

Commodity Futures Trading Commission
CEA CASES

NAME: ROBERT HALTMIER

CITATION: Comm. Fut. L. Rep. (CCH) P20,078; [1975-1977 TRANSFER BINDER]

DOCKET NUMBER: 75-2; 229

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[P 20,078] In re Robert Haltmier.

Commodity Futures Trading Commission. CFTC Docket No. 75-2. September 3, 1975. Decision and order in full text. (For final CFTC opinion, see P 20,160).

Antifraud -- Account Executive -- Unauthorized Trading -- Profit Irrelevant -
- An account executive who executed transactions for a customer's account without the customer's knowledge or authority has violated Sec. 4b of the Commodity Exchange Act. The account was not a discretionary account and the respondent admitted that the transactions were not "expressly" authorized. Respondent justified the transactions by claiming they were necessary to preserve the customer's capital in a declining market. The extent of gain or loss is immaterial, however. Even if a greater gain would have accrued than if the instructions had been followed, the actions of the respondent represent a clear violation of his fiduciary obligations under the Commodity Exchange Act.

See P 12,555, "Liabilities -- Prohibitions" division.

Preliminary Statement

LIEBERT, Administrative Law Judge: This is an administrative proceeding under the Commodity Exchange Act (7 U. S. C. §§ 1 *et seq.*, hereinafter referred to as the "Act"), which was instituted by a complaint and notice of hearing filed on June 10, 1974, by the Assistant Secretary of Agriculture. The complaint alleges that from April 18, 1972, through October 10, 1972, the Respondent, Robert Haltmier, an account executive employed by a registered futures commission merchant, executed 208 transactions for the regulated commodity futures trading account of a customer without his knowledge or authorization. Such act is alleged to have been wilful and in violation of section 4b of the Act (7 U. S. C. § 6b).

After extensions of time for filing an answer Respondent filed a letter responsive to the complaint on August 23, 1974. While not denying the fact of the transactions, Respondent stated by way of answer that the reasons for his actions in handling the account as he did were (1) an increase in margin requirements by the Chicago Board of Trade for soybean futures contracts; (2) adverse movement in the price of the soybean futures contracts; (3) the necessity to take action to preserve what he believed to be the customer's objective. He generally denied wrongdoing.

Oral hearing on the matter was held in New York City on January 16, 1975, before Administrative Law Judge John G. Liebert. The Respondent represented himself and Complainant was represented by Herbert R. Bader, Esq., Office of the General Counsel, United States Department of Agriculture. Following the conclusion of the hearing the parties were afforded an opportunity to file proposed findings of fact and briefs.

Findings of Fact

1. The Respondent, Robert Haltmier, an individual whose address is 97-25 118th Street, Richmond Hill, New York 11419, during the period March 1, 1971, through October 10, 1972, was employed as an account executive by the firm of Conti-Commodity Services, 2 Broadway, New York, New York, a registered futures commission

merchant under the Act. Respondent's compensation was strictly on a percentage basis, that is, he was paid by Conti-Commodity Services a percentage of the commission charged by the firm on each customer transaction.

2. Commencing sometime in January, 1972, Mr. Albert F. Millet opened a personal account with Conti-Commodity Services for trading in commodity futures. Because of dissatisfaction with the account executive initially assigned to handle his account, Mr. Millet caused the account to be liquidated and on or about March 16, 1972, Conti-Commodity Services assigned Respondent as the new account executive for Millet's account. The account was in the approximate amount of \$ 5,000 on April 18, 1972, which was the date of initial purchases by Respondent for the account.

3. There is no disagreement that Mr. Millet's instructions to Respondent were to purchase as many soybean futures contracts as he could with the money available for margin and to hold them for a period of at least 6 months for purposes of long term tax advantage on anticipated profits. Evidence discloses that the margin at this time was \$ 1,000 per contract. Mr. Millet instructed Respondent that in the event it was necessary to obtain additional margin he could call on Mrs. Elizabeth Eastment, who had his power of attorney, for an amount up to \$ 500 to supplement his margin account. He further instructed Respondent that he should make additional purchases with the additional paper profits if the market went up as anticipated; however, if the market went down so that further funds were needed he instructed that one or all of the contracts should be closed out. Shortly thereafter Mr. Millet went abroad and made no further communication with Respondent until October, 1972.

