

Commodity Futures Trading Commission
CEA CASES

NAME: ALVIS R. DAVIS

DOCKET NUMBER: 50

DATE: JUNE 21, 1949

DOCUMENT TYPE: DECISION AND ORDER

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re Alvis R. Davis, Respondent

CEA Docket No. 50

Decision and Order

Preliminary Statement

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C., Chapter 1), initiated by a complaint issued by the Secretary of Agriculture on May 23, 1949, charging the respondent with cheating, defrauding, and wilfully deceiving customers, and with falsely reporting to a customer that transactions for the customer's account had been executed on a contract market. The complaint alleged that the respondent, an agent and correspondent of a registered futures commission merchant, converted to his own use funds received from customers to margin or secure the trades of such customers, that he caused the execution of a trade for the account of a customer without authority from the customer, and that he reported to a customer that orders which the customer had placed had been executed whereas, as a matter of fact, the respondent had failed to transmit such orders to his principal and no such executions had taken place.

The complaint was served on the respondent in Chicago on May 26, 1949. Later during the same day the respondent conferred with representatives of the Commodity Exchange Authority in Chicago and expressed a desire to enter into a stipulation for the purpose of dispensing with

a hearing. On May 27, 1949, the respondent executed a document in which he admitted the facts, waived hearing, and consented to the entry of an order denying trading privileges to him for such period of time as the Secretary of Agriculture or his duly authorized representative might determine. This document was filed with the Hearing Clerk on June 2, 1949, in accordance with section 0.4(b) of the rules of practice (17 CFR, Cum. Supp., 0.4(b)). Under date of June 3, 1949, the respondent addressed a letter to the Hearing Clerk in which he stated his desire to have included in the record the fact that all customers who lodged legitimate claims against him had been paid in full.

Section 0.4(b) of the rules of practice provides that prior to the hearing in any proceeding the Secretary may in his discretion, allow a respondent to consent to an order, provided that the respondent submits, 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. Since the respondent has admitted the facts charged in the complaint and has agreed that an order may be entered against him, no purpose can be served by a hearing.

Findings of Fact

1. The respondent, Alvis R. Davis, an individual doing business as Alvis R. Davis and Company, 208. Woodruff Building, Springfield, Missouri, was at all times material hereto a non-clearing member of the Board of Trade of the City of Chicago (hereinafter called the Chicago Board of Trade) and of the Chicago Mercantile Exchange, both duly designated

contract markets under the Commodity Exchange Act. The respondent had an agreement or arrangement with the Uhlmann Grain Company of Chicago, Illinois, a registered futures commission merchant and clearing member of the Chicago Board of Trade and of the Chicago Mercantile Exchange, under which the respondent acted as agent and correspondent of the said Uhlmann Grain Company in accepting and transmitting orders from customers for the purchase or sale of commodities for future delivery on or subject to the rules of contract markets. In connection with the acceptance and transmission of such orders, the respondent was required to receive money, securities and property from customers to margin, guarantee or secure the trades or contracts accruing to them as the result of such orders, and to remit such money, securities and property to the said Uhlmann Grain Company for credit to the accounts of such customers.

2. On or about January 23, 1948, the respondent, acting in the capacity of agent for Uhlmann Grain Company, converted to his own use funds in the sum of one thousand dollars (\$ 1,000) which he had received from one A. J. Sams, to margin, guarantee and secure transactions in commodity futures for the account of the said A. J. Sams with Uhlmann Grain Company.

3. On or about January 16, 1949, the respondent, acting in the capacity of agent for Uhlmann Grain Company, converted to his own use funds in the sum of thirteen hundred dollars (\$ 1,300) which he had received from one Lawrence J. Haymes to margin, guarantee and secure transactions in commodity futures for the account of the said Lawrence J. Haymes with Uhlmann Grain Company.

4. On or about February 10, 1949, and February 12, 1949, the respondent, acting in the capacity of agent for Uhlmann Grain Company, converted to his own use funds in the sum of one thousand two dollars and fifty-six cents (\$ 1,002.56) which he had received from one Leonard A. Voeltz to margin, guarantee and secure transactions in commodity futures for the account of the said Leonard A. Voeltz with Uhlmann Grain Company.

5. On or about February 8, 1949, the respondent, acting in the capacity of agent for Uhlmann Grain Company, sold 40,000 pounds of March lard futures on the Chicago Board of Trade at 11.82 cents per pound for the account and risk of Leonard A. Voeltz. On the same day, on his own initiative and without any authority from or notification to the said Leonard A. Voeltz, the respondent instructed Uhlmann Grain Company to purchase 40,000 pounds of March lard futures on the Chicago Board of Trade at 11 cents per pound and caused such executed purchase to be entered in the account of the said Leonard A. Voeltz with Uhlmann Grain Company.

6. On or about February 9, 1949, the respondent, acting in the capacity of agent for Uhlmann Grain Company, received an order for the purchase of 40,000 pounds of March lard futures and the sale of 40,000 pounds of May lard futures for the account of Leonard A. Voeltz with Uhlmann Grain Company. The respondent subsequently reported to the said Leonard A. Voeltz that 40,000 pounds of March lard futures had been

bought on the Chicago Board of Trade at 11.45 cents per pound and that 40,000 pounds of May lard futures had been sold on the Chicago Board of Trade at 11.50 cents per pound for his account and risk, whereas, in truth and in fact, the respondent had not transmitted such orders for execution and no such purchase or sale had been executed.

