

Commodity Futures Trading Commission
CEA CASES

NAME: BENEDICT K. GOODMAN

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re: Benedict K. Goodman, Respondent
CEA Docket No. 81

COMPLAINANT'S SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER, AND BRIEF IN SUPPORT THEREOF

Due date:
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INTRODUCTION

The complaint in this proceeding charges that the respondent, an individual trader, held speculative positions in rye futures on the Chicago Board of Trade in excess of 500,000 bushels, the maximum permissible quantity, in wilful violation of section 4a of the Commodity Exchange Act (7 U.S.C., 1952 ed., § 6a) and the order of the Commodity Exchange Commission (17 CFR, § 150.3); and that he failed to file required reports with the Commodity Exchange Authority concerning his trading and positions in rye futures, in wilful violation of section 4i of the act (7 U.S.C., 1952 ed., § 6i) and the applicable regulations (17 CFR, §§ 2.10, 2.11, 2.12, 2.21).

These charges are based upon allegations that between December 31, 1957, and February 21, 1958, the respondent held speculative net long positions in the March 1958 rye future on the Chicago Board of Trade which ranged from 580,000 to 700,000 bushels, and speculative net long positions in all rye futures combined which ranged from 730,000 to 1,085,000 bushels, which positions were in excess of the speculative limit of 500,000 bushels (Complaint, paragraph III); that since these positions exceeded 200,000

bushels in a single future, the respondent was in reporting status under the regulations and required to submit reports to the Commodity Exchange Authority with respect to all his trades and positions in rye futures during such status, but that he failed to do so (Complaint, paragraph IV); and that the respondent was aware of his obligations with respect to these matters and had attempted to conceal his violations by distributing the positions among various futures commission merchants in quantities just below the level at which the futures commission merchant would have been required to report the respondent's position to the Commodity Exchange Authority (Complaint, paragraph V).

Section 6(b) of the Commodity Exchange Act (7 U.S.C., 1952 ed., § 9) authorizes the Secretary of Agriculture, if he finds that any person has violated any of the provisions of the act or the regulations, to deny all trading privileges on all contract markets to such person. This proceeding was instituted under the authority of section 6(b).

The answer admits only the respondent's identity and the status of the Chicago Board of Trade as a contract market (Answer, paragraphs I, II). It denies the substantive allegations, challenges the Secretary's jurisdiction over the respondent and the subject matter, and asserts that the Commodity Exchange Act, the regulations thereunder, and the order of the Commodity Exchange Commission are unconstitutional, void, and of no effect (Answer, paragraphs III - XI, inclusive). By way of affirmative defense, the answer alleges that the respondent engaged in the trading in question in reliance upon erroneous information as to speculative limits furnished

to him by a representative of the Commodity Exchange Authority, and contends that the Secretary of Agriculture should, therefore, be estopped from proceeding against the respondent (Answer, paragraphs XII - XVIII).

A hearing was held in Chicago on August 8, 1958, before Jack W. Bain, Office of Hearing Examiners United States Department of Agriculture. The respondent was represented by Homer E. Rosenberg of Chicago, Illinois. Benj. M. Holstein, Office of the General Counsel, United States Department of Agriculture, appeared as counsel for the complainant. Both sides offered oral and documentary evidence, which is described in the findings of fact and conclusions.

FINDINGS OF FACT

1. The respondent, Benedict K. Goodman, is an individual whose address is 636 Church Street, Evanston, Illinois. The respondent is now, and has been since 1927, a member of the Board of Trade of the City of Chicago, a duly designated contract market, hereinafter called the Chicago Board of Trade.

2. From December 31, 1957, through February 21, 1958, the respondent held speculative net long positions in the March 1958 rye future on the Chicago Board of Trade which ranged between 580,000 and 700,000 bushels, and speculative net long positions in the March 1958 and May 1958 rye futures combined which ranged between 730,000 and 1,085,000 bushels. Such positions were held through seven different brokerage houses or futures commission merchants, and the maximum quantity in any one

future held through any one futures commission merchant was 195,000 bushels (Complainant's Exhibit 1).

