 287).

Conclusions

Respondent does not challenge the futures transactions and positions in his own accounts or the accounts of his sons as described above, nor the fact that he did not file reports (Comp. Exs. 3-6, inc.; Resp. Brief, pp. 4, 22). His principal defense is that he did not

report because of an honest misinterpretation of the regulations; that his failure to report was not wilfull (Resp. Brief, pp. 4, [ILLEGIBLE TEXT], 10, 22-24); that it was therefore incumbent upon complainant, as required by the rules of practice (17 CFR 0-3(c)), to afford respondent an opportunity to demonstrate or achieve compliance before instituting this proceeding; and that complainant's failure to afford respondent such an opportunity requires dismissal of the complaint (Resp. Brief, pp. 11, 13, 23).

Respondent also argues that although he loaned money to his sons with which to trade and also guaranteed their accounts, he did not control these accounts and was therefore not required to report with respect to such accounts (Resp. Brief, pp. 16-17), and that, in any event, to the extent that the regulations require the reporting of an account which one "controls", they go beyond the statute and are therefore invalid (Resp. Brief, pp. 19-21).

I

The rules of practice provide: ". . . . in any case, except one of willfulness . . . prior to the institution of a proceeding for the suspension or revocation of a registration or license, facts or conditions which may warrant such action shall be called, in writing, to the attention of the person complained against, and such person shall be accorded opportunity to demonstrate or achieve compliance

with all lawful requirements". (17 CFR 0.3(c). This is the provision upon which respondent relies in support of the contention that the proceeding should be dismissed because of the absence of prior notification. The Administrative Procedure Act contains a substantially identical provision (5 U.S.C. 558(c)).

As defined in the Administrative Procedure Act, a license consists of "an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission; . . ." (5 U.S.C. 551 (8)). Traders in futures on contract markets are not licensed or registered and they are free to engage in such trading without any permit, certificate, charter, or any other form of permission or approval by the Commodity Exchange Authority. Accordingly, this proceeding cannot be considered as "a proceeding for the suspension or revocation of a registration or license" and the provisions in question are not applicable. See *Goodman v. Benson*, 18 Agric. Dec. 1121, 1128 (18 A.D. 1121, 1128) (1959), affirmed, 286 F.2d 896 (7th Cir. 1961).

But assuming arguendo that respondent can be considered as a licensee and therefore within the intent of the above provision, the failure to report was

nevertheless willful and respondent was for that reason not entitled to prior notification. In support of his contention of good faith, respondent asserts that he interpreted the regulations as not requiring reports if his position in a single

future with any one futures commission merchant did not exceed 24 contracts, regardless of his aggregate position in such future in all his accounts. In the first place, this interpretation is directly contrary to the clear language of the regulations. Section 18.01 (17 CFR 18.01) specifies:

Sec. 18.01 Interest in or control of several accounts (a) Multiple accounts. If any trader holds or has a financial interest in or controls more than one account, whether carried with the same or with different futures commission merchants . . . , all such accounts shall be considered as a single account for the purpose of determining whether such trader has a reportable position and for the purpose of reporting. (Underscoring supplied).

Respondent was aware of this requirement. In 1958, he received a letter from the Commodity Exchange Authority calling his attention to the regulations and the necessity for reporting whenever his position reached 25 contracts or more in a single future, including his own account or accounts and any account or accounts of other persons which he controlled (Comp. Ex. [ILLEGIBLE TEXT]; Tr. pp. 73-77).

More significant is the fact that for a period of several years prior to the transactions in question respondent filed reports from time to time as required by his aggregate position in a single future in all his accounts, despite the fact that his maximum position in such future with any one futures commission merchant did not exceed 24 contracts (Comp. Ex. 8; Tr. pp. 191, 197-198, 260, 283).

Respondent's explanation as to why he discontinued filing reports after April 1965 is not plausible. He testified that at or about that time he "developed" the "understanding" that if he had positions in the same future with more than one broker but did not exceed 24 contracts with any one broker, he would not be required to report; that he reached this conclusion for some reason which he could not explain; that he did not examine the act or regulations beforehand nor did he consult an attorney; that he had conversations with various brokers and "took these conversations and just put it in my head that I didn't have to report and I let it go at that" (Tr. pp. 269, 271, 284). When asked to identify the brokers in question he declined to do so, and when asked if he could name any person who gave him such information he replied "My memory on that is not definite" (Tr. pp. 285, 288). When asked by his own counsel why he did not "look up the law", he replied "I can't tell you. Frankly, I just didn't; that is all. I just took for granted whatever I had been told it was alright to go ahead and I went ahead. I am not a lawyer". (Tr. p. 307).