4. The evidence discloses and Respondent admitted that during the period April 18 through October 10, 1972, after the initial purchase of 5 soybean contracts, Respondent made some 208 additional transactions in Millet's account involving some 690 contracts. These transactions included soybeans, soybean oil, wheat, cotton, potatoes and meal. Respondent admitted that these 208 transactions were not expressly authorized by Millet. He justified the transactions as deemed by him necessary to preserve Millet's capital in a declining market for soybeans, and further, that an increase in margin requirement sometime in June changed the quantity of contracts that Millet had projected and he took actions in the form of additional trades to compensate. Generally, his contention adds up to a defense that he believed he had discretion to make these additional trades in Millet's best interest.

5. The futures transactions, referred to herein, relate to the purchase and sale of futures contracts on or subject to the rules of the Chicago Board of Trade. Such transactions could have been used for (a) hedging transactions in interstate commerce, (b) determining the price basis of transactions in interstate commerce and (c) delivering commodities sold, shipped or received in interstate commerce for the fulfillment of futures contracts.

6. The sole evidence introduced in support of Respondent's contention for the exercise of discretion in handling the account is his own testimony concerning Millet's conversations with him about trading. This testimony on several points is confused and contradictory. On the other hand, Millet firmly denies that he gave any authorization to Respondent at any time to make any trades in commodities other than soybeans, and those only within the trading program as stated in Finding 3. The evidence discloses that in actual practice Respondent made the trades, or stated a belief that a certain trade would be profitable, and wrote a report to Millet of what he had done, or intended to do, and mailed this to Mrs. Eastman's address. Millet was abroad at the time and received none of these advices. Millet did not communicate during the period with Respondent,

either by way of inquiry or response to Respondent's letters and reports. Millet did not learn of any of these additional transactions until sometime in September 1972, just prior to his return to New York.

7. On the basis of the evidence we place more credence on the testimony of Millet. Additionally, Respondent knew, or should have known, that it is improper for brokers, or traders, or account managers to make trades in accounts under their control without specific authority. The only deviation from this practice is in a situation where a "discretionary account" is authorized. An official of Conti-Commodity Services testified that the company had an absolute rule that no "discretionary account" was permitted, or would be authorized, where the amount of the funds in

the account was less than \$ 10,000, and that all "discretionary accounts" had first to be accepted by the company and approved in writing. Millet's account failed to satisfy either requirement. Moreover, unimpeachable evidence adduced discloses that the margin requirements for soybeans did not go up in June, as stated by Respondent, but did in fact go down. Also, the evidence discloses that Respondent made no call on Mrs. Eastment for additional margin, as arranged, when it was concluded by him to be necessary or desirable, nor did he make such a call on Millet.

8. On the basis of the foregoing, and after consideration of all of the testimony and evidence presented, we find that Respondent made the trades in Millet's account as alleged without authorization. Additionally, we find that, by virtue of his own admissions, Respondent willfully made these trades knowing them to be unauthorized.

9. No evidence was adduced on the matter of the extent of gain or loss to Millet by virtue of Respondent's unauthorized trading in the account. Regardless, however, of the actual fact, we do not find it to be material or relevant to the issue. Even should there have been a greater gain to Millet than might have accrued if instructions had been followed, the fact remains that Respondent's actions were a clear violation of his fiduciary obligations under the Act. One ancillary and obvious fact is worthy of note and it is that Respondent's unauthorized trades greatly increased his commissions from what he would have received if he had followed his instructions; however, there was no showing that Respondent's mishandling of the account resulted in any other personal financial gain to himself.

Conclusions

On October 23, 1974, Congress amended the Commodity Exchange Act by enactment of the Commodity Futures Trading Commission Act of 1974 (Pub. Law 93-463, October 23, 1974, 88 Stat. 1389 --). The amendments were made effective on April 21, 1975. Among the amendments were those which provide:

"Sec. 411. All operations of the Commodity Exchange Commission and of the Secretary of Agriculture under the Commodity Exchange Act, including all pending administrative proceedings, shall be transferred to the Commodity Futures Trading Commission as of the effective date of this Act and continue to completion. All rules, regulations, and orders heretofore issued by the Commodity Exchange Commission and by the Secretary of Agriculture under the Commodity Exchange Act to the extent not inconsistent with the provisions of this Act shall continue in full force and effect unless and until terminated, modified, or suspended by the Commodity Futures Trading Commission.