3. By reason of the fact that the positions described in paragraph 2 were equal to or in excess of 200,000 bushels in a single future, the respondent was in reporting status on December 31, 1957, and remained in such status through February 21, 1958, and he was, therefore, required to report to the Commodity Exchange Authority with respect to all transactions executed and all open contract positions held for his account in all rye futures on all boards of trade (exchanges) during the said period, and with respect to all such

transactions by reason of which the respondent's position was reduced below reporting levels. On ten days within the above described period, viz., on January 22, 23, 24, and 28, February 4, 5, 10, 12, 17, and 19, 1958, the respondent bought or sold rye futures on the Chicago Board of Trade through one or more of the futures commission merchants described above, but the respondent did not report such transactions or the resulting positions to the Commodity Exchange Authority (Complainant's Exhibit 1; Tr. pp. 15-17, 26-27).

4. Effective December 3, 1945, the Commodity Exchange Commission reduced the limit on the maximum speculative position in rye for future delivery which any person could hold or control on any one contract market from 2, 000, 000 to 500,000 bushels, and at or about the same time the Chicago Board of Trade addressed a letter to its members setting forth in full the order of the Commission with respect to such reduction. The respondent was a member of the Chicago Board of Trade at that time. The

said 500,000 bushel limit has remained in effect continuously since December 3, 1945 (17 CFR, §§ 150.1, 150.3; Tr. pp. 36-37, 44-45; Complainant's Exhibit 7)

5. During the period between February 23, 1956, and March 2, 1956, the respondent held a speculative position in rye futures on the Chicago Board of Trade in excess of 500,000 bushels. The matter was promptly called to his attention by the Commodity Exchange Authority, and in a conference with representatives of that agency the respondent explained that he did not know that the limit had been reduced to 500,000 bushels, and stated that he would bring himself into compliance by reducing his position, which he did within a short time. On or about March 1, 1956, as a result of this occurrence, the respondent received from the Chicago office of the Commodity Exchange Authority a document specifying the speculative limits on trading and positions under the Commodity Exchange Act, which stated that the maximum allowable position in rye was 500,000 bushels. Shortly thereafter, the respondent received a letter from the Administrator of the Commodity Exchange Authority containing similar information and requesting the respondent's cooperation in observing limits in the future (Tr. pp. 32-36, 43-45, 123-124, 156, 159; Complainant's Exhibits 4, 5, 6).

6. Sometime prior to February 21, 1958, the respondent inquired of Mr. Paul Murin, a partner in David A. Noyes and Company, one of the brokerage firms through which respondent traded, concerning the speculative limit on rye futures, and was informed by the said Paul Murin that the

limit was 2,000,000 bushels. The respondent questioned the accuracy of this information but was told by Murin that a check had been made with the Commodity Exchange Authority and with various brokerage houses, and that the information was correct. The respondent made no further inquiry with respect to such limit until after he learned, on February 21, 1958, that his trading and positions were being examined by the Commodity Exchange Authority, whereupon he again inquired of his brokers and was told by Mr. John Murin and Mr. Sigmund Mika, partner and office manager, respectively, in the said Noyes and Company, that the limit was 2,000,000 bushels. The respondent again questioned the accuracy of this figure and replied that he believed the limit to be 500,000 bushels, Mr. Mika then telephoned the Chicago office of the Commodity Exchange Authority and asked for Mr. Albert W. Kibby, Chief Accountant. When informed that Mr. Kibby was not in, Mr. Mika asked for Mr. Stone, an accountant in the Commodity Exchange Authority office who had previously examined the said broker's books and was, therefore, known to Mika. In answer to Mika's inquiry, Stone erroneously informed him that the rye limit was 2,000,000 bushels. Later the same day, the respondent made inquiry of his attorney who ascertained and informed the respondent that the limit in question was 500,000 bushels (Tr. pp. 58-60, 71-72, 76-77, 92-99, 103-104, 126-127, 130-133, 138, 157-158, 172).

7. Under Commodity Exchange Act regulations, a trader is obligated to report to the Commodity Exchange Authority whenever he holds a position in any one grain future (including rye) on any one contract market in the

amount of 200,000 bushels or more, regardless of whether such position is held through one or more than one broker or futures commission merchant (Complainant's Exhibit 2; 17 CFR, §§ 2.00, 2.10, 2.11, 2.12, 2.21). Each futures commission merchant is required to report to the Commodity Exchange Authority with respect to any customer's position on his books which reaches or exceeds such quantity (Complainant's Exhibit 3; 17 CFR, §§ 2.04, 2.05, 2.07, 2.09, 2.20). The respondent was aware of the above regulations. Over a period of approximately 20 years prior to 1958, he had, as required from time to time by his market position, filed reports with the Commodity Exchange Authority with respect to his trading in wheat, corn, rye, and soybeans (Tr. p. 31).

