

Commodity Futures Trading Commission
CEA CASES

NAME: CHARLES B. GRADY

CITATION: 8 Agric. Dec. 1241

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(No. 2270)

In re CHARLES B. GRADY. CEA Doc. No. 49. Decided November 21, 1949.

Disciplinary Proceeding -- Revocation of Registration -- Wrongful Handling of Customer's Funds

Where in a disciplinary proceeding under the act, the complaint, in substance, charged respondent, a futures commission merchant, with wrongful conduct in his handling of a customer's funds in violation of the act, it is held, that on the evidence before the Judicial Officer, respondent's wrongful acts were clearly wilful and, therefore, his registration as a futures commission merchant should be revoked. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Approval of Granting of Motion to Dismiss in Part

Motion to dismiss proceeding granted by referee insofar as the motions applied to charges involving transactions with customers other than K. B. U., approved. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Acts Constituting Fraud and Deceit in Violation of Act

Where respondent secured funds from a customer through misrepresentation, and altered, a statement of purchase and sale to make it appear that the transactions were for the account of the customer rather than for respondent, held that the wrongful securing of the funds constitutes a fraud upon the customer and that the alteration was intended to deceive the customer, both in violation of section 4b of the act. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Commingling of Funds as Constituting Conversion in Violation of Act

Commingling of funds received from a customer with the bank account of respondent amounts to a conversion of such funds in violation of section 4d (2) of the act. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Violation of Act -- False Representation as to Purported Purchases on Contract Market

Respondent's false representation to a customer that purchases had been made for her on a contract market constitutes a violation of section 4h (2) of the act. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Approval of Denial of Respondent's Motions to Dismiss

Respondent's motion to dismiss the complaint in its entirety was properly denied since there is evidence to sustain the charges with reference to respondent's transactions with the customer; the denial of his motion to postpone further hearing of the matter until after disposition of the criminal case pending against him and involving the same matter was justified because his contention that his constitutional rights might be prejudiced is without merit, since the record shows that respondent chose not to testify and no attempt was made to compel him to do so. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Denial of Request for Finding of Fact Approved -- Evidence

Denial of respondent's request for a finding of fact that he borrowed the funds in question in order to make purchases for his own account, approved, as the only evidence in the record on this point shows that the customer did not transfer the funds to respondent as a loan. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Seriousness of Violation of Act -- Congressional Intent -- Mitigation of Offenses

The fact that respondent repaid the customer the funds that he had wrongfully obtained from her only after she had employed an attorney to obtain redress carries little weight in mitigation of offenses, as the congressional intent in passing the act was the protection of customers of registered futures

commission merchants against a complete disregard of the trust relationship between such merchants and their customers. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Mr. Benj. M. Holstein for complainant. *Mr. Maurice J. Walsh*, of Chicago, Illinois, for respondent. *Mr. Earl J. Smith*, Hearing Examiner.

Decision by Thomas J. Flavin, Judicial Officer

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 August 31, 1948. The complaint, in substance, charged the respondent, a futures commission merchant, with wrongful conduct in his handling of customers' funds, in violation of sections 4b, 4d(3) and 4h(2) of the act (7 U. S. C. 6b, 6d(2), 6h(2)).

Earl J. Smith, a hearing examiner of the United States Department of Agriculture, was assigned as referee in the proceeding. Following motions by counsel for both the complainant and the respondent, the dates for answer and hearing were deferred indefinitely because a criminal proceeding, involving respondent and based upon the same subject matter as the administrative proceeding, was pending in a United States District Court and was about to come to trial. On March 24, 1949, counsel for the complainant filed a motion asking that a time be fixed for answer and hearing, pointing out that the trial of the criminal case had been postponed to October 10, 1949. Counsel for respondent filed an answer opposing this motion. The referee, on April 26, 1949, ordered that an answer to the complaint be filed by May 10, 1949, and that a hearing be held on May 26, 1949. On May 5, 1949, respondent filed a motion to vacate this order and requested that the matter be certified to the Secretary of Agriculture for his decision. The complainant filed an answer to this motion and also requested such certification. The matter was so certified and on May 13, 1949, an order was issued directing that the hearing be held at the time fixed by the referee but that no answer to the complaint need be filed 8 Agric. Dec. 506 (8 A. D. 506). The hearing was held at Chicago, Illinois, on May 26, 1949.

At the close of the Government's presentation of the evidence, counsel for respondent moved to dismiss the complaint for insufficiency of evidence and on the ground that the respondent's current registration was not involved, since his registration for the year 1947, when the alleged violations occurred, had expired, and moved further that the hearing be postponed to a date subsequent to the hearing of the criminal

case. The motion to dismiss was granted by the referee insofar as it applied to charges involving transactions with customers other than a Kathryn B. Ungar and this action is hereby approved. The other motions were denied. Counsel for the respondent then announced that no evidence would be offered on behalf of the respondent, and rested his case.

Respondent did not appear at the hearing but was represented by Maurice J. Walsh, his attorney. The complainant was represented by Benjamin M. Holstein, attorney, Office of the Solicitor, United States Department of Agriculture.

On August 12, 1949, the referee filed a report recommending that the registration of the respondent as a futures commission merchant be revoked. Neither the complainant nor the respondent filed exceptions to the referee's report.

FINDINGS OF FACT

1. The respondent, Charles B. Grady, also known as Bern Grady and Bernard Grady, is an individual residing at 7546 1/2 Saginaw Avenue, Chicago, Illinois. At the time of the transactions involved in this proceeding he was a member of the Chicago Open Board of Trade, a duly designated contract market under the Commodity Exchange Act. He was during such time registered as a futures commission merchant under the Commodity Exchange Act and is now so registered.