Sec. 412. Pending proceedings under existing law shall not be abated by reason of any provision of this Act but shall be disposed of pursuant to the applicable provisions of the Commodity Exchange Act, as amended, in effect prior to the effective date of this Act."

This case was heard prior to April 21, 1975, and jurisdiction for purposes of this Decision is retained.

The amendments to the Act did not change the pertinent language supporting the charge in section 4b of the Act (7 U. S. C. 6b) which in pertinent part reads:

"Sec. 4b. It shall be unlawful (1) for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person, or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof --

(A) to cheat or defraud or attempt to cheat or defraud such other person;

(B) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

(C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or * * *."

The agency has consistently held that unauthorized trading in a customer's account with a registered futures commission merchant by an employee of such merchant having control of the account constitutes cheating or defrauding such customer in violation of section 4b of the Act. *In re Douglas Steen*, 21 Agric. Dec. 1076 (21 A.D. 1076) (1962); *In re George Rex Andrews*, 32 Agric. Dec. 553 (32 A.D. 553) (1973); *In re William R. Thompson, Jr.*, 27 Agric. Dec. 325 (27 A.D. 325) (1968); *In re Roger Harris*, 29 Agric. Dec. 1330 (29 A.D. 1330) (1970); *In re The Siegel Trading Co., Inc., et al.*, 29 Agric. Dec. 189 (29 A.D. 189) (1970); *In re Edward Weitman*, 30 Agric. Dec. 600 (30 A.D. 600) (1971); *In re Elliott Alkow*, 31 Agric. Dec. 1353 (31 A.D. 1353) (1972).

The prohibitions in section 4b of the Act are sufficiently broad enough to encompass Respondent's activities at issue in this proceeding. One is mindful of the fact that the pertinent section of the Act is intended as remedial legislation. It imposes a high degree of trust on those engaged in trading activity with customer's funds. Respondent breached this trust by disregarding Millett's instructions. We conclude, therefore, that Respondent violated section 4b of the Act as charged, and that such violations were wilful and flagrant. Moreover, the facts in evidence compel the inference that Respondent was motivated by personal gain, or, at least, was the beneficiary of his unauthorized actions.

Respondent is not registered as a floor broker or as a futures commission merchant, therefore, it is not possible to suspend or revoke any license as a result of his violations of the Act. However, in order to have an effective sanction the CEA has recommended that Respondent be denied all trading privileges for a period of 5 years and be required to cease and desist from the instant kinds of violations. These sanctions are consistent with the administrative policy of the CEA following determinations of wilful and flagrant violations of the Act. In the context of the recent amendments to the Act *supra*, we deem such sanctions to be presently appropriate.

The foregoing findings and conclusions have been made after full consideration of the entire record and all evidence received. All motions, objections, proposed findings and arguments presented by the parties inconsistent with this decision are denied or found to be without persuasive merit.

Order

1. Upon the effective date of this Order, the Respondent, Robert Haltmier, shall cease and desist from placing, or causing to be placed, in any customer's account any commodity futures transaction without the prior knowledge, consent or authorization of such customer, or otherwise to cheat or defraud, or attempt to cheat or defraud, any person in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery on or subject to the rules of any contract market for, or on behalf of, any person.

2. The Respondent Robert Haltmier, is prohibited from trading on or subject to the rules of any contract market for a period of 5 years, and all contract markets shall refuse all trading privileges to him during said period. Such prohibition and refusal shall apply to all trading done and all positions held directly, or indirectly, whether for his account, or for the account of any other person. This prohibition of trading and denial of trading privileges to the Respondent shall become effective on the twentieth day after the date this Decision and Order becomes final.

3. Pursuant to the Rules of Practice governing proceedings under the Act, this Decision and Order shall become final without further proceedings 35 days after service thereof, unless appealed to the Commission by a party to this proceeding within 30 days after service, as provided in the Rules of Practice.

4. A copy of this Decision and Order shall be served upon the Respondent and on each contract market.

LOAD-DATE: June 16, 2008