8. Between December 31, 1957, and January 23, 1958, the respondent had a reportable position in corn futures, which included 200,000 bushels or more in a single future through each of three futures commission merchants. During the said period, the Commodity Exchange Authority received reports as required with respect to such positions from each of the said futures commission merchants and also from the respondent. On February 21, 1958, the respondent's position in wheat futures reached 200,000 bushels or more in one future. This position was on the books of one futures commission merchant, and the Commodity Exchange Authority received a report as required with respect thereto from the said futures commission merchant and also from the respondent. Between January 14 and February 14, 1958, the respondent had a reportable position in soybean futures, consisting of positions of less than 200,000 bushels with

each of several futures commission merchants, which positions, in the aggregate, totaled more than 200,000 bushels in a single future. On January 14, 20, 22 and 28, and on February 12 and 14, 1958, reportable transactions in soybean futures were executed for the respondent's account, but the respondent did not report such transactions to the Commodity Exchange Authority until February 24, 1958 (Tr. pp. 27-30, 39-41, 161).

9. In accordance with the practice followed by the respondent during 1958 and for several years prior thereto, reports concerning his trading and positions were prepared by his secretary from information contained in brokers' confirmations, and forwarded by her to the Commodity Exchange Authority without any prior examination by the respondent. The secretary who prepared reports for the respondent in 1958 had been employed by the respondent and had prepared and submitted such reports for many years (Tr. pp. 110-112, 119, 125, 159).

CONCLUSIONS AND BRIEF

There is no dispute concerning the facts in this matter. The respondent admits that he exceeded the maximum speculative limit in rye futures and that he did not submit required reports. His defense is that (1) he relied upon erroneous information with respect to the rye limit furnished to him by the Commodity Exchange Authority (Answer, paragraphs XII, XIV, XVIII; Tr. pp. 134, 138-139, 154), and (2) the failure to file reports was due to a misunderstanding by his secretary (Tr. pp. 127-130, 135, 154).

I

The record does not support the claim that erroneous information which the respondent received from the Commodity Exchange Authority was responsible for his excess trading. It is conceded that on February 21, 1958, Mr. Stone, an employee of the Commodity Exchange Authority, mistakenly informed Mr. Sigmund Mika of David A. Noyes and Company, the respondent's broker, that the limit was 2,000,000 bushels (Tr. pp. 157-158, 172). Since the respondent's excess trading

violations occurred before Stone made this statement to Mika on February 21, 1958, the respondent could not have been misled by it (Complainant's Exhibit 1; Complaint, paragraph III; Tr. pp. 94, 157-158).

The only other information on the rye limit claimed to have come from the Commodity Exchange Authority was allegedly obtained by Mr. Paul Murin, senior partner in Noyes and Company, in the course of a telephone conversation with some unidentified employee of the Commodity Exchange Authority, who told Mr. Murin in response to his inquiry that the rye limit was 2,000,000 bushels. According to Murin's testimony, this confirmed what he had already told the respondent and he assured the respondent accordingly (Tr. pp. 58-63, 71-78, 84-85). The respondent testified similarly (Tr. pp. 126-127).

As we shall show, the date of this alleged conversation and the other details surrounding it are clouded in obscurity and contradictions. Assuming for the moments, however, that the conversation took place when and as

claimed by the respondent, it does not serve to exonerate him. His own testimony indicates that throughout the period of his trading he remained under the correct impression that the limit was 500,000 bushels and not 2,000,000 bushels. When Paul Murin first informed him that the limit was 2,000,000 bushels, he questioned the accuracy of this figure and told Murin that he (Murin) was mistaken (Tr. p. 127). Murin is then alleged to have made the telephone call in question and to have reported to the respondent that the 2,000,000 bushel figure was correct. When John Murin and Sigmund Mika gave the respondent similar misinformation on February 21, 1958, the respondent told them that they were wrong (Tr. p. 133). This, it should be noted, was before the respondent learned from his attorney that his own impression was correct and that the limit was indeed 500,000 bushels (Tr. pp. 134, 138). It appears, therefore, that if the respondent relied upon what Murin had told him earlier, he did so in the face of his own continuing conviction that the limit was only 500,000 bushels.