2. On or about May 17, 1947, the respondent represented to Kathryn B. Ungar that he had purchased 10,000 bushels of corn futures on the Chicago Open Board of Trade for her account and that she had an accrued profit of \$ 350 as a result of such purchase. Kathryn B. Ungar then delivered \$ 2,500 to the respondent to margin, guarantee and secure the purchase. No such purchase for the account or benefit of Kathryn B. Ungar had been executed. The respondent deposited the \$ 2,500 in his personal bank account.

3. On or about June 1, 1947, the respondent recommended to Kathryn B. Ungar that she purchase an additional 10,000 bushels of corn futures. She authorized the respondent to make such purchase for her account and delivered \$ 2,500 to him to margin, guarantee and secure it. The respondent received that sum of money and deposited it in his personal bank account. He subsequently delivered to Kathryn B. Ungar a statement purporting to show that he had purchased for her account, through Joseph D. Feeney & Company, 10,000 bushels of December corn futures on the Chicago Open Board of Trade at \$ 1.58 5/8 per bushel. No such purchase had been executed for the account of Kathryn B. Ungar. The respondent had executed a purchase

of 10,000 bushels for his personal account and received from Joseph D. Feeney & Company a statement showing such purchase in his own name and for his own account. The respondent altered the statement to show the purchase as having been made for the account of Kathryn B. Ungar and delivered the altered statement to her.

4. The conduct of the respondent in obtaining the aforementioned sums from Kathryn B. Ungar was wilful and fraudulent.

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

6. After Kathryn B. Ungar had turned the matter over to her attorney, the respondent made restitution of the \$ 5,000 which he had received from her.

CONCLUSIONS

The complainant contends that the respondent violated Sections 4b, 4d (2) and 4h (2) of the Commodity Exchange Act. Section 4b (7 U. S. C. 6b) makes it unlawful for a member of a contract market, in connection with transactions in commodity futures on behalf of any person, to cheat or defraud or to attempt to cheat or defraud such person or to make a false report or statement to, or to deceive or attempt to deceive any such person. Section 4d (2) (7 U. S. C. 6d (2)) requires that a futures commission merchant treat and deal with money or property received by him to margin, guarantee or secure trades or contracts of his customers as belonging to the customer, and prohibits the commingling of such funds with funds of his own. Section 4h (2) (7 U. S. C. 6h (2)) makes it unlawful for any person, in connection with handling an order or contract for the purchase or sale of any commodity for future delivery, falsely to represent that it has been executed on a contract market.

Securing of funds from Mrs. Ungar, by misrepresentation, by the respondent constituted a fraud on Mrs. Ungar. Also the alteration of the statement of purchase and sale to make it appear that it was for the account of Mrs. Ungar, rather than for the respondent, obviously was for the purpose of deceiving her in violation of section 4b. Commingling the funds received from Mrs. Ungar in the bank account of the respondent amounted to a conversion of them in violation of section 4d (2). The respondent's representation to Mrs. Ungar that these purchases had been made for her on a contract market was a violation of section 4h (2).

As to the motions filed by the respondent at the close of the hearing, it is clear that there was evidence to sustain the charges in reference to respondent's transactions with Mrs. Ungar. Respondent's motion to dismiss the complaint in its entirety was properly denied. Respondent's motion to postpone further hearing of the matter until after disposition of the criminal case was in substance the same as his earlier motion which was passed upon in the order of May 13, 1949, 8 Agric. Dec. 506 (8 A. D. 506). It was based, in substance, on the contention that this hearing would require the testimony of the respondent

and that his testimony in this proceeding might be used against him in the criminal proceeding, thus compelling him to become a witness against himself in violation of the Constitution of the United States. The clear answer to that contention is that he chose not to testify, and no attempt was made to compel him to do so. The Congress, in enacting the Commodity Exchange Act and in providing for both administrative and criminal proceedings for violations of its terms, made no provision for the deferment of either type of proceeding during the pendency of the other. Under the circumstances, it is concluded that the respondent's constitutional rights have not been prejudiced because of the fact that the hearing in the administrative proceeding was held prior to the final disposition of the criminal proceeding.

The motion to dismiss on the ground that the respondent's current registration was not involved and that his registration for the year 1947, when the violations occurred, had expired was also passed upon in the order of May 13, 1949, referred to above. The act authorizes the Secretary to proceed against any person who is violating or has violated the provisions of the act. There is nothing in the act which says that this violation must have occurred during the registration period in which a suspension or revocation takes places.

The respondent has requested a finding of fact to the effect that he borrowed the \$ 5,000 from Mrs. Ungar in order to make purchases for his own account. The only evidence in the record on that point is that Mrs. Ungar did not transfer these funds to the respondent as a loan. Therefore, such a finding is unjustified.

The offenses proved against the respondent are serious. They violate the provisions of the Commodity Exchange Act in which Congress provided for, among other purposes, the protection of customers of registered futures commission merchants against a complete disregard of the trust relationship between such a merchant and his customers. The fact that the respondent repaid Mrs. Ungar the money that he had wrongfully obtained from her, but only after she had employed an attorney to obtain redress, carries little weight in mitigation of the offenses. On the evidence before us, his wrongful acts

were clearly wilful. Under such circumstances, we conclude that his registration as a futures commission merchant should be revoked.

ORDER

Effective on the 30th day after the date of this order, the registration of Charles B. Grady as a futures commission merchant is revoked. This order shall not affect the right of the respondent to trade on his own account as an individual.

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

LOAD-DATE: March 12, 2008