We cannot accept this testimony as a reasonable basis for the honest misinterpretation claimed by respondent. It must be concluded that he knew what was required of him by way of reports, that if he was told anything by his brokers it was that a particular broker would not report his trades as long as his

account with that broker did not exceed 24 contracts in a single future, and that he instructed his brokers accordingly. We conclude that respondent's failure to report as required by his aggregate position was knowing and therefore willful. In re Great Western Distributors, Inc., 10 Agric. Dec. 783, 826 (10 A.D. 783, 826) (1951); Great Western Food Distributors Inc., v. Brannan, 201 F.2d 476, 484 (7th Cir. 1953), cert. denied, 345 U.S. 997 (1953).

The conclusions expressed above are applicable even if we consider only the trading in respondent's own accounts during the periods in question, as described in Finding 4. With respect to the accounts of his sons, Webster A. Collins and Douglas B. Collins, the evidence shows that respondent originated and was responsible for the trading orders in these accounts, guaranteed the accounts, and deposited the required margins with the futures commission merchants (Tr. pp. 205, 219, 294, 296, 305). It was the practice of respondent's sons never to establish a position in the market or make a trade without discussing the matter in advance with respondent (Tr. p. 299). When asked on cross-examination whether he made the final decision with respect to the trades in the accounts of his sons, respondent replied "I cannot answer that question yes or no. Our decisions are the result of discussions between us". (Tr. p. 294). Finally, respondent did not deny

telling representatives of the Commodity Exchange Authority that he controlled his sons' trading. In response to a question on that point he replied "I told you before that I do not remember making the statement and I do not remember not making it. In other words, I don't remember". (Tr. p. 305). This testimony is too vague and inconclusive to outweigh the testimony of Messrs. Stults and Coopersmith, both of whom testified that respondent did make such a statement. (Tr. pp. 92-93, 204-205, 247-249, 255-258). We must conclude from the weight of the evidence that respondent did control the trading in his sons' accounts, that he was therefore obligated to include such trading in his reports, and that his failure to do so was willful.

III

Counsel for respondent argues that the statute (section 4(i)) does not mention control but requires reports by a trader only if the trader makes the contract or contracts and has or obtains the position in question, and that since the regulation may not enlarge the statutory authorization the regulation is invalid (Resp. Brief, 18-21). We do not agree. The entire tenor of the Commodity Exchange Act and especially sections 3 and 4(a) (7 U.S.C. 5, 6(a)) shows that the Congress was concerned with minimizing excessive speculation which causes sudden and unreasonable price fluctuations to the detriment of producers and consumers and which constitute a burden on interstate commerce. Where a large volume of trading is

controlled by one person the climate for the development of such conditions is favorable. To say that section 4(i) was intended to apply to a single trader who owns 25 contracts but not to one who controls 100 or 200 contracts ignores the plain intent of the law. Also, it should be noted that the section includes anyone who "directly or indirectly" makes the contracts or has the position in question. The Act authorizes the Secretary to issue such regulations as, in his judgment, "are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act . . ." (7 U.S.C. 12(a)(5)). This is a broad and far-reaching authority. *Rice v. Chicago Board of Trade*, 331 U.S. 247, 252 (1947). We conclude that it is sufficient to encompass control as well as outright ownership and that the regulation is not invalid.

The recommendation of complainant that all trading privileges should be denied to respondent for a period of 60 days is adopted.

Order

Effective 30 days after the entry of this order, all contract markets shall refuse all trading privileges to the respondent, Webster E. Collins, for a period of sixty (60) days,

such refusal to apply to all trading done and all positions held by the said Webster E. Collins, directly or indirectly.

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

Note: This is the referee's report or recommended decision. It is not a final order. The final order will be issued by the Judicial Officer after the parties have had opportunity to file exceptions, as provided by the rules of practice.

[SEE SIGNATURE IN ORIGINAL]

Benj. M. Holstein

Referee

January 17, 1969

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re Webster E. Collins, Respondent

CEA Docket No. 142

Supplemental Order

The order entered in this proceeding on February 25, 1969, directing contract markets to refuse all trading privileges to respondent shall become effective on March 31, 1969, instead of March 17, 1969, as stated in the February 25th order.

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

Done at Washington, D. C.

Thomas J. Flavin

Judicial Officer

LOAD-DATE: June 12, 2008

