

Commodity Futures Trading Commission
CEA CASES

NAME: DANIEL J. SHELLEY, JOHN M. ROWLEY, AND SAM H. LAMANTIA (LA MANTIA)

CITATION: 22 Agric. Dec. 8

DOCKET NUMBER: 96

DATE: JANUARY 30, 1963

DOCUMENT TYPE: DECISION AND ORDER

NOTE: SOMETIMES SPELLED AS LAMANTIA AND SOMETIMES AS LA MANTIA

(No. 8117)

In re DANIEL J. SHELLEY, JOHN M. ROWLEY, AND SAM H. LAMANTIA. CEA Docket No. 96. Decided January 30, 1963.

Noncompetitive Trades -- Accommodation Trades -- Offsets -- Superior Position of Hearing Examiner on Credibility of Witnesses

Where a floor broker bought from and sold to the same floor trader the same quantity of wheat futures "at the close" of trading in the future with the sales recorded in the name of another floor broker and both floor brokers and the floor trader testified at the hearing, the recommended conclusions of the hearing examiner to the effect that the evidence was inadequate to find violations of the Commodity Exchange Act in the way of noncompetitive trades, accommodation trades, etc., were followed because the outcome of the case rests largely if not entirely upon evaluation of the testimony of respondents and the hearing examiner, who saw and heard the respondents' testimony, was in the best position to evaluate the testimony.

False Records -- False Reports -- Full and Complete Records

The recording of trades on a floor broker's trading card which trades the floor broker did not make but recorded at the request of another floor broker constitutes a false report and a false record in violation of section 4b(B) of the act and deceived in violation of section 4b(C) the future commission merchants who gave the trading orders. The false recording also constituted a violation of section 1.35 of the regulations requiring full and complete records on the part of the floor broker who executed the sales but did not record them and on the part of the floor trader who incorrectly recorded the name of the floor broker with whom he did not make the trades.

Mr. Benj. M. Holstein, Mr. Donald A. Campbell and Mrs. Dona S. Kahn, for Commodity Exchange Authority. Mr. J. R. Blomquist, of Chicago, Illinois, for respondent Daniel J. Shelley. Mr. Robert P. Howington, Jr., of Chicago, Illinois, for respondent John M. Rowley. Mr. Neil McKay, of Chicago, Illinois, for respondent Sam H. LaMantia. Mr. Jack W. Bain, Hearing Examiner.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. ch. 1) instituted by a complaint filed by the Acting Secretary of Agriculture on December 16, 1960.

Respondents Shelley and LaMantia are members of the Chicago

Board of Trade and are floor brokers on the Board of Trade. Respondent Rowley is also a member of the Board of Trade, he is a floor trader and he is also registered under the act as a floor broker. The proceeding involves purchases of 140,000 bushels of May wheat futures from Rowley by Shelley on the floor of the Board of Trade at \$ 1.94 a bushel and sales of the same quantity of futures by Shelley to Rowley at \$ 1.93 a bushel. These transactions took place on May 19, 1960, "at the close" of trading in the May 1960 future.

The complaint charges that by reason of the trades, (1) Shelley filled orders of his customers for purchases by offset against orders of other customers for sales in violation of section 4b(D) of the act (7 U.S.C. § 6b(D)), cheated or defrauded his customers in violation of section 4b(A) of the act (7 U.S.C. § 6b(A)) and (2) Rowley entered into accommodation trades in violation of section 4c(A) of the act (7 U.S.C. § 6c(A)) and Rowley and Shelley executed purchases and sales of commodity futures in a manner which was not open and competitive as required by section 1.38 of the rules and regulations (17 CFR 1.38) issued under the act.

The complaint also carries charges dealing with the recording of the trades involved. The complaint alleges that Shelley did not record on his trading card the sales to Rowley but that at Shelley's request LaMantia recorded the sales to Rowley on LaMantia's trading card and Rowley recorded on his trading card the sales by Shelley as having been made by LaMantia. The complaint charges that thereby Shelley and LaMantia deceived the persons from whom the orders had been received in violation of section 4b(C) of the act (7 U.S.C. § 6b(C)) and that all respondents caused false reports to be made and false records to be entered in connection with the execution of the orders in violation of section 4b(B) of the act (7 U.S.C. § 6b(B)) and failed to keep full and complete records of futures transactions as required by section 1.35 of the regulations (17 CFR 1.35) and section 4g of the act (7 U.S.C. 6g).

