

Commodity Futures Trading Commission
CEA CASES

NAME: DAVID L. HOFER

DOCKET NUMBER: 156

DATE: NOVEMBER 6, 1968

DOCUMENT TYPE: COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: David L. Hofer, Respondent

CEA Docket No. 156

Complaint and Notice of Hearing Under the Commodity Exchange Act

There is reason to believe that the respondent, David L. Hofer, has violated the Commodity Exchange Act, as amended (7 U.S.C. 1 et seq.; Public Law 90-258), hereinafter referred to as the act, and the rules and regulations made pursuant thereto (17 CFR, Part 1), hereinafter referred to as the regulations. There is also reason to believe that under the provisions of section 8a of the act, as amended (7 U.S.C. 12a; Public Law 90-258), the respondent's application for registration as futures commission merchant, filed August 2, 1968, should be denied. Therefore, this complaint and notice of hearing is issued alleging the following:

I

Respondent, David L. Hofer, an individual whose business address is 110 North Franklin Street, Chicago, Illinois, was at all times material herein, engaged as futures commission merchant within the meaning of the term "futures commission merchant" as used in the act. On August 2, 1968, the respondent filed an application for registration as futures commission merchant under the act, but registration has not been granted.

II

At all times during the period from June 18 through August 16, 1968, inclusive, the respondent, acting in the capacity of futures commission merchant under the act, carried accounts for customers who traded in commodity futures subject to the provisions of the act and regulations, and had received funds belonging to such customers, representing deposits of margin by and trading profits accruing to such customers.

III

During the period specified in paragraph II above, the respondent failed and refused to segregate and to account separately for the funds belonging to his customers, commingled such funds with the funds of the respondent, used customers' funds for the respondent's own benefit, and except for one day - August 15, 1968 - failed and refused to prepare a daily record setting forth the amount of customers' money and equities required to be kept in segregation in accordance with the provisions of section 4d of the act (7 U.S.C. 6d). The segregation record prepared by the respondent for August 15, 1968, showed that he had excess funds in segregation on that day. However, in such record, the respondent improperly included as segregated funds two accounts receivable totaling \$ 21,440.00 which did not constitute funds in segregation. The segregation record, when adjusted to compensate for such amount, showed that the respondent was under-segregated by \$ 18,055.52 - that is, the total amount of

customers' money, securities and property held in segregation was, according to the respondent's segregation record

for August 15, 1968, when so adjusted, insufficient by \$ 18,055.52, to pay all credits and equities due to the respondent's customers.

IV

In the registration application, filed by the respondent with the Commodity Exchange Authority on August 2, 1968, the respondent wilfully made a material false statement, in that, in such application, the respondent answered "no" to the following question:

Have you or any general partner, officer, holder of more than 10 per cent of the capital stock, or any person participating in managing your business or any of your offices been subject to any of the following actions which have not been previously reported to this agency: * * * 2. Any action by the United States Securities and Exchange Commission, the securities commission or equivalent authority of any State?

In truth and in fact, the respondent was subject to such an action in November 1967, before the Insurance Commissioner of the State of Iowa, and on November 7, 1967, the Insurance Commissioner entered an order in that action which, inter alia, ordered the respondent to "cease and desist from further solicitation and sale" of certain securities in the State of Iowa.

V

On August 2, 1968, the respondent, in connection with his application for registration as futures commission merchant, wilfully submitted

to the Commodity Exchange Authority a false financial report as of June 30, 1968, overstating his assets by more than \$ 100,000, and concealing the fact that as of June 30, 1968, he lacked more than \$ 52,000 of having enough funds to pay his customers' credits and equities.

VI

During the period from June 18 through August 16, 1968, the respondent acted as futures commission merchant in soliciting and accepting orders for the purchase and for the sale of commodity futures subject to the act, without being registered with the Secretary of Agriculture as futures commission merchant.

VII

By reason of the facts alleged in this complaint: (1) the respondent wilfully violated sections 4d, 4f, and 6(b) of the act (7 U.S.C. 6d, 6f, and 9, as amended by Public Law 90-258) and sections 1.7, 1.10, 1.20, 1.21, 1.32 and 1.35 of the regulations issued under the act (17 CFR 1.7, 1.10, 1.20, 1.21, 1.32, 1.35), and (2) the respondent's application for registration as futures commission merchant should be denied under the provisions of section 8a of the act (7 U.S.C. 12a, as amended by Public Law 90-258).

WHEREFORE, it is hereby ordered that this complaint and notice of hearing be served upon the respondent and this proceeding shall be governed by sections 0.1, 0.2, 0.4(b), 0.5 through 0.22, and 0.28 of the rules of practice under the act (17 CFR 0.1 0.2, 0.4(b), 0.5 through 0.22, 0.28). The respondent will have twenty (20) days after the receipt

of this complaint in which to file with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, an answer with an original and three copies, fully and completely stating the nature of the defense and

admitting or denying, specifically and in detail, each 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 allegations of this complaint and a waiver of hearing. The filing of an answer in which all of the material allegations of fact contained in this complaint are admitted likewise shall constitute a waiver of hearing unless a hearing is requested. The respondent is hereby notified that unless a hearing is waived, a hearing will be held at 10:00 a.m., local time, on December 11, 1968, in Chicago, Illinois, at a place therein to be specified later, before a referee designated to conduct such hearing. At such hearing, the respondent will have the right to appear and show cause, if any there be, why an appropriate order should not be issued in accordance with the act, (1) prohibiting the respondent from trading on or subject to the rules of any contract market, and directing that all contract markets refuse all trading privileges to the respondent for such period of time as may be determined, (2) denying the respondent's application for registration as futures commission merchant, and (3) directing that the respondent shall cease and desist from violating the act and regulations in the manner alleged herein.

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

Done at Washington, D. C.

November 6 1968

[SEE SIGNATURE IN ORIGINAL]

Ted J. Davis

Assistant Secretary

LOAD-DATE: June 16, 2008

