

Commodity Futures Trading Commission
CEA CASES

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

CITATION: 19 Agric. Dec. 467

DOCKET NUMBER: 92

DATE: MAY 6, 1960

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AGRICULTURE DECISIONS

BEFORE THE SECRETARY OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

(No. 6516)

In re CONSOLIDATED GROWERS EXCHANGE, INC., AND HARVEY A. BAUM. CEA Docket No. 92. Decided May 6, 1960.

Records -- Suspension of Registration -- Denial of Trading Privileges -- Consent Order

Respondents admitted the violations charged and consented to an order suspending the registration of Consolidated Growers Exchange, Inc., as a futures commission merchant for 30 days and denying trading privileges to both respondents for 30 days.

Mr. Benj. M. Holstein, for Commodity Exchange Authority. *Mr. Irving Coopersmith*, of New York, New York, for respondents.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

The complaint in this administrative proceeding charged the respondents, a corporation registered as a futures commission merchant and its president, with wilful violations of various sections of the Commodity Exchange Act and the regulations.

The complaint alleges that the respondent corporation's records erroneously showed certain accounts of individual customers as joint accounts of such customers and the respondent corporation, and that the records were otherwise deficient in identifying persons for whom accounts were carried (Complaint, paragraphs IV, V); that the respondents used customers' funds to finance the corporation's trading activities, and failed to maintain a daily record of customers' funds required to be kept in segregation (Complaint, paragraphs VI, VII); and that the firm's records did not sufficiently identify transactions in futures executed by or for the corporation (Complaint, paragraph VIII). The complaint charged that, by reason of such acts, the respondents wilfully violated sections 4, 4d(2) and 4g of the act (7 U.S.C. 1958 ed. §§ 6, 6d(2), 6(g)) and various sections of the regulations.

No hearing has been held. The respondents have filed a document under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they admit the facts alleged in the complaint, waive hearing, and consent to entry of the order hereinafter set forth.

FINDINGS OF FACT

1. Respondent Consolidated Growers Exchange, Inc., a corporation with offices at 6 Harrison Street, New York 15, New York, is now and has been at all times material herein a clearing member of the New York Mercantile Exchange and a registered futures commission merchant under the Commodity Exchange Act.

2. 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 herein 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.

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

4. During March, April, and May 1959, the respondent corporation carried accounts on its books and records which bore the designation "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 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 the individual accounts of one E. Larocque and of the Dominion Banana and Potato Company, respectively.

5. 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.

6. 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.

7. 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.

8. 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.

CONCLUSIONS

The respondents have admitted the facts alleged in the complaint, which have been adopted as the findings of fact in this proceeding.

Section 4 of the act (7 U.S.C. 1958 ed., § 6) prohibits the making or confirmation of a transaction in futures unless such transaction "is evidenced by a record in writing which shows the date, the parties to such contract, and their addresses" Section 1.37 of the regulations (17 CFR 1.37) requires every futures commission merchant to "keep a record in permanent form which shall show for each commodity futures account carried by him the true name and address of the person for whom such account is carried and the principal occupation or business of such person" The books of the firm showed the respondent corporation as co-owner of the Larocque and Dominion Banana and Potato Company accounts when, in fact, the corporation had no interest in these accounts. It follows that the records did not show "the parties to such contract" as required by section 4 of the act, or "the true name and address of the person for whom such amount is carried", as required by the regulation.

The failure of the respondent corporation for more than four years to include in its records of customers' accounts the items of information specified by section 1.37 of the regulations was also in violation of this regulation and of section 4 of the act.

Section 4d(2) of the act (7 U.S.C. 1958 ed., § 6d(2)) requires each futures commission merchant to treat and deal with the funds of a customer "as belonging to such customer" and to account separately for such funds, and prohibits the commingling of such funds with funds of the futures commission merchant or the use of such funds "to margin or guarantee the trades or contracts, or to secure or extend the credit of any customer or person other than the one for whom the same are held." Section 1.20 and 1.21 of the regulations (17 CFR 1.20, 121) contain additional detailed requirements with respect to customers' funds. It appears that on nine different occasions in March, April, and May 1959, the respondent corporation deposited funds belonging to Larocque or to the Dominion Banana and Potato Company in its general bank account, and used such funds to margin trades of the corporation. This was a clear violation of the provisions of the act and the regulations.

The failure to prepare and maintain a daily segregation record setting forth the amount of customers' money, securities, and property required to be kept in segregation was contrary to the express provisions of section 1.32 of the regulations.

Section 4g of the act authorizes the Secretary of Agriculture to prescribe the form and manner in which a registered futures commission merchant shall keep books and records, and authorizes the Secretary to revoke or suspend a futures commission merchant's registration for failure or refusal to comply. Section 1.35 of the regulations (17 CFR 1.35) sets forth certain information which a registered futures commission merchant must include in his records "as a minimum requirement." Among the items of information which must be shown by the records of a registered futures commission merchant who is also a clearing member, are the identity of the floor broker executing the transaction on behalf of the clearing member and the clearing member on the opposite side of the transaction. The respondent corporation's books did not contain this information with respect to numerous transactions executed during the period between January and May 1959, and such failure constituted violations of the above provisions.

The number of violations involved, the extensive periods of time during which they occurred, and the numerous occasions on which the infractions were specifically called to the attention of the respondents, justify the conclusion that the violations were wilful, as alleged in the complaint.

The complainant states that it has carefully considered the proposed order and the assurance by the respondents that they will take steps to prevent

similar violations in the future. The complainant is of the view that the proposed sanction is sufficient and that the prompt entry of such an order without further proceedings would serve the public interest and effectuate the purposes of the Commodity Exchange Act. The complainant therefore recommends that the respondents' waiver and consent be accepted and that the proposed order be issued. It is so concluded.

ORDER

Effective July 1, 1960, the registration of Consolidated Growers Exchange, Inc., as a futures commission merchant is suspended for a period of thirty (30) days.

Effective July 1, 1960, all contract markets shall refuse all trading privileges to Consolidated Growers Exchange, Inc., and to Harvey A. Baum for a period of thirty (30) days, such refusal to apply to all trading done and positions held by Consolidated Growers Exchange, Inc., or Harvey A. Baum, directly or indirectly.

A copy of this decision and order shall be served on the respondents and on each contract market.

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