After a continuance and denials of motions for discovery and particulars, an oral hearing was held in Chicago, Illinois, March 8-10, 1961, before Hearing Examiner Jack W. Bain, Referee. Benj. M. Holstein, Office of the General Counsel, United States Department of Agriculture, appeared for the complainant, the Commodity Exchange Authority of the Department. J. R. Blomquist

of Campbell, Miller, Carroll & Paxton, of Chicago, appeared as counsel for respondent Shelley. Robert P. Howington, Jr., of Pope, Ballard, Uriell, Kennedy, Shepard & Fowle, of Chicago, appeared for respondent Rowley, and Neil McKay, of Winston, Strawn, Smith & Patterson, of Chicago, appeared for respondent LaMantia. Motions by respondents Rowley and LaMantia for dismissal and severance were denied. Complainant called five witnesses and presented 19 exhibits, and respondents called five witnesses, including each respondent, and presented seven exhibits. After the hearing, the parties filed suggested findings and briefs. On July 17, 1962, the referee filed a report. With respect to the charges of offsetting customers' trades in violation of section 4b (D) of the act, cheating or defrauding customers in violation of section 4b (A) of the act, entering into accommodation trades in violation of section 4c(A) of the act, and entering into noncompetitive trades in violation of section 1.38 of the regulations, the hearing examiner concluded that the evidence was sufficient to ". . . support a suspicion that the trades were prearranged . . ." and that ". . . while an overwhelming set of circumstances is a sound basis for a finding of guilt it is concluded that the circumstances shown by the record are not sufficient to warrant sanctions on respondents on this issue." The hearing examiner did not find or conclude that any of the respondents had violated the act on the charges of offsetting trades, accommodation trades and noncompetitive trades, etc. As to the charges involving the recording of trades, the hearing examiner concluded that Shelley and LaMantia had violated 4b(B) and 4b(C) of the act, that Rowley had not violated 4b(B) of the act, and that all three respondents had violated section 1.35 of the regulations.

All parties including the complainant filed exceptions to the hearing examiner's report and oral argument upon the exceptions was held before the Judicial Officer in Washington, D. C., December 4, 1962.

FINDINGS OF FACT

1. Respondent Daniel J. Shelley, whose business address is Care of Trading Floor, Board of Trade of the City of Chicago, 141 West Jackson Boulevard, Chicago 4, Illinois, is now and was at all times material herein a registered floor broker under the Commodity Exchange Act and a member of the Board of Trade of the City of Chicago (hereinafter called the Chicago Board of Trade, the Board of Trade, or the exchange).

2. Respondent John M. Rowley, whose business address is Room 1690, 141 West Jackson Boulevard, Chicago 4, Illinois, is now and was at all times material herein a registered floor broker under the act and a member of the Chicago Board of Trade.

3. Respondent Sam H. LaMantia, whose business address is Room 1036, 141 West Jackson Boulevard, Chicago 4, Illinois, is now and was at all times material herein a registered floor broker under the act and a member of the Chicago Board of Trade.

4. The Chicago Board of Trade is and was at all times material herein a duly designated contract market under the Commodity Exchange Act.

5. Trading in wheat futures on the Chicago Board of Trade takes place in what is known as the wheat pit. Trading sessions open at 9:30 a.m. and close at 1:15 p.m. The beginning and end of the trading session are announced by the ringing of a bell. As changes in prices occur in the course of trading, the prices are recorded on pit slips by employees of the Chicago Board of Trade and the time, in minimum intervals of ten seconds, is registered on each slip by placing it in a time stamp. Such pit slips are thereafter maintained by the exchange as permanent records. The prices shown on the pit slips are transcribed into a book in the proper sequence and this book is also maintained by the exchange as a permanent record.

