

Commodity Futures Trading Commission
CEA CASES

NAME: SECRETARY OF AGRICULTURE V. H. W. ARMSTRONG & COMPANY, JOSEPH BUCHHALTER, CATHERINE L. DURANT, WILLIAM C. DURANT, ALEXANDER EISEMANN, ALEXANDER EISEMANN & COMPANY, AND CLEMENT B. JOHNSON

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UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

C. E. A. DOCKET NO. 12

Secretary of Agriculture, Complainant, v. H. W. Armstrong & Company, Joseph Buchhalter, Catherine L. Durant, William C. Durant, Alexander Eisemann, Alexander Eisemann & Company, and Clement B. Johnson, Respondents.

Proceedings, Findings of Fact, Conclusions, and Order.

PROCEEDINGS

On March 10, 1939, complaint was issued by the Acting Secretary of Agriculture, pursuant to the provisions of the Commodity Exchange Act (7 U. S. C., 1934 ed., and Supp. IV, § 1-17a), against the above-named respondents, alleging that they were members of a contract market or correspondents, agents, or employees of members. Respondents were charged with cheating, defrauding, misleading, falsely reporting to, and deceiving persons in connection with wheat futures contracts on contract markets, and attempting to do so, by the manner in which they promoted and operated a scheme sometimes called the Buchhalter Plan, which was described

in general as involving a power of attorney from the customer, whereunder both a long and a short position are taken, on each one cent fluctuation in price thereafter trades are made by which that position showing a profit is closed out and reestablished and that showing a loss is left open, and such reports and checks are sent to the customer as to lead him to believe that he has an investment assuring him profits without losses. It was alleged that closing out a position and simultaneously reestablishing it served only to enable respondents to charge an additional commission and send a statement showing a realized profit while the whole account showed a loss, and that few, if any, accounts handled under the plan proved profitable to customers. Respondents were notified to appear at a hearing before a referee in New York, New York, on March 29, 1939, to show cause why an order should not be made directing contract markets to refuse trading privileges to respondents and revoking the registrations of the two respondents registered as futures commission merchants.

The complaint was served on each respondent by registered mail. At the request of counsel for Alexander Eisemann, the hearing was postponed from March 29. It began on April 19, 1939, before Jack W. Bain, Esquire, the referee. Charles W. Bucy, Esquire, Office of the Solicitor, Department of Agriculture, appeared for the Government. Jacob Gruber, Esquire, appeared

for the respondents H. W. Armstrong & Company, William C. Durant, Catherine L. Durant, and Clement B. Johnson. Frank Aranow, Esquire, and Jeannette Aranow,

Esquire, of the firm of Hastings and Aranow, appeared for the respondents Alexander Eisemann and Alexander Eisemann & Company. Respondent Joseph Buchhalter appeared in person. After all parties had put in their cases and rested, the hearing was closed on May 2, 1939. Some exhibits were not in complete final form, but were put into such form by July 5, 1939.

On August 16, 1939, copies of the referee's report, proposed findings of fact and conclusions, and recommended order were served upon the respondents, and a period of twenty days was given for filing exceptions and requesting oral argument before the Secretary. Mr. Gruber filed exceptions and briefs, and requested oral argument, on behalf of the respondents he represented. No other briefs or exceptions were filed. Argument was set for October 25 in Washington, and the parties were notified. At the appointed time and place, Mr. Harry L. Brown, Assistant Secretary of Agriculture, heard the arguments presented by Mr. Gruber, Mr. Aranow, and Mr. Bucy. The respondent Buchhalter did not appear. Before the case had been decided, Mr. Brown resigned from the Department, and all parties consented to its submission without further oral argument, with the transcript of the argument before Mr. Brown being considered as the argument in the case.

FINDINGS OF FACT

1. H. W. Armstrong & Company was formed May 1, 1938, as a partnership, the partners being Catherine L. Durant and H. W. Armstrong. H.W. Armstrong died May 30, 1938. On and after June 6, 1938, the partners were Clement B. Johnson and Catherine L. Durant. The partnership registered with the Secretary of Agriculture as futures commission merchant on July 5, 1938, for the period ending December 31, 1938. The partnership discontinued business as a futures commission merchant on December 27, 1938. Its address at all times prior to the issuance of the complaint herein was 230 Park Avenue, New York, New York.

2. H.W. Armstrong & Company was incorporated October 22, 1938, the officers being: Clement B. Johnson, president, chairman of the board, and director; Robert W. Morris, vice-president and director; Catherine L. Durant, treasurer and director; and Suzanne E. Weiller, secretary and director. The corporation registered with the Secretary of Agriculture as futures commission merchant on November 5, 1938, for the period ending December 31, 1938, and on December 28, 1938, for the period ending December 31, 1939. Its registration has not heretofore been suspended or revoked. Its address at all times prior to the issuance of the complaint herein was 230 Park Avenue, New York, New York.

