

Commodity Futures Trading Commission
CEA CASES

NAME: THOMAS JORDAN & COMPANY, THOMAS JORDAN, EDMUND H. CRANE, AND FRANK W. VAN KIRK

CITATION: 7 Agric. Dec. 381

DOCKET NUMBER: 44

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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AGRICULTURE DECISIONS

(Agric. Dec. 1758)

In re THOMAS JORDAN & COMPANY, THOMAS JORDAN, EDMUND H. CRANE, AND FRANK W. VAN KIRK. CEA Doc. No. 44. Decided May 5, 1948.

Order Suspending Registration and Denying Trading Privileges To Be Held in Abeyance -- Wash Sales -- Fictitious Sales -- Offsetting and Reciprocal Transactions

Where the respondents cause the execution of purchases of cotton futures contracts for the account of one of the respondents against offsetting and reciprocal sales of identical quantities of the same future for the account of such respondent, it is held that the respondents caused the execution of wash sales and fictitious sales in violation of section 4c of the Commodity Exchange Act (7 U. S. C., § 6c), and it is ordered that the registration of respondent Thomas Jordan & Company as a futures commission merchant be suspended for a period of 10 days and that the trading privileges be denied to respondents Thomas Jordan & Company, Thomas Jordan, and Edmund H. Crane for the same period, such suspension and denials to be held in abeyance for a period of two years, conditioned upon the respondents' observance during that time of the Commodity Exchange Act and the rules and regulations. *

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

Wash Sales -- Fictitious Sales -- Change in Ownership

Where a purchase is made for the account or benefit of a particular person and the corresponding sale side of the transaction is also for the account or benefit of that person, no change in ownership has taken place since such person has bought from and sold to himself, and such transactions are wash sales and fictitious sales in violation of section 4c of the Commodity Exchange Act (7 U. S. C., § 6c). *

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

Wash Sales -- Fictitious Sales -- Ameliorating Circumstances

Effective administration of the Commodity Exchange Act does not require the imposition of any sanction against one of the respondents in whose favor ameliorating circumstances are found to have existed. *

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

Agriculture Decisions Followed

In re JEAN GOLDWURM *et al.*, 7 Agric. Dec. 265 (7 A.D. 265).

Mr. Benjamin M. Holstein for complainant. Messers. Kelleher, Hurley & Kohlmeyer, of New Orleans, Louisiana, for respondent. Mr. Glen J. Gifford, Referee.

Decision by Thomas J. Flavin, *Judicial Officer*

DECISION AND ORDER

This is a disciplinary proceeding under the Commodity Exchange Act (7 U. S. C. Chapter 1) initiated by a complaint issued on February 12, 1948, by the Secretary of Agriculture, charging that the respondents had offered to enter into, entered into, executed, and confirmed the execution of transactions which were wash sales or fictitious sales in violation of Section 4c of the Commodity Exchange Act. The complaint alleged that respondents Thomas Jordan and Edmund H. Crane, partners in the respondent partnership Thomas Jordan & Company, caused the execution on the New Orleans Cotton Exchange of purchases of cotton futures contracts for the personal account of respondent Thomas Jordan against reciprocal sales of such contracts for the same account, and that respondent Frank W. Van Kirk, also a partner in the respondent partnership Thomas Jordan & Company, executed such transactions on the floor of the New Orleans Cotton Exchange by offsetting the purchase of specified quantities of designated cotton futures contracts against the sale of identical quantities of such contracts.

On March 3, 1948, the referee extended the time for filing of the answer to April 7, 1948, and postponed the hearing date indefinitely. On April 23, 1948, complainant filed Suggested Findings of Fact, Conclusions and Order. This decision and order are substantially as suggested by complainant.

