

Commodity Futures Trading Commission
CEA CASES

NAME: J. M. LEAK

CITATION: 7 AGRIC. 528

DOCKET NUMBER: 46

DATE: JULY 13, 1948

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(Agric. Dec. 1808)

In re J. M. LEAK. CEA Doc. No. 46. Decided July 13, 1948.

**Denial of Trading Privileges -- Violation of Act -- Acting as Futures
Commission Merchant Without Registration -- Default -- Effect of Failure to File
Answer**

Where complaint stated that respondent, a dealer in cotton, violated the act by accepting orders for the purchase of cotton futures contracts and by receiving funds to margin such transactions, without registration as a futures commission merchant, and by making false representations concerning his status as a registered futures commission merchant and concerning the execution of futures transactions on a contract market, Held: that respondent's failure to file an answer constitutes an admission of the allegations in the complaint and a waiver of hearing; and that the violations of the act by the respondent were sufficiently serious to warrant the denial of his trading privileges for a period of 60 days *

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

Mr. Benj. M. Holstein for complainant. *Mr. Maurice F. Bishop*, of Birmingham, Alabama, for respondent. *Mr. John J. Curry*, Hearing Examiner.

Decision by Thomas J. Flavin, Judicial Officer.

DECISION AND ORDER

On April 12, 1948, the Secretary of Agriculture issued a complaint against the respondent charging violations of Sections 4d (1) and 4h (2) of the Commodity Exchange Act (7 U. S. C. Chapter 1.) The complaint alleged that the respondent, a dealer in cotton, had acted as a futures commission merchant by accepting orders for the purchase of cotton futures contracts and by receiving funds to margin such transactions, without registration with the Secretary of Agriculture as a futures commission merchant, and that he made false representations concerning his status as a registered futures commission merchant and concerning the execution of futures transactions on a contract market.

The complaint was served April 16, 1948, and a hearing was set for June 2, 1948. On May 4, 1948, at the request of the attorney for the

respondent, the time for the filing of the reply was extended to May 20, 1948. As of the close of business May 24, 1948, no answer had been received. The rules of practice under the Commodity Exchange Act specify that failure to file an answer constitutes an admission of the allegations in the complaint and a waiver of hearing, and it is provided that if the respondent admits the material

allegations of fact contained in the complaint, the referee, without further investigation or hearing, shall prepare his report in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint (17 CFR, Cum. Supp., 0.9; 12 F.R. 1030). Accordingly, the material facts set forth in the complaint were adopted by Referee John J. Curry in his report which was issued on June 4, 1948. The referee's report was served upon the parties. No exceptions were filed and no request for oral argument was received. This decision and order are substantially the same as the referee's recommendations. The Commodity Exchange Authority, by its attorney, Benjamin M. Holstein, filed suggested findings of fact, conclusions, and order in the proceeding.

FINDINGS OF FACT

1. The respondent, J. M. Leak, is an individual engaged in business as a cotton merchant at Arab, Alabama.
2. During the times specified in these findings of fact, the said respondent was not registered with the Secretary of Agriculture as a futures commission merchant under the provisions of the Commodity Exchange Act.
3. The New York Cotton Exchange was, prior to the time of the transactions described in these findings of fact, duly designated as a contract market under the provisions of the Commodity Exchange Act, and has been a contract market continuously since that time.
4. On or about January 29, 1942, the respondent, acting in the capacity of a futures commission merchant, accepted an order from Dr. R. M. Barnard, an individual residing in Arab, Alabama, for the purchase of 500 bales of cotton for future delivery on the New York Cotton Exchange, and received funds in the sum of \$ 1,250 from the said Dr. R. M. Barnard to margin, guarantee, and secure such purchase. The respondent thereafter represented to the said Dr. R. M. Barnard that his purchase order had been executed and that, as the result of such purchase, the said Dr. R. M. Barnard had a position in the cotton futures market whereas, in truth and in fact, such purchase order had not been executed and no such market position existed for the account and benefit of the said Dr. R. M. Barnard.
5. On or about November 5, 1946, the respondent reported to the said Dr. R. M. Barnard that 500 bales of October 1947 cotton futures

contracts had been purchased for his account at 24.30 cents per pound, and that the same quantity of October 1947 cotton futures contracts had been sold for his account on November 4, 1946, at 27.09 cents per pound, rendered a statement of account to the said Dr. R. M. Barnard based upon such purchase and sale, including commission charges for the execution thereof, and delivered funds to him in settlement of such account whereas, in truth and in fact, no such purchase and sale had been executed.

6. On or about February 1, 1942, the respondent, acting in the capacity of a futures commission merchant, accepted an order from Dr. W. J. Griffith, an individual residing in Arab, Alabama, for the purchase of 100 bales of cotton for future delivery on a contract market, and extended credit to the said Dr. W. J. Griffith to margin, guarantee, and secure such purchase. The respondent thereafter represented to the said Dr. W. J. Griffith that his purchase order had been executed and that, as the result of such purchase, the said Dr. W. J. Griffith had a position in the cotton futures market whereas, in truth and in fact, such purchase order had not been executed and no such market position existed for the account and benefit of the said Dr. W. J. Griffith.

CONCLUSIONS

When the respondent accepted orders for the purchase of cotton futures on the New York Cotton Exchange and received funds and extended credit to margin, guarantee, and secure such purchases, he acted in the capacity of a futures commission merchant. Section 4d of the act provides, in part, as follows:

"It shall be unlawful for any person to engage as futures commission merchant in * * * accepting orders for the purchase or sale of any commodity for future delivery, * * * on or subject to the rules of any contract market unless (1) such person shall have registered, under this Act, with the Secretary of Agriculture as such futures commission merchant and such registration shall not have expired nor been suspended nor revoked; * * *"

Since the respondent was not registered with the Secretary of Agriculture as a futures commission merchant, he violated the above provision.

Subsequently, the respondent reported to the persons who placed these orders that their orders had been executed and that such persons had positions in the cotton futures market, and rendered a statement of account showing executed transactions and commission charges, when none of the orders or transactions had, in fact, been executed. Section 4h (2) declares it to be illegal, in connection with the handling of any order for the purchase or sale of a commodity for future delivery, falsely to represent one's self as a registered futures commission

merchant or falsely to represent that such order has been executed on a contract market. The respondent, therefore, also violated section 4h (2) of the act.

The respondent necessarily knew that he was not registered as a futures commission merchant and that the orders given to him had not been executed. His representations to the contrary were wilfully false. It is therefore concluded that these violations were sufficiently serious to warrant the denial of trading privileges to the respondent for a period of 60 days, and an order to that effect is accordingly issued.

ORDER

Effective on the 15th day after the date of this order, all contract markets shall refuse all trading privileges thereon to J. M. Leak for a period of 60 days.

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

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