6. On May 19, 1960, successive price quotations of \$ 2.02 1/2, \$ 2.02 1/4, \$ 2.02, \$ 2.01 3/4, \$ 2.01 1/2, \$ 2.01, \$ 2.00 1/2, \$ 2.00, \$ 1.99, \$ 1.98, \$ 1.97, \$ 1.96, \$ 1.95, \$ 1.94, and \$ 1.93 for the May 1960 wheat future were recorded between 1:14.10 and 1.15 p.m. On the final bell, the market closed with the future offered at \$ 1.93. Under a rule of the Chicago Board of Trade, this was the lowest price at which the May 1960 wheat future could be purchased or sold on May 19, 1960, the last day for trading in the future. Despite the fact that the future was being offered at the lowest price at which trading was permitted, a number of orders to sell could not be executed because buyers could not be found who were willing to pay this price. The total of the orders to sell which remained unexecuted after the termination of trading was approximately 170,000 bushels. The volume of trading for the day was 14,554,000 bushels. The volume traded at \$ 1.94 was 335,000 bushels, and at \$ 1.93 was 525,000 bushels. The volume

left open, that is, to be settled by delivery of cash wheat, was 1,195,000 bushels.

7. A transaction in futures is initially recorded on the respective trading cards of the floor brokers or traders who actually make the trade with each other. Each trading card bears the name of the executing floor broker or trader, or some indication thereof. Purchases are entered on one side of the card and sales on the reverse side. These entries show the date, the quantity bought or sold, the future, the price, and the name of the opposite clearing member. The trading card may or may not show the name of the opposite floor broker or trader. Trading cards are turned in to the clearing member by whom the purchase or sale is to be cleared and are kept as a part of the clearing

member's records. The information on the trading cards (except the name of the opposite broker, where shown) is transcribed into the street book or journal, which is a permanent record of the clearing member.

8. Pursuant to arrangements previously made between respondents Shelley and LaMantia, it was understood that on May 19, 1960, Shelley would handle the purchase orders and LaMantia would handle the sell orders for May 1960 wheat futures received from Sincere & Company, Thomson & McKinnon, and Bache & Company, registered futures commission merchants and clearing members of the Chicago Board of Trade. Pursuant to such arrangement, orders to buy on the close for such firms were delivered to Shelley from time to time on that day, and were being held by him for execution on the close. Shortly before 1:15 p.m., Shelley held such orders in the total amount of 140,000 bushels, as follows: 10,000 bushels for Sincere & Company; 30,000 bushels for Thomson & McKinnon; and 100,000 bushels for Bache & Company. Orders to sell on the close for those firms were delivered to LaMantia from time to time and were being held by him for execution on the close.

9. An order to buy or sell on the close requires the purchase or sale to be made during a specified period of time just prior to the end of the trading session. On the last day of trading in a future, this period is determined by the Chicago Board of Trade and announced to all traders in advance. On May 19, 1960, the close was the two-minute period from 1:13 to 1:15 p.m.

10. While holding the 140,000 bushels of purchase orders described in Finding 8, Shelley requested and received directly from

LaMantia, or from the messengers who were delivering selling orders to LaMantia, or from both, a number of orders to sell May 1960 wheat futures on the close for the accounts of Thomson & McKinnon and Bache & Company, in the total amount of 140,000 bushels. Shelley then executed such orders by buying 140,000 bushels of May 1960 wheat futures from Rowley at \$ 1.94 per bushel, and then selling the same quantity of the same future to Rowley at \$ 1.93 per bushel, and Rowley made the corresponding sale and purchase for his own account carried with John S. Morris & Company, a clearing member of the Chicago Board of Trade.

11. The contracts resulting from the purchases and sales described in Finding 10 were capable of being used for hedging a transaction in interstate commerce in wheat or the products or by-products thereof, or for determining the price basis of a transaction in interstate commerce in wheat, or for delivering wheat sold, shipped, or received in interstate commerce.

