

Commodity Futures Trading Commission  
CEA CASES

**NAME:** SECRETARY OF AGRICULTURE V. ELMER C. KIMBALL

**DOCKET NUMBER:** 17

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DEPARTMENT OF AGRICULTURE

Washington, D. C.

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. CE-A 17

Secretary of Agriculture, Complaint, v. Elmer C. Kimball, Respondent.

**Proceedings, Findings of Fact, Conclusions, and Order.**

**PROCEEDINGS**

On February 3, 1940, complaint was issued by the Assistant Secretary of Agriculture, pursuant to the provisions of the Commodity Exchange Act (7 U. S. C. and Supp. V, §§ 1-17c), against Elmer C. Kimball. It was alleged that the respondent, Kimball, was registered as a futures commission merchant, was a member of the Chicago Board of Trade, and, without prior consent of customers, had taken the other side of customers' orders for futures in commodities named in the act. A hearing was set for February 26 in Washington, D. C. The complaint was served upon the respondent by registered mail on February 7. On February 23, Jack W. Bain, of the Solicitor's Office, who had been appointed referee by the

Assistant Secretary, continued the hearing until March 5, and by wire advised the respondent that he should request it if he desired a hearing at a place other than Washington. On the same day, the respondent requested a hearing in Chicago and a continuance of six weeks to allow him to take a trip for his health. On February 29, the referee continued the hearing to Chicago without date, and on April 9, after the respondent returned from his trip, act it for April 30. On April 23, James J. Coughlin wrote Dr. J. W. T. Duvel, Chief of the Commodity Exchange Administration, that the respondent had that afternoon employed him as counsel, and requested a continuance because of counsel's market commitments and other engagements. On April 24, the referee denied this request for continuance.

The hearing was held before the referee on April 30, 1940, at 332 South LaSalle Street, Chicago. Charles W. Buoy, Office of the Solicitor, Department of Agriculture, appeared for the Government, and James J. Coughlin, Chicago, for the respondent. Judicial notice was taken of the designation of the Chicago Board of Trade as a contract market and of the respondent's registration as a futures commission merchant and floor broker for the years 1939 and 1940. It was agreed that the respondent was no longer a member of a contract market and that he had returned his 1940 registration certificate to the Commodity Exchange Administration. Respondent's counsel then moved to dismiss the complaint on the grounds that: (1) the complaint was not issued by the Secretary himself and does not recite that the Secretary believes that the net was violated;

(2) the question is moot because the respondent is no longer a member of a contract market and has surrendered his registration certificate; and (3) the provisions of the net authorizing denial of trading privileges on contract markets are unconstitutional as they seek to deprive persons of property without due process of law. He said that he had not prepared the case for trial because sufficient time had not been given. The referee denied the motion to dismiss, Mr. Coughlin withdrew from the hearing "for the time being," after the referee's statement that the case would proceed, and the Government presented its evidence. The respondent did not appear in person, and, after Mr. Coughlin's withdrawal, was not represented by anyone present.

The Government introduced, as exhibits, trading cards and other records of various commission firms pertaining to May wheat futures trades made on the Chicago Board of Trade on December 16, 19, and 20, 1939, and a Government accountant's tabulation of trades executed by the respondent, as shown by those records. These exhibits, with the testimony of witnesses who identified them and explained various parts of them, show that the respondent, as floor trader, in many instances took the other side of a trade which he executed for a customer and cleared the two sides of the trade through different clearing members. Mr. Emmett George Barker testified that the respondent did not, in any instance, have the consent of the customer to take the other side of the trade. Mr. William B. Bosworth testified that the respondent became a member

of the Chicago Board of Trade in 1918 and was a member in good standing in December 1939.

After the hearing was closed, the referee served his report upon the respondent by registered mail and upon Dr. Duvel and Mr. Buoy. A period of 20 days was given for filing exceptions, briefs, and request for oral argument before the Secretary. The time has elapsed, and none has been filed.

#### **FINDINGS OF FACT**

1. On December 16, 19, and 20, 1939, Elmer C. Kimball, the respondent, was, but on April 30, 1940, was not, a member of The Board of Trade of the City of Chicago, a contract market.

2. The respondent registered with the Secretary of Agriculture as a futures commission merchant and floor broker, under the Commodity Exchange Act (7 U. S. C. and Supp. V, §§ 1-17a), for the years 1939 and 1940, and his registration has not heretofore been suspended or revoked.

3. On December 16, 1939, the respondent had orders to sell two job lots (1,000 bushels each) of May wheat futures at 104, one at 104-1/4, one at 104-3/8, seven at 104-1/2, one at 104-5/8, one at 104-3/4, eight at 104-7/8, and three at 105, on the Chicago Board of Trade, for various customers of James E. Bennett & Company, a clearing member of the exchange. He did not have the consent of that company or of any of its customers to become the buyer with respect to any sale. He became the buyer in each instance, for

his own account carried with Alex McD. Simons, a clearing member of the exchange.

4. On December 19 and 20, 1939, the respondent took similar action with respect to various customers' orders to sell jobs in Chicago May wheat futures, under similar circumstances except that the prices were different.

5. On December 20, 1939, the respondent took similar action with respect to various customers' orders for jobs in Chicago May wheat futures, under similar circumstances except that the prices were different, the customers' orders were to buy, and he had no consent to become the seller.

**CONCLUSIONS**

The uncontradicted evidence shows that the respondent became the buyer in respect to selling orders, and the seller in respect to buying orders, of customers without their prior consent, in violation of section 4b of the act. It is concluded that, because of these violations, his registration should be revoked and his trading privileges on contract markets denied.

**ORDER**

IT IS ORDERED that the registration of Elmer C. Kimball as futures commission merchant and floor broker for the year 1940 be, and it is hereby, revoked.

IT IS FURTHER ORDERED that all contract markets refuse Elmer C. Kimball all trading privileges thereon until further notice by the Secretary of Agriculture.

IT IS FURTHER ORDERED that a copy hereof be sent by registered mail to the respondent and to each contract market, and that this order shall become effective 10 days after its date.

(SEAL)

Done at Washington, D. C., this 26th day of August 1940. Witness my hand and the seal of the Department of Agriculture.

(Signed)

GROVER B. HILL

Assistant Secretary of Agriculture.

**LOAD-DATE:** December 15, 2008