In spite of the admitted doubt in the respondent's own mind as to the accuracy of the 2,000,000 bushel figure, he made no effort at any time to check personally with anyone at the Commodity Exchange Authority. As a result of his prior violations of the rye limit in 1956, he knew that Mr. Harper of the Commodity Exchange Authority, who had called these violations to his attention at that time, could give him authentic information, but he made no attempt to question Mr. Harper. He was also acquainted with Mr. Kibby, the Chief Accountant in the Chicago office of the Commodity Exchange Authority, but he did not approach Mr. Kibby until

February 21, 1958, after he had learned that his accounts were being checked, and he did not even then ask Mr. Kibby what the rye limit was (Tr. pp. 132, 158).

The respondent recalled "very vividly" the circumstances of his prior violations in February 1956, including the conversations which he had at that time with Mr. Harper and Mr. Koutsky, the supervisor in Chicago (Tr. pp. 123-124, 156). He remembered the letter which he received from the Administrator as a result of such violations (Complainant's Exhibit 6; Tr. p. 156), and the official document specifying the limits on all commodities which was sent to him at the same time (Tr. p. 159). Despite all these first hand indications that the limit was 500,000 bushels, the respondent preferred to rely upon a statement by his broker that the limit was 2,000,000 bushels. These were not the actions of a prudent man, as the respondent claims (Tr. p. 134). A prudent man, assailed by the doubts which the respondent admits, would have sought to resolve them by seeking authoritative information from persons who were able to supply such information. The respondent was acquainted with such persons but did

nothing in that direction. Indeed, he seems to have avoided those who could inform him accurately.

As indicated above, the record is far from clear as to when and under what circumstances the conversation in question took place. Mr. Paul Murin first testified that he "did not make the calls" but that he thought Mr. Mika made some, and immediately corrected this to state that he

(the witness) did make one call but did not know "if I made it at that time", that is, the time of the inquiry by the respondent as to what the rye limit was (Tr. p. 58). As to the date of the call, Paul Murin testified variously that it was made during late August or early September (Tr. pp. 59-60), that it was made prior to August 1 (Tr. pp. 62,77), that it was made in the latter part of August (Tr. p. 65), and that he could not place the date more specifically than some time between April and September 1957 (Tr. p. 78). As to the reason for the call, the witness stated variously that it was made because of the respondent's inquiry as to the rye limit (Respondent's Exhibit 1; Tr. pp. 58, 71-72, 89-90), that it was made "because I wanted to know for myself and for the office" (Tr. p. 62), and that it was occasioned by an inquiry from the Indianapolis office of David A. Noyes and Company (Tr. pp. 79-82). This witness testified that he was not definitely sure as to the limit (Tr. p. 76), and also that he had no doubt in that direction (Tr. pp. 89-90). Finally, as stated above, he could not identify his informant or even remember whether he had asked for any person specifically (Tr. 72-74). The nature of this testimony does not lend plausibility to the respondent's claim.

Finally, the manner in which the respondent's positions were distributed among the seven brokers with whom he traded supports the conclusion that he deliberately sought to conceal his activities from the Commodity Exchange Authority. His position in the March future with each of two of the seven brokers in question was kept at 195,000 bushels

throughout the period of his trading (Complainant's Exhibit 1). A position of 200,000 bushels with any one broker would have required the broker to report such position to the Commodity Exchange Authority (17 CFR, §§ 204, 220). The respondent denies any intent to conceal, and in support of such denial asserts that he filed reports concerning his trading in soybeans, despite the fact that his soybean position was also held through several brokers in amounts which did not reach 200,000 bushels through any one broker (Tr. pp. 39-40). The respondent did indeed submit such reports to the Commodity Exchange Authority, but not until February 24, 1958, which was after the discovery by the respondent that the Commodity Exchange Authority had investigated and learned the facts with respect to his rye trading (Tr. pp. 161, 162). Under the regulations, these soybean reports should have been submitted from ten to thirty days prior thereto (17 CFR, § 2.10). Their submission after the respondent learned that the Commodity Exchange Authority had become aware of his violations with respect to rye futures lends no support whatever to the claim of no concealment.

II

There is a similar lack of substance to the respondent's contention that a misunderstanding of directions which he gave to his secretary was responsible for the failure to submit reports on rye trading. His secretary, who prepared and filed all necessary reports for the respondent, testified that in August or September 1957, the respondent told her that

he was about to engage in rye trading and directed her to alert him whenever his position in rye approached 2,000,000 bushels, from which she concluded that no

reports were necessary so long as his position remained below this quantity, and none were made (Tr. pp. 114-116, 127-128).