7. The transactions in commodity futures contracts described in paragraphs 2, 3, 4, 5, and 6, above, were capable of being used for hedging transactions in interstate commerce in such commodities or the products or by-products thereof, or for determining the price basis of transactions in interstate commerce in such commodities, or for delivering such commodities, sold, shipped, or received in interstate commerce.

8. By an arrangement between respondent and Uhlmann Grain Company, all customers who lodged legitimate complaints against respondent because of respondent's activities described above, have been paid in full.

Conclusions

Section 4b of the act declares it to be unlawful for any agent or correspondent of a member of a contract market, in connection with any transaction in commodity futures on behalf of any person, to cheat or defraud, or wilfully deceive such person in regard to such transaction or to any act of agency performed with respect thereto. Conversion is the fraudulent appropriation of another's property. *Terry v. Water Improvement District*, 179 Okla. 106, 64 P. (2d) 904, 906 (1937). The terms "defraud" and "cheat" are synonymous. *State v. Mastin*, 277 Mo. 495, 211 S.W. 14, 18 (1919). Accordingly, the conversion to his own use

of the funds entrusted to the respondent constituted cheating and defrauding in violation of section 4b. The respondent is also chargeable with wilful deceit in permitting his customers to believe that the funds which they had turned over to him would be credited to their accounts in the usual manner. The act of causing the execution of a sale for the account of Leonard A. Voeltz without the latter's authorization or knowledge also constitutes wilful deceit.

Section 4h of the act declares it to be unlawful for any person falsely to represent, in connection with the handling of an order for the purchase or sale of commodity futures, that such order has been executed on a contract market. The respondent's false representation to Mr. Voeltz that orders given by the latter had been executed on the Chicago Board of Trade was a clear violation of this section, and was also wilful deceit under section 4b.

The violations admitted by the respondent are serious and warrant the imposition of an effective sanction. If the respondent were registered as a futures commission merchant, suspension or revocation of such registration would be justified. Since he is not so registered, the same objective can be reached by a denial of trading privileges in such a manner that he will be unable to trade for or handle accounts of customers. In view of the nature of the violations, such denial should continue until further order of the Secretary. *In re Charles Vojtek*, 7 Agric. Dec. 386 (7 A.D. 386) (1948), was a proceeding which also involved the conversion of customers' funds and false reports to customers that transactions for their accounts had

been executed. A denial of trading privileges until further notice by the Secretary was ordered. Accordingly, all contract markets should be ordered, until further notice, to refuse trading privileges to the respondent except in connection with transactions for his own account and in which no customers are involved.

Since the Commodity Exchange Act imposes duties and obligations upon futures commission merchants and their agents which are separate and distinct from those imposed upon traders, and since the act also provides for different sanctions appropriate to each of these classes of persons, we believe it would be preferable wherever possible and equitable to relate the sanction to the particular duty or obligation which has been breached. The respondent violated the obligations and duties which he owed to his customers and not those which he owed as a trader. Accordingly; the sanction recommended is designed to prevent

him from having any further dealings with customers, but will not affect the privilege of trading for himself.

Order

Effective on the 30th day after the date of this order, all contract markets shall, until further notice by the Secretary of Agriculture or his duly authorized representative, refuse all trading privileges to Alvis R. Davis except in connection with transactions for the account of the said Alvis R. Davis in which no customers are involved.

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

Done at Washington, D. C., this 21st day of June 1949.

/s/ Thomas J. Flavin
Judicial Officer

UNITED STATES DEPARTMENT OF AGRICULTURE

Commodity Exchange Authority

Washington 25, D. C.

May 26, 1949

ISSUANCE OF COMPLAINT - CE-A DOCKET NO. 50

(Administrative Hearing under the Commodity Exchange Act)

A complaint and notice of hearing was signed by the Secretary of Agriculture on May 23, 1949, charging

ALVIS R. DAVIS of Springfield, Missouri with violation of the Commodity Exchange Act.

Complaints are issued under the Commodity Exchange Act for the purpose of notifying respondents that the Secretary of Agriculture has reason to believe that respondents have violated the Act and to advise them of the time and place of hearings to be held to determine whether the charges are correct. The issuance of a complaint does not, of course, constitute proof of violation of the law. Such violation is established only when the Judicial Officer of the Department has made a determination that the evidence substantiates allegations in the complaint.

Complaints are filed in the office of the hearing clerk of the solicitor of the Department of Agriculture and are thereupon a matter of public record. Copies are filed in the Washington office and the field offices of the Commodity Exchange Authority.

In cases where the Judicial Officer determines that a violation has occurred the resulting order will be served upon all contract markets and circularized among all registered futures commission merchants for their information and guidance. Pending disposition by the Judicial Officer it is the policy of the Commodity Exchange Authority not to comment or elaborate upon the charges contained in complaints or discuss the evidence upon which they are based.

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