On March 31, 1948, each of the respondents executed a document entitled "Waiver of Hearing and Consent to Order." This document was filed on April 5, 1948, in accordance with section 0.4 (b) of the rules of practice (17 CFR, Cum. Supp., 0.4 (b)). This section specifies that prior to the hearing in any proceeding the Secretary may, in his discretion, allow a respondent to consent to an order, provided that the respondent submits, for filing in the record, a stipulation or statement in which he admits at least those facts necessary to the Secretary's jurisdiction and agrees that an order may be entered against him. The waiver executed by these respondents stipulates that they "waive hearing on the complaint in this proceeding and consent to the entry of an order by the Secretary of Agriculture based upon the facts alleged in such complaint." Since the respondents

have thus admitted the facts charged in the complaint, no purpose would be served by a hearing.

FINDINGS OF FACT

1. Respondent Thomas Jordan & Company is a partnership doing business in New Orleans, Louisiana. At the time of the transactions involved the partnership was and is now registered as a futures commission merchant under the provisions of the Commodity Exchange Act. The partnership enjoys membership trading privileges on the New Orleans Cotton Exchange and the New York Cotton Exchange, and is a member of the New Orleans Cotton Exchange Clearing Association.

2. The New Orleans Cotton Exchange was, prior to the time of the transactions described in these findings, duly designated as a contract market under the provisions of the Commodity Exchange Act, and has been a contract market continuously since that time.

3. Thomas Jordan, an individual, is a member of the partnership of Thomas Jordan & Company and a member of the New Orleans Cotton Exchange and the New York Cotton Exchange.

4. Edmund H. Crane, an individual, is a member of the partnership of Thomas Jordan & Company and a member of the New Orleans Cotton Exchange.

5. Frank W. Van Kirk, an individual, is a member of the partnership of Thomas Jordan & Company and a member of the New Orleans Cotton Exchange. The said Frank W. Van Kirk was at all times material to these findings and is now a registered floor broker under the provisions of the Commodity Exchange Act.

6. On or about December 16, 1947, respondent Thomas Jordan caused the execution on the New Orleans Cotton Exchange of a purchase of 17,200 bales of 1948 March cotton futures for his personal account against a reciprocal sale on the said Exchange of 17,200 bales of 1948 March cotton futures for his personal account.

7. On or about December 16, 1947, respondent Thomas Jordan caused the execution on the New Orleans Cotton Exchange of a purchase of 14,600 bales of 1948 May cotton futures for his personal account against a reciprocal sale on the said Exchange of 14,600 bales of 1948 May cotton futures for his personal account.

8. On or about December 16, 1947, respondent Edmund H. Crane caused and directed the execution of a reciprocal purchase and sale on the New Orleans Cotton Exchange of 17,200 bales of 1948 March cotton futures at 35.98 cents per pound, for the personal account of respondent Thomas Jordan carried on the books of respondent Thomas Jordan & Company.

9. On or about December 16, 1947, respondent Edmund H. Crane caused and directed the execution of a reciprocal purchase and sale on the New Orleans Cotton Exchange of 14,600 bales of 1948 May cotton futures at 35.60 cents per pound, for the personal account of respondent Thomas Jordan carried on the books of respondent Thomas Jordan & Company.

10. On or about December 16, 1947, respondent Frank W. Van Kirk received an order or orders from his firm, respondent Thomas Jordan & Company, to buy and sell 17,200 bales of 1948 March cotton futures on the New Orleans Cotton Exchange at 35.98 cents per pound. Respondent Frank W. Van Kirk, acting for the said Thomas Jordan & Company, executed such order or orders on the floor of the New Orleans Cotton Exchange by offsetting a purchase of 17,200 bales of 1948 March cotton futures at 35.98 cents per pound against a sale of 17,200 bales of 1948 March cotton futures at the same price. These transactions were for the personal account of respondent Thomas Jordan carried on the books of Thomas Jordan & Company.

11. On or about December 16, 1947, respondent Frank W. Van Kirk received an order or orders from his firm, respondent Thomas Jordan & Company, to buy and sell 14,600 bales of 1948 May cotton futures on the New Orleans Cotton Exchange at 35.60 cents per pound. Respondent Frank W. Van Kirk, acting for the said Thomas Jordan & Company, executed such order or orders on the floor of the New Orleans Cotton Exchange by offsetting a purchase of 14,600 bales of 1948 May cotton futures at 35.60 cents per pound against a sale of 14,600 bales of 1948 May cotton futures at the same price. These transactions were for the personal account of respondent Thomas Jordan carried on the books of Thomas Jordan & Company.

