

Commodity Futures Trading Commission
CEA CASES

NAME: CONSOLIDATED GROWERS EXCHANGE, INC., AND HARVEY A. BAUM

DOCKET NUMBER: 92

DATE: MARCH 22, 1960

DOCUMENT TYPE: COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re: Consolidated Growers Exchange, Inc., and Harvey A. Baum, Respondents
CEA Docket No. 92

Complaint and Notice of Hearing Under the Commodity Exchange Act

There is reason to believe that the respondents, Consolidated Growers Exchange, Inc., and Harvey A. Baum have violated the Commodity Exchange Act (7 U.S.C. 1958 ed., Chapter 1) and the rules and regulations promulgated thereunder, and in accordance with the provisions of section 6(b) of the said act (7 U.S.C. 1958 ed., § 9) this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

Respondent Consolidated Growers Exchange, Inc., a corporation with offices at 6 Harrison Street, New York 13, New York, is now and has been at all times material to this complaint a clearing member of the New York Mercantile Exchange and a registered futures commission merchant under the Commodity Exchange Act.

II

Respondent Harvey A. Baum, an individual whose business address is 6 Harrison Street, New York 13, New York, is now and was at all times material to this complaint a member of the New York Mercantile Exchange and the president of the respondent corporation. At all such times the operations of the said corporation, hereinafter described, were under the direction and control of respondent Harvey A. Baum.

III

The New York Mercantile Exchange is now and was at all times material to this complaint a duly designated contract market under the Commodity Exchange Act.

IV

During March, April, and May 1959, the respondent corporation carried accounts on its books and records which bore the designations "CGE/E. Larocque" and "CGE/Dominion Banana and Potato Company", and during the said period the respondent corporation executed transactions in commodity futures on the New York Mercantile

Exchange and entered such transactions in such accounts. Such transactions were capable of being used for hedging transactions in interstate commerce, or determining the price basis of transactions in interstate commerce, or for delivering commodities sold, shipped, or received in interstate commerce. The said designations indicated that the accounts were joint accounts of respondent Consolidated Growers Exchange, Inc., and E. Larocque, and of respondent

Consolidated Growers Exchange, Inc., and the Dominion Banana and Potato Company, respectively, and upon inquiry the respondents so informed the Commodity Exchange Authority. In truth and in fact, the said accounts were not joint accounts but were individual accounts of one E. Larocque and of the Dominion Banana and Potato Company, respectively. By reason of such acts, the respondents knowingly and wilfully violated section 4 of the Commodity Exchange Act (7 U.S.C. 1958 ed., § 6), and section 1.37 of the rules and regulations thereunder (17 CFR 1.37).

V

Between May 1955 and August 1959, the respondent corporation failed to keep a record in permanent form showing, for each commodity futures account carried by it, the true name and address

of the person for whom such account was carried and the principal occupation or business of such person, as required by section 1.37 of the rules and regulations under the Commodity Exchange Act (17 CFR 1.37). On numerous occasions during such period, the Commodity Exchange Authority informed the respondents that such a record was necessary under the aforesaid regulation, and the respondents' failure to maintain such a record was a knowing and wilful violation of the said regulation and of section 4 of the Commodity Exchange Act (7 U.S.C. 1958 ed., § 6).

VI

On or about March 26, April 1, April 2, April 16, April 29, April 30, May 1, May 4 and May 5, 1959, the respondents knowingly commingled customers' funds with funds of the respondent corporation in that, on the said dates, the respondents deposited funds belonging to E. Larocque or to the Dominion Banana and Potato Company, or both, customers of the respondent corporation, in the respondent corporation's general bank account, or used such funds to margin or guarantee the trades of the respondent corporation. By reason of such acts the respondents wilfully violated section 4d(2)

of the Commodity Exchange Act (7 U.S.C. 1958 ed., § 6d(2)) and sections 1.20 and 1.21 of the rules and regulations thereunder (17 CFR 1.20, 1.21).

VII

On approximately 61 days between April 2, 1959, and December 2, 1959, the respondents failed to prepare and maintain a daily segregation record setting forth the amount of money, securities, and property of customers required to be kept in segregation in accordance with the provisions of section 4d(2) of the Commodity Exchange Act (7 U.S.C. 1958 ed., § 6d(2)). On numerous occasions prior to and during such period the Commodity Exchange Authority informed the respondents that section 1.32 of the rules and regulations (17 CFR 1.32) required the preparation and maintenance of such a record, and the respondents' failure to prepare and maintain the same, as above described, was a knowing and wilful violation of the said sections of the act and the regulations.

VIII

Between January and May 1959, the respondents executed transactions in commodity futures on the New York Mercantile Exchange for the accounts of customers, but failed to keep full, complete,

and systematic records of all such transactions, in that, in connection with numerous transactions, such records did not identify or make possible the identification of the floor broker who executed the transactions on behalf of the respondent corporation nor the clearing member on the opposite side of such

transactions, as specifically required by section 1.35 of the rules and regulations (17 CFR 1.35). The respondents were aware of the provisions of the said regulation, and their failure, as above described, was a knowing and wilful violation of the said regulation and of section 4g of the Commodity Exchange Act (7 U.S.C. 1958 ed., § 6g).

Wherefore, it is hereby ordered that this complaint and notice of hearing be served upon each of the said respondents. The respondents will have twenty (20) days after the receipt of this notice of hearing in which to file with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., an answer with an original and five copies, fully and completely stating the nature of the defense and admitting or denying, specifically and in detail, each material and relevant allegation of this complaint. Allegations not answered will be deemed admitted for the purpose of this proceeding. Failure to file an answer will constitute an

admission of all the material allegations of this complaint and a waiver of hearing. The respondents are hereby notified that unless hearing is waived, either expressly or by failure to file an answer and request a hearing, a hearing will be held at 10:00 a.m., local time, on the 19th day of April 1960, in New York, New York, at a place therein to be specified later, before a referee designated to conduct such hearing. At such hearing the respondents will have the right to appear and show cause, if any there be, why an order should not be made suspending or revoking the registration of respondent Consolidated Growers Exchange, Inc., as a futures commission merchant, and directing that all contract markets refuse all trading privileges to each of the respondents for such period of time as may be determined.

It is ordered that this complaint and notice of hearing be served on the respondents at least twenty (20) days prior to the date set for hearing.

Done at Washington, D. C.,

March 22, 1960

/s/ Clarence L. Miller

Clarence L. Miller

Assistant Secretary

LOAD-DATE: June 12, 2008