12. Respondent Shelley recorded the above-described purchase by entering on his trading cards 10,000 bushels bought from Rowley for Sincere & Company, 30,000 bushels bought from Rowley for Thomson & McKinnon, and 100,000 bushels bought from Rowley for Bache & Company, all at \$ 1.94 per bushel, and respondent Rowley entered the corresponding sales on his trading card. However, Shelley did not make any entry on his trading cards to show the sale which he made to Rowley at \$ 1.93 per bushel. Instead, Shelley requested La Mantia and Rowley to record such sale on their respective trading cards as a sale by LaMantia to Rowley, and in compliance with such request LaMantia entered on his trading cards a sale of 20,000 bushels to Rowley for the account of Thomson & McKinnon and a sale of 120,000 bushels to Rowley for the account of Bache & Company, all at \$ 1.93 per bushel, and Rowley showed the corresponding purchases on his trading card as having been made from LaMantia. Respondents Shelley, Rowley, and LaMantia then delivered these trading cards to the respective clearing members who were to clear the transactions shown thereon, and such transactions were subsequently entered by such clearing members into their permanent records.

13. The above-described purchase by respondent Shelley from respondent Rowley at \$ 1.94 filled all the purchase orders which Shelley was holding for execution on the close. Shelley made no trades in the May 1960 wheat future on May 19, 1960, at prices of \$ 1.94 or \$ 1.93 with any broker other than Rowley, and Rowley

made no trades in such future at such prices with any broker other than Shelley.

14. On March 26, 1956, the Business Conduct Committee of the Chicago Board of Trade transmitted a letter to all members of the Chicago Board of Trade calling attention to the fact that the carding or recording of a trade by a member who did not execute the trade was a violation of a rule of the Board of Trade, and that such practice also constituted the making of a false record in violation of the Commodity Exchange Act and caused the clearing firm through which the trade was cleared to maintain false records. The letter requested all members to cease and desist from such conduct. Respondents Shelley, Rowley, and LaMantia were members of the Chicago Board of Trade at the time of the transmission of such letter.

CONCLUSIONS

The respondents testified at the hearing that the trades involved were executed in the wheat pit of the Chicago Board of Trade in a competitive manner by open outcry. The hearing examiner did not regard the evidence of record as adequate to find and conclude that the trades involved were made by prearrangement and he did not find or conclude that respondent's breached the act on the charges of offsetting trades, cheating or defrauding customers, and executing trades in a noncompetitive manner.

The outcome of the case on these charges hinges largely if not entirely upon the evaluation of the testimony of the respondents. We do not believe we are in a position to disagree with the hearing examiner who saw and heard the respondents testify. See *e.g.*, *Universal Camera Corporation v. National Labor Relations Board*, 340 U.S. 474, 496, 497 (1951); *National Labor Relations Board v. Local 160*, 268 F. 2d 185 (7th Cir. 1959); *National Labor Relations Board v. Thompson & Co.*, 208 F. 2d 743, 745 (2d Cir. 1953); *U. S. Steel Co. v. National Labor Relations Board*, 196 F. 2d 459, 463 (7th Cir. 1952); *Heikes v. Fleming*, 168 F. Supp. 675 (S.D. Ill. 1958).

The remaining charges of the complaint deal with the recording and reporting of the trades involved. It is undisputed that Shelley did not record the sales of 140,000 bushels by him to Rowley and that LaMantia, at Shelley's request, recorded on his trading card the sales as having been made by him. It is undisputed, too, that Rowley wrote "Sam" on his trading card in connection

with his purchase of the 140,000 bushels from Shelley. In his answer (par. VII) to the complaint Rowley admits that he recorded LaMantia as the floor broker through whom he made the 140,000 bushel purchases. During the course of the proceeding Rowley contended that "Sam" merely meant the floor broker who was to get the brokerage commission but this contention is obviously an afterthought.