12. The transactions in cotton futures described in paragraphs 6, 7, 8, 9, 10, and 11, above, were capable of being used for hedging a transaction in interstate commerce in cotton, or the products or byproducts thereof, or for determining the price basis of a transaction in interstate commerce in cotton, or for delivering cotton sold, shipped or received in interstate commerce.

CONCLUSIONS

The respondents have admitted that they executed and confirmed the execution of offsetting and reciprocal purchases and sales for the same account. Where a purchase is made for the account or benefit of a particular person and the corresponding sale side of the transaction is also for the benefit or account of that person, it is obvious that no change in ownership has taken place. Such a person has bought from and sold to himself, and such transactions are wash sales and fictitious

sales, prohibited by section 4c of the act. An exhaustive discussion of this subject appeared in the decision and order entered on April 21, 1948, in *In re Jean Goldwurm, Jula Goldwurm, Ira Haupt and Company, Irving Weis and Irving Weis and Company*, CEA Docket No. 38, 7 Agric. Dec. 265 (7 A.D. 265).

Respondents Thomas Jordon and Edmund H. Crane initiated and directed these transactions, and they must be considered as primarily responsible for the resulting violations. Since they are partners in respondent Thomas Jordan & Company, the partnership is responsible to the same extent. The situation is somewhat different insofar as respondent Van Kirk is concerned. In the Suggested Findings of Fact, Conclusions and Order filed by complainant, it is stated that Mr. Van Kirk's chief duties as a member of Thomas Jordan & Company were to execute orders for the firm on the floor of the New Orleans Cotton Exchange, that at the time of the transactions involved he had been associated with Thomas Jordan & Company for only one month, and that his experience as a floor trader covered less than one year. The complainant also said that it had no reason to question the representation of respondents that Mr. Van Kirk's participation in these transactions was the result of instructions which were given to him by the senior member of the firm and which he followed without further inquiry. The complainant suggested that, in view of these ameliorating circumstances in Mr. Van Kirk's favor, effective administration of the act does not require the imposition of any sanction against respondent Frank W. Van Kirk. This suggested conclusion is adopted here.

As to the other respondents, similar violations were recently disposed of in *In re Jean Goldwurm et al.*, referred to above. The effectiveness of sanctions was held in abeyance in that proceeding because the transactions, while constituting wash sales or fictitious sales in violation of section 4c of the act, were not engaged in for manipulative purposes and constituted a case of first impression under that part of the act. Such considerations are also applicable to this proceeding since the activities here in question took place prior to the decision in the *Goldwurm* case. The purposes of the act will be adequately served by suspending the registration of respondent Thomas Jordan & Company as a futures commission merchant for a period of ten days, and by denying trading privileges to respondent Thomas Jordan & Company, Thomas Jordan, and Edmund H. Crane for a like period, such suspension and denial to be held in abeyance for a period of two years conditioned upon the respondents' observance during that time of the act and the rules and regulations.

ORDER

Effective on the 30th day after the date of this order, the registration of Thomas Jordan & Company as a futures commission merchant is suspended for a period of ten (10) days.

Effective on the 30th day after the date of this order, all contract markets shall refuse all trading privileges thereon to Thomas Jordan & Company, Thomas Jordan, and Edmund H. Crane for a period of ten (10) days.

It is further ordered that such suspension of registration and denial of trading privileges shall be held in abeyance for a period of two years from the date of this order: *Provided*, That if within such two-year period the said Thomas Jordan & Company, Thomas Jordan, or Edmund H. Crane should, after complaint and hearing in accordance with established procedure, be found to have again violated the Commodity Exchange Act or the rules and regulations

thereunder, then and in that event and without further notice, the Secretary of Agriculture, or his lawful delegatee, may issue a supplemental order in this proceeding directed against the person or persons so found to have again violated the act, making effective forthwith the aforesaid suspension of registration or denial of trading privileges, as the case may be, for such ten-day period.

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

LOAD-DATE: June 8, 2008

