

Commodity Futures Trading Commission  
CEA CASES

**NAME:** SECRETARY OF AGRICULTURE V. PAUL A. NELSON

**CITATION:** 1 Agric. Dec. 362

**DOCKET NUMBER:** 29

**DATE:** MAY 25, 1942

**DOCUMENT TYPE:** DECISION AND ORDER

(A. D. 128)

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

CE-A Docket No. 29

SECRETARY OF AGRICULTURE, Complainant v. PAUL A. NELSON, Respondent.  
Proceedings, Findings of Fact, Conclusions, and Order.

**PROCEEDINGS**

On June 13, 1941, the Under Secretary of Agriculture issued a complaint under the Commodity Exchange Act (7 U. S. C. 1940 ed. 1) against Paul A. Nelson, the respondent. It was alleged that respondent had acted as a floor broker for more than two years before registering with the Secretary in May 1940, and had taken the other side of his customer's wheat futures orders, without the customer's consent, through cross trades with seven other brokers, in 57 instances in February 1940. A hearing was set for June 26 in Chicago, and respondent was given 15 days to answer. On June 18, a copy of the complaint was served by registered mail on respondent, with a letter in which the referee, to allow time to answer, postponed the hearing to July 17.

Respondent filed an answer on June 28, asking for an early hearing and denying that he had violated the act or rules of the Board of Trade. He said his failure to register was due to his belief that, trading for only one house, he was not required to register. He denied that he had ever been in a transaction involving a cross trade,

and that any of the 57 instances involved simultaneous trades; instead, the trades were minutes or hours apart. He said that he executed Fenner & Beane orders for over 6,300,000 bushels of wheat futures during the month involved, and that it is no wonder he bought of and sold to the same individual in many instances. He attached affidavits by the seven brokers, in which each averred, in identical language, that he never crossed a trade, that his trades with respondent were in accord with the act and Board of Trade rules, and "that no wheat trade was ever made at any time simultaneously with the said Paul A. Nelson or within a period of time which even might give suspicion of it being a simultaneous trade or so called 'cross trade'".

The hearing was held in Chicago on July 17-21, 1941, before Jack W. Bain, the referee. Charles W. Bucy, Office of the Solicitor, Department of Agriculture, appeared as counsel for the Government, and James J. Coughlin, Chicago, as counsel for the respondent.

On the question of failure to register, the evidence is not conflicting. Respondent conceded that, from September 1937 to May 1940, he executed trades as broker for one clearing member of the Board of Trade, for which he was paid brokerage, and executed trades for himself which he cleared through two other

clearing members. He testified that he did not read the regulations regarding registering, but thought, in accordance with the prevalent view around the Board of Trade, that he did not have to register, as he filled orders for only one house. When he asked Mr. Fitz, head of the Chicago office of the Commodity Exchange Administration, Fitz told him he was not subject to registration, but he had not told Fitz he traded for himself as well as for Fenner & Beane, and cleared through other houses. When he discovered he should register, he did so. It is clear that respondent should have registered as early as September 1937. Had he bothered to read the statute and the regulations applicable to his business, or to disclose all the facts to Mr. Fitz when he asked advice, it is not likely that he would have remained so long in ignorance of registration requirements.

The evidence concerning alleged cross trades and customer's orders is quite different. Through 11 witnesses, the Government introduced numerous trading cards and other records of various firms concerning wheat futures transactions on the Chicago Board of Trade. The official quotations of the Board of Trade, showing prices at which the July wheat future sold in February 1940, were not physically introduced in evidence, because the only copy of that record is used frequently in Chicago, but it was agreed that it might be referred to, and would be made available at any time it was required in this proceeding. The Government then introduced, as Government's

Exhibit 26, a tabulation prepared from the records already in evidence, by William T. Buster, an investigator for the Commodity Exchange Administration. This showed 57 instances in which respondent had, during February 1940, bought or sold 1940 July wheat futures for Fenner & Beane, and on the same day had made, for his personal account, opposite trades in like quantities, at the same prices, with the same traders. For example, it appears from item 1 of the tabulation that, on the Chicago Board of Trade, on February 1, 1940, respondent, for Fenner & Beane, sold 5,000 bushels of Chicago July wheat, at 93 1/4 cents per bushel, to P. J. Barrett, and, for himself, bought 5,000 bushels of such wheat, at 93 1/4 cents per bushel, from P. J. Barrett. Fenner & Beane cleared its sale of wheat, I. P. Skolly cleared respondent's purchase of wheat, and O. S. Nickels & Company cleared Barrett's purchase from respondent for Fenner & Beane and sale to respondent for respondent's account. Item 2 shows a purchase by respondent for Fenner & Beane and a corresponding sale by respondent for himself, and so on down through all 57 items. Respondent's purchases and sales were made with seven different traders, who cleared their trades through various houses. Their trades were all for their personal accounts, rather than for accounts of customers. Respondent cleared his personal trades through either T. P. McGuire or I. P. Skolly.