Section 4b of the act (7 U.S.C. § 6b) is as follows:

It shall be unlawful for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of (1) any contract of sale of any commodity in interstate commerce, or (2) any contract of sale of any commodity for future delivery made, or to be made, on or subject to the rules of any contract market for or on behalf of any person * * * --

(A) to cheat or defraud or attempt to cheat or defraud such person;

(B) willfully to make or cause to be made to such person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

(C) willfully to deceive or attempt to deceive such person by any means whatsoever in regard to any such order or contract or the disposition or

execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or

(D) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person. * * * [Emphasis supplied.]

As is seen from decisions in administrative proceedings under the act it has been the administrative interpretation of section 4b over a period of years that a futures commission merchant comes within the meaning of the words, "for or on behalf of any person"

in the part of section 4b preceding (A) (B) (C) and (D) in the case of the execution of trades by floor brokers for the futures commission merchant. See e.g., *Secretary of Agriculture v. Nelson*, 1 Agric. Dec. 362 (1 A.D. 362) (1942), *aff'd*, *Nelson v. Secretary of Agriculture*, 133 F. 2d 453 (7th Cir. 1943); *Secretary of Agriculture v. Gatlin*, 1 Agric. Dec. 423 (1 A.D. 423) (1942); *In re Maurice J. LeGardeur*, 3 Agric. Dec. 467 (3 A.D. 467) (1944).

Since LaMantia recorded on his trading card which went to his principals, the futures commission merchants, the sales of 140,000 bushels to Rowley when Shelley made the sales, LaMantia made a false report and a false record in violation of section 4b(B) and deceived the futures commission merchants in violation of section 4b(C). Shelley also caused the false report to be made and the false record to be entered in violation of 4b(B) and by failing to record the sales made by him and by having LaMantia record the sales as executed by LaMantia, Shelley also breached 4b(C). These subparagraphs require that the prohibited acts be "willfully" done. Certainly, the untrue records and reports were intentionally made and whether or not these respondents knew that false carding of trades is unlawful, their activities were nevertheless willful. See *Goodman v. Benson*, 286 F. 2d 896 (7th Cir. 1961).

Complainant dropped the charge in the complaint to the effect that Rowley violated section 4b(B) of the act by indicating on his trading card that he bought the 140,000 bushels from LaMantia because Rowley was trading for himself and not for others. The complaint, however, charges all three respondents with violating section 1.35 of the regulations under the act (17 CFR 1.35) and section 4g of the act (7 U.S.C. § 6g).

Section 1.35 of the regulations provides:

Records of cash commodity and futures transactions.

(a) *Futures commission merchants and members of contract markets.* Each futures commission merchant and each member of a contract market shall keep full, complete, and systematic records of all commodity futures transactions and cash commodity transactions, made by or through him, on or subject to the rules of a board of trade. He shall keep such records, including all orders, trading cards, signature cards, street books, journals, ledgers, cancelled checks, copies of confirmations

and copies of statements of purchase and sale, together with all other data and memoranda, and records of every sort pertaining to transactions in cash commodities and in commodities for future delivery, for the period of time and in the manner prescribed in section 1.31. He shall produce the same for inspection and shall furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by any authorized representative of the Commodity Exchange Authority. [Emphasis supplied.]

(b) *Futures commission merchants and clearing members of contract markets.* Each futures commission merchant and each clearing member of a contract market

shall, as a minimum requirement, prepare regularly and promptly, and keep systematically and in permanent form, the following:

(1) A financial ledger record which will show separately for each customer all charges against and credits to such customer's account, including but not limited to funds or securities deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions;

(2) A record of transactions which will show separately for each account (including house accounts) all commodity futures transactions executed for such account, including the date, price, quantity, market, commodity, and future; and

(3) A record or journal which will show separately for each business day complete details of all commodity futures transactions executed on that day, including the date, price, quantity, market, commodity, future, and the person for whom such transaction was made.

(c) *Clearing members of contract markets.* In the daily record or journal required to be kept under paragraph (b) (3) of this section, each clearing member of a contract market shall also show the floor broker or other person executing each transaction and the opposite clearing member with whom it was made.