We need not enter into a discussion as to whether the secretary was justified in interpreting the respondent's directions as she did. Even if she were, the responsibility was not hers but the respondent's. He was an experienced and substantial trader. He had been a member of the Chicago Board of Trade for approximately thirty years and had filed reports from time to time on corn, wheat, soybeans and rye over a period of twenty years (Tr. pp. 31, 45). He was, therefore, well aware of what was required (Tr. p. 159).

That he never saw the reports which his secretary forwarded does not excuse him but, on the contrary, indicates a lack of that care which the respondent claims to have exercised. In view of the sizeable positions which he held, ordinary prudence would have dictated some examination by him before reports were forwarded. Had he done this, he would have been in a position to discover and correct the misunderstanding of his secretary. He did not follow the practice of examining his reports, but chose to leave everything to his secretary. He must accept the consequences because, while he could delegate his duties, he could not delegate his responsibilities.

We have the further circumstance that during the period in question the respondent filed timely reports only with respect to those commodities (corn and wheat) in which his positions necessitated reports from his

brokers (Tr. pp. 27-30). In the case of soybeans, as described above, the respondent's position did not necessitate reports from his brokers but did necessitate such reports by the respondent, and he did not file these until after he had learned that he was under investigation. In other words, the Commodity Exchange Authority received reports from brokers during this period with respect to the respondent's trading in corn and wheat, and the respondent also reported these commodities. The regulations did not require and the Commodity Exchange Authority did not receive any reports from brokers during this period concerning the respondent's trading in rye and soybeans, nor did the respondent report with respect to these commodities, although required to do so. It thus appears that reports from the respondent were forthcoming only when his brokers found it necessary to reveal his position to the Commodity Exchange Authority, which thereby became alerted to the fact that reports were due.

III

The facts in this proceeding compel the conclusion that, as charged in the complaint, the respondent knowingly held speculative positions in rye futures in excess of the quantity allowed, and that he sought to conceal such holdings by failing to submit required reports and by distributing his holdings among various brokers in quantities which would exempt the brokers from the need to submit reports and thus alert the Commodity Exchange Authority. These violations were wilful. "Wilfulness in violating a regulatory statute implies not so much malevolent

design as acting with knowledge that ones acts are proscribed or with careless disregard for their lawfulness or unlawfulness". *Mercado v. Brannan*, 173 F. 2d 554, 555 (C.A. 1). As a legal matter, therefore, the violations were wilful if the acts in question indicate a careless disregard for lawful requirements. The evidence shows that such was the case.

Counsel for the respondent filed a special appearance in which he challenges the Secretary's jurisdiction over the subject matter and the person of the respondent. In the answer, counsel renews this challenge and moves to dismiss the proceeding because of the alleged lack of jurisdiction. However, no grounds are set forth as a basis for this challenge and the motion to dismiss must, therefore, be denied. If the challenge is founded upon the contention that the

act, the regulations thereunder, and the order of the Commodity Exchange Commission are unconstitutional, the motion must likewise be denied. The respondent may not raise the issue of constitutionality in a proceeding of this type. *Panitz v. District of Columbia*, 112 F. 2d 39, 41-42, (C.A. 4); *Fosgate Company v. Kirkland*, 19 F.S. 152, 157 (D. C. Fla.); *Engineer's Public Service Company v. S. E. C.*, 138 F. 2d 936, 952 (C.A. 4).

After due consideration of all the facts, it is recommended that all contract markets be directed to refuse all trading privileges to the respondent for a period of ninety days, such refusal to apply to all trading done and positions held by the respondent directly or indirectly.

ORDER

Effective thirty days after the entry of this order, all contract markets shall refuse all trading privileges to the respondent, Benedict K. Goodman, for a period of ninety (90) days, such refusal to apply to all trading done and positions held by the said Benedict K. Goodman directly or indirectly.

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

On the basis of the evidence, it is recommended that the findings of fact, conclusions, and order contained herein be adopted as the findings of fact, conclusions, and order in this proceeding.

[SEE SIGNATURE IN ORIGINAL]

Benj. M. Holstein, Attorney
Commodity Exchange Authority

LOAD-DATE: June 12, 2008