Respondent pointed out that, in some instances, the quantities shown as bought or sold on Fenner & Beane orders were not those on the orders involved, i. e., where the tabulation shows 5,000 bushels bought for Fenner & Beane, Fenner & Beane's order may have been to buy 10,000 or 50,000 bushels, in which case the 5,000 shown bought may have only partially filled the order. Pursuant to agreement, after the hearing the Government prepared and filed, as Government's Exhibit 26A, a tabulation showing data as to the Fenner & Beane order in each instance.

Mr. Buster, after outlining his experience in the grain futures business, testified that he had investigated respondent's trading in February 1940, and had prepared the tabulation, Government's Exhibit 26, from records of various Board of Trade members, all of which records were in evidence. He identified the exhibits from which the data for item 7 had been taken. He said that the sale of 25 July wheat to Fenner & Beane and the purchase of 20 from Skolly, both at 98 cents, were shown on opposite sides of the same card of Weis, which indicated almost simultaneous transactions, and that, on the Board of Trade quotations for that day, the price of 98 cents appeared only once, with a lower price appearing three minutes later, so that respondent's purchase and sale with

Weis must have occurred within three minutes, if they were not simultaneous.  
Fenner &

Beane's records show respondent's purchase of 20 was for a Fenner & Beane customer, and Skolly's records show his sale of 20 was for his personal account. Buster also identified the records, by exhibit numbers, from which he prepared item 13, and said the same procedure was used for all 57 items. The purchase and sale by the intermediate broker appeared in sequence on his trading cards, and in the majority of instances, on the same card. The broker would consider these as scratch trades (purchase and sale the same day at the same price, not necessarily with the same party), for clearing which he would pay 10 cents for each 5,000 bushels. From a trading card, a broker's position long or short cannot be determined. Item 18 the records show to have been an "out" trade.

On cross-examination, Buster said it was possible for trades such as those shown to occur accidentally, but, after his investigation, he did not consider these as such. His appraisal of what occurred as to items 28 and 29, from the way trades are carded, is that respondent bought 15 in the open market and "got a name" from Weis on the other 10 he had to buy. It is possible respondent was trying to buy at 102 1/2 cents, and had some of his own to sell, and, to facilitate his getting the wheat ordered, offered 10 or 15 at the same time he bid for 10 or 15, but if Weis then took both bid and offer, he made a cross trade. It happens that an active scalper has wheat bought and sold at the same price with the same broker. On the cards, this would look like a cross trade, but it would not happen consistently with the same people. 145 brokers traded in July wheat on February 20, 1940, but relatively few professional traders (as distinguished from brokers who execute orders for customers only) stay all day in the center of the pit where July wheat was then being traded, and a broker like respondent would have the majority of his trades with relatively few professional traders. From the positions of the trades and changes appearing on Latimer's card, and the general pattern of trading, it is Buster's judgment that, as to item 51, respondent sold Latimer 10, and later asked him to change it to 35 bought (by Latimer) and 25 sold. It is possible, but not probable, that Latimer bought 35, the market turned, and Latimer then sold 25 back. Without the intent to sell back when buying, there would be no cross trade, although on the cards there might seem to be one. The records in evidence do not show the time trades were made; a trade could have been made at any time its price appears in the quotations. The positions of trades on the cards, price quotations, price movements, and consistency of these trades with the same people are factors on which Buster based his conclusions that respondent's trades for himself and for his customer were approximately simultaneous.

Respondent's defense was not that the trades shown on the tabulation had not been made, but that there was no cross trade or giving

of a name, the purchase and sale with the intermediate trader not having been simultaneous, related, or prearranged, but having been made openly, in the pit, at different times, it just happening, in the regular course of business, that in those instances wheat was bought and sold with the same trader.