Section 4g of the act is as follows:

If any person registered hereunder as futures commission merchant or floor broker shall violate any of the provisions of this Act, or any of the rules or regulations of the Secretary of Agriculture thereunder, or shall fail or refuse to make any report required by the Secretary of Agriculture regarding the transactions of such person, or the transactions of the customers thereof, in commodities for future delivery on any board of trade, in the United States or elsewhere, *or shall fail or refuse to keep the books and records pertaining to such transactions in the form and manner required by the Secretary of Agriculture*, or shall fail or refuse to keep such books and records open to inspection by any representative of the United States Department of Agriculture or the United States Department of Justice, the registration of such person may be suspended or revoked after notice and hearing in accordance with the procedure and subject to the judicial review provided in paragraph (b) of section 6 of this Act. [Emphasis supplied.]

In his report the hearing examiner concluded, without mentioning section 4g of the act, that all respondents had failed to comply with section 1.35 of the regulations and he referred to section 1.35 as promulgated by the Secretary of Agriculture pursuant to section 8a(5) of the act (7 U.S.C. § 12a(5)) authorizing the Secretary to issue rules and regulations to effectuate the purposes of the act.

We see no fatal variance between the complaint's charges and the hearing examiner's conclusions as to section 1.35 of the regulations. If respondents did not make and keep full and complete records of their transactions as required by section 1.35 of the regulations, we do not believe it makes any material difference as to whether section 1.35 of the regulations implements 4g of the act or is a legislative regulation issued pursuant to 8a(5) of the act. Like the hearing examiner we prefer the latter view since the language of 4g in this connection seems to refer to specific methods of record keeping rather than the failure to keep records.

When Shelley failed to record the sales he made to Rowley he of course failed to keep full and complete records of his transactions in violation of section 1.35 of the regulations. Concerning LaMantia and section 1.35, however, LaMantia did not execute

the transactions he recorded. A person who fails to record correctly a transaction he made fails to keep full and complete records as well as making a false record because he fails to keep a *true* record of a transaction he executed. But, we hesitate to hold that LaMantia, who did not execute the trades involved, failed to keep full and complete records solely because he made a false record of a transaction which he did not execute and was not required to record. This may be hairsplitting but we think that it is legal hairsplitting which respondent LaMantia is entitled to as a matter of law. Of course, he entered or caused to be entered a false record, as we have concluded above, in willful violation of section 4b(B) of the act.

As to Rowley's recording of the purchases as from LaMantia instead of Shelley, Rowley of course made the purchases and was required by section 1.35 of the regulations to make and keep a record of them. Although section 1.35 seems to say that all members of contract markets shall keep full and complete records of their transactions, it has not been the administrative practice in the enforcement of the act and regulations to require that floor brokers, including floor traders, make and keep a record of the opposite floor broker with whom they have executed a transaction. Rowley, however, did record LaMantia as the opposite floor broker for the 140,000 bushel purchases instead of Shelley. He, therefore, failed to keep full and complete records in violation of section 1.35 of the regulations. Cf. *Irving Weis and Company V. Brannan*, 171 F. 2d 232 (2d Cir. 1948).

Respondents argue that in any event no sanctions should be ordered for any violations found in connection with the recording and reporting of the trade in issue. Complete and correct records on the part of persons subject to the act are a vital necessity to effective administration of the act. We do not agree that sanctions should not be ordered and we adopt the hearing examiner's recommended order as proposing reasonable sanctions in the light of the violations found.

ORDER

Effective on the 30th day after the date of this order, the registrations of Daniel J. Shelley and Sam H. LaMantia as floor brokers under the Commodity Exchange Act are suspended for 10 days.

Effective on the 30th day after the date of this order, the registration

of John M. Rowley as a floor broker under the Commodity Exchange Act is suspended for 5 days.

Effective on the 30th day after the date of this order, all contract markets shall deny all trading privileges to Daniel J. Shelley and Sam H. LaMantia for a period of 10 days and to John M. Rowley for a period of 5 days, such refusal to apply to all trading done and positions held by such individuals, directly or indirectly.

A copy of this decision and order shall be served upon each of the respondents and upon each contract market.

LOAD-DATE: June 8, 2008