Joshua J. D. Derry, a Fenner & Beane partner who had been called by the Government to identify some records and testify that respondent had not been given consent to take the other side of Fenner & Beane orders, was called by respondent, and testified that respondent had been a satisfactory broker for Fenner & Beane since 1933, but had not traded for them since these charges were filed, and probably would not be reemployed by them if found guilty of the charges.

Edward J. Keeley, head broker for Fenner & Beane and Faroll Brothers, testified that he, from the top of the pit where the active options are traded, flashes or signals Fenner & Beane orders to respondent, in the center of the pit

where the off option is traded, when Mr. Spinney is out of the pit. About 20 men who regularly trade in the center see the flashes and would see respondent get a name if he did so. Keeley would also see it, as he watches respondent execute flashed orders. He never saw respondent do anything not above board. It frequently happens, in executing Fenner & Beane orders, that a broker will have wheat bought and sold with the same broker at the same price, and this would look like a cross trade on the cards. For instance, Keeley had such a trade two days before with Ed Green, and one four months before with Henry Wolfe. In a fast market, Keeley could hit (make trades with) seven men in one second. On a larger order, he would make five or six trades, and then card them as he recalled them, not necessarily in the order made. On cross examination, he said that, in executing small orders, he cards the trade as soon as he makes it. Most of respondent's orders are not flashed, and other brokers cannot see whether he executes these in the open or gets a name. Occasionally, but not often, a broker will offer his own wheat to try to help get off an order to buy wheat.

Peter B. Carey, vice president and former president of the Board of Trade, testified that he trades for himself in the center of the pit near Nelson, that Nelson is alert and capable, that he never saw Nelson get a name, and that almost every day he, Carey, has trades with the same broker at the same price, about which one who wanted to could assume the worst. On cross examination, he said that an offer to buy and sell at the same time is legitimate under the rules, and that a broker with an unexecuted order for 5,000 bushels near the close might offer to buy and sell the five at the same time. To help him out, another broker might take both trades, as the other broker might want to do the same thing some time. This might happen frequently.

Thomas J. Friel testified that he trades for himself in the center about three feet from respondent, has made many trades with him, and has never given him a name. He sees the flashes, and would know it if respondent executed only part of such an order. He, Friel, hundreds of times has trades at the same price with the same broker, without prearrangement. He was in Mexico City in February 1940.

Much of the testimony of respondent and the seven intermediate traders consisted of statements regarding various phases of the 57 items. There was no claim that anyone remembered specific trades made a year and a half before the testimony was given; so the statements were largely of what must or might have happened in specific instances, rather than of what they knew did happen. Such testimony would be difficult, if not impossible, to summarize, and no attempt will be made to outline it as it applied to each item.

The seven intermediate traders were Patrick J. Barrett, Martin T. McDonough, Morris Weis, Joseph E. Griffin, Fred Spinney, William F. Melican, and M. E. Latimer. Each of them testified. According to them, and to respondent, all purchases and sales involved were made in the pit, openly, so that any broker could have taken them. All of them traded in the center of the pit, near respondent. There was no connection between the purchase and the sale, no prearrangement, no agreement to sell back any part of what was bought. There was no giving of a name or cross trade. The traders never saw respondent ask for a name. All agreed, in general, that there must be some prearrangement in a cross trade, and that, without this element, a purchase and sale of wheat with the same person, at the same time, at the same price, is not a cross trade. So, they would say, if broker A would offer to buy and sell wheat at the same time, at the same price, in the pit, and broker B would take both the purchase and the sale, simultaneously, there would be no cross trade or giving of a name unless A and B had agreed beforehand that they would do just what they did. McDonough, Spinney, Melican, and Latimer said that a broker might offer and bid for wheat at the same time and price, and another broker might take both bid and offer, without prearrangement, and that this could have happened in their trades with respondent. Latimer said he had done this, and that it happens very frequently, all day long. Griffin said he would not take both an offer and a bid to help another broker get off an order, but Melican said a broker would take both

purchase and sale to help another broker, Barrett said he would do that for respondent, and McDonough said a broker will invariably sell back a part of what he has bought from another broker who wants it back. Barrett, McDonough, Weis, Spinney, and Melican said that their references to simultaneous and cross trades in their affidavits had reference only to prearranged

trades, and not to simultaneous or almost simultaneous trades made in the pit without prearrangement.

In addition to testifying as to flash and limited orders, executing all orders openly in the pit, lack of any connection between his purchases and sales with the intermediate traders, what constitutes a cross trade, and the like, Mr. Nelson went into numerous details regarding trades shown on various records in evidence. He said brokers seldom offer and bid at the same time, and he does not remember ever having done so. According to the price quotations, his trades with Weis in item 13 had to be made either at the same time or 30 seconds apart. According to the records, he made all transactions involved in items 22, 23, and 24, and made a sale of 10 wheat not involved in the items, within 30 seconds, during which time the price fluctuated 1/4 cents. The records show that item 18 was an out trade. That means, Nelson's card showed the purchase from Bache on a Fenner & Beane order, but there was no corresponding sale to Fenner & Beane shown on Bache's records. In such a situation, Nelson is said to be out the trade. This results from unavoidable error. Nelson having reported to Fenner & Beane that the trade was made, and they probably having so reported to their customer, Nelson was responsible for the trade. He does not remember this instance, of course, but, in accordance with the way out trades are always adjusted, he must have remembered buying from Weis, and then have conferred with Weis. This usually occurs on the following day, but the records indicate that this error was discovered and corrected on the day it was made. Respondent and Weis then apparently agreed, in order to give the customer the name to which he was entitled on the trade, that Weis would card a sale to Fenner & Beane and a purchase from Nelson (clearing through McGuire), and Nelson would card a sale (through McGuire) to Weis (through Bache). Either broker may assume the profit or loss resulting from such a situation, but they usually agree to split it. This sort of procedure leaves the broker, to some extent, on the other side of a customer's trade, but it is the way to settle unavoidable errors. In this case, Nelson could have carded a sale for his personal account direct to Fenner & Beane, but that would have made him principal and agent in the same transaction. To avoid making such a cross trade, the described method of settlement was used.

The testimony given by the traders shows that, in their eagerness to help a brother broker by denying that there had been anything wrong, they were, to say the least, careless in their statements. Those who were asked admitted that they did not mean all they had said in their affidavits. Their testimony that some of their trades with respondent might, although not prearranged, have been simultaneous, or approximately so, casts doubt upon their uniform insistence that

the trades were entirely unrelated. Weis testified that his purchase and sale in item 18 was made openly in the pit, but the records and respondent's testimony show otherwise. Even after describing what happened in item 18, the out trade, which includes precisely what the brokers described as a cross trade or giving a name, respondent reiterated that all his trades were made in the pit, open to any taker. It seems rather odd that respondent should have felt that he could not have taken, directly, the trade for which his (or Weis's) mistake left him responsible, but could take it indirectly by getting a name from Weis. The only real difference resulting is that, by getting the name, the error was not made known to Fenner & Beane and their customer. This would not legalize the cross trade with Weis.

It is apparent that the concensus of the brokers who testified is that there is nothing wrong with a simultaneous purchase and sale, or a purchase and a sale back almost simultaneously, to help a brother broker execute an order, with the same person at the same price, so long as the trades were made in the pit and had not been planned in advance by the participants. Just why they feel that absence of prearrangement legitimizes a transaction which leaves at least one of the parties as he was before, is unexplained. Even if it were to be assumed, however, that 56 of the 57 pairs of transactions with intermediate traders were not in violation of section 4c (A) of the statute, there remain the admitted out trade and the uncontradicted fact that respondent's activities resulted in his having, as principal, personal trades directly opposite to those he executed, as agent, for Fenner & Beane customers in 57 instances in one month, involving 220,000 bushels bought for customers, and 190,000 sold. Each instance resulted from his having a purchase and a sale with one of seven brokers. This happened too often to be accidental.

Within the time allowed after the close of the hearing, the Government filed a suggested order recommending suspension of respondent's trading privileges for a year, and the respondent filed one recommending dismissal of the complaint. In a memorandum brief, respondent alleged that his failure to register was not in bad faith, and that the only evidence of cross trades consisted of mere inferences which are insufficient to overcome the presumption of innocence applicable where the charges involve fraud.

Before the referee's report was filed, respondent's registration as floor broker for 1941 expired.

The referee's report, containing the foregoing summary of the evidence, proposing the findings and conclusions herein, and recommending denial of respondent's trading privileges for a year, was served on February 6, 1942. Respondent excepted, claiming the evidence does not warrant the proposed findings, conclusions, and

order. Oral argument was not requested, the case being submitted on written briefs.

In his briefs, respondent alleges confusion, mistakes, partisanship, and improper acts by various Department employees. He says that there are only presumptions of guilt and suppositions, not evidence, to support the Government's case. According to him, all the evidence is in his favor, the brokers who testified being the only ones who really know what happened, and their testimony is unimpeached. These contentions are answered in a brief filed by the Government. The record does not support respondent's allegations. It does support the findings and conclusions and authorizes imposition of a penalty. As it is felt that certainty of punishment is a more effective means of law enforcement than severity of the penalty, the denial of trading privileges will be for ninety days instead of for the year recommended.

#### **FINDINGS OF FACT**

1. Paul A. Nelson, of Chicago, Illinois, the respondent, as broker, continuously from September 1937 to June 1941, in Chicago, made contracts on The Board of Trade of the City of Chicago, a contract market, for the future delivery of wheat, for Fenner & Beane, I. P. Skolly, and T. P. McGuire, clearing members of the Board of Trade. His executions for Fenner & Beane, for which he received brokerage, were on orders from customers of Fenner & Beane. His executions for Skolly and McGuire were for his personal accounts carried with them.

2. Respondent did not register as a floor broker with the Secretary of Agriculture until May 1940, when he registered for the year 1940. He later registered for the year 1941.

3. Before May 1940, respondent did not think his activities made him subject to registration requirements for floor brokers.

4. Contracts for future delivery of wheat on The Board of Trade of the City of Chicago may be used for hedging transactions in wheat in interstate commerce.

5. On February 17, 1940, respondent and Morris Weis agreed to and did, without open outcry in the pit, enter on their trading cards a simultaneous purchase and sale of 5,000 bushels of wheat for future delivery in July, at \$ 1.01 per bushel, on the Board of Trade of the City of Chicago, respondent's purchase to clear through Fenner & Beane and his sale through T. P. McGuire, and both the purchase and sale of Weis to clear through J. S. Bache & Company, a clearing member of the Board of Trade.

6. In the transaction mentioned in Finding 5, respondent's purchase was for a customer of Fenner & Beane, which firm was respondent's employer and customer; respondent's sale was for his own

personal account; and both purchase and sale by Weis were for the personal account of Weis. Respondent did not have the consent of Fenner & Beane, nor of Fenner & Beane's customer, to become the seller on their order to buy the wheat.

7. In the transaction mentioned in Finding 5, respondent made a cross trade, and, through the cross trade, knowingly and willfully and without prior consent became the seller in respect to his customer's buying order.

8. On 56 other occasions in February 1940, respondent made a purchase and sale of the Chicago July wheat future with another trader, respondent executing one side for Fenner & Beane as Fenner & Beane's broker, and the other side for his own personal account, with the result that respondent, knowingly and willfully and without prior consent, through the intermediate trades, became the seller on the customer's buying order or the buyer on the customer's selling order.

9. In each of the 56 occasions mentioned in Finding 8, the other trader involved was either Patrick J. Barrett, Martin T. McDonough, Morris Weis, Joseph E. Griffin, Fred Spinney, William F. Melican, or M. E. Latimer, and both purchase and sale by such other trader was for such trader's own personal account. Each of the transactions was made either in the manner outlined in Finding 5, or by simultaneous or almost simultaneous purchase and sale in the pit, either with or without prior arrangement between the two participants.

#### **CONCLUSIONS**

The record shows that, for more than two years, respondent acted as a floor broker without registering as such, in violation of Section 4e of the Commodity Exchange Act. It shows also that, through transactions of the type declared unlawful by section 4c (A) of the act, he willfully and knowingly took the other side of his customer's orders, without prior consent, in violation of section 4b (D). The fact that the customer's trades got into respondent's account by passing through another trader, instead of going direct, did not alter the results obtained, but only served to conceal them. For his violations of the act, respondent's trading privileges on contract markets should be suspended for ninety days.

#### **ORDER**

**IT IS ORDERED** that all contracts markets refuse the respondent, Paul A. Nelson, all trading privileges thereon for a period of ninety days, beginning on the effective date of this order.

**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.

Done at Washington, D. C., this 25th day of May, 1942.

Witness my hand and the seal of the Department of Agriculture.

[SEAL]

(S) GROVER B. HILL

*Assistant Secretary of Agriculture*

**LOAD-DATE:** March 12, 2008