3. H.W. Armstrong was a member of The Board of Trade of the City of Chicago, a contract market. Application was made to

register his membership for the use of H. W. Armstrong & Company, but this was refused. After his death, the membership was transferred to his son-in-law, Clement B. Johnson. Application to register the membership for the use of H. W. Armstrong & Company was approved by the Board of Trade on November 14, 1938.

4. Alexander Eisemann was, at all times mentioned herein, a member of the Board of Trade of the City of Chicago, a contract market. His membership was registered for the use of Alexander Eisemann & Company.

5. Alexander Eisemann & Company is a partnership, of which Alexander Eisemann is a principal partner. The address of its principal officer is 42 Broadway, New York, New York. It registered with the Secretary of Agriculture as futures commission merchant for the years 1938 and 1939, and its registration has not heretofore been suspended or revoked.

6. In October 1937 Joseph Buchhalter had authorizations to trade in wheat futures for some 30 persons, and did the trading through Schatzkin, Loewi & Company, futures commission merchants, where a commission of \$ 3.50 was charged for each round turn, or completed purchase and sale, of 1,000 bushels of wheat

for future delivery, and through other futures commission merchants. He traded in the accounts for these persons pursuant to a so-called Buchhalter Plan.

7. The plan of trading used by Joseph Buchhalter consisted of trading in and out of the wheat market on the Chicago Board of

Trade in units of 1,000 bushels. A long position of 1,000 bushels in one future, and a short position of like quantity in a different future, were taken at or near the same price. At each 1 cent fluctuation in price, that position, long or short, showing a profit was closed out by making an offsetting contract, such position was then reestablished by making another contract at the now price, and the position showing a loss was increased by making a contract for another 1,000 bushels at the new price.

8. Closing out and reestablishing a position in wheat futures at the same time and price served no purpose beneficial to the account, leaving it unchanged in value except that an additional commission to the broker has accrued. It enables the broker to send a report to the customer. If this report indicates that a profit has resulted from such a transaction it is misleading, because there is no profit in a simultaneous purchase and sale at the same figure.

9. The commission charged by Alexander Eisemann & Company for the round turn on 1,000 bushels was \$ 3.50, the commission for such transactions usually charged by commission merchants and brokers. On Buchhalter transactions, the charge at H. W. Armstrong & Company was \$ 4.75 by the partnership and \$ 3.50 by the corporation. The higher commission charged by the partnership did not violate the law or exchange regulations, but increased its profit and enabled it to pay, and it did pay, to W. W. Murphy

a part of the commission charged on each completed transaction in accounts under the Buchhalter plan solicited and brought in by him.

10. Pursuant to Joseph Buchhalter's desires, trades in the accounts operated by him at Schatzkin, Loewi & Company were paired off so as to show a profit for each completed round turn, leaving all losses open and unrealized, but upon instructions of its accountant, Schatzkin, Loewi & Company refused to continue such practice, and thereafter trades were paired off in the order in which they were made, regardless of whether a profit or loss was shown. Shortly thereafter, Mr. Buchhalter took the accounts away from such firm.

11. At a number of conferences, beginning early in November 1937, Joseph Buchhalter explained his plan of trading to Alexander Eisemann and other officials of Alexander Eisemann & Company. Joseph Buchhalter and Alexander Eisemann & Company entered into a written contract, dated November 30, 1937. Under this contract, the company was to advance funds for Mr. Buchhalter to obtain a membership in the Chicago Board of Trade. At the option of the company, Mr. Buchhalter was to trade exclusively through it for five years after obtaining such membership. Mr. Buchhalter was to get each of his customers to sign the customer's card of the company, the company was to carry the customers on its books as its own, and commissions were to be split.

12. Early in December 1937 Joseph Buchhalter brought to Alexander Eisemann & Company a number of accounts which he operated under his plan. At that time Alexander Eisemann opened an account to be operated under the plan by Mr. Buchhalter, and instructed Mr. Buchhalter not to bring in additional accounts under the plan until he, Eisemann, saw the results of the operation of this account. As of January 28, 1938, this account showed a net profit, although in the end no account mentioned in these findings showed a profit to the customer.

13. In January 1938 the Chicago Board of Trade refused a seat to Joseph Buchhalter on the basis that it was against its policy to permit persons to buy

seats with other than their own funds. Thereupon an arrangement was made whereby Alexander Eisemann & Company would employ Harold Buchhalter, son of Joseph Buchhalter, until such time as Joseph Buchhalter could obtain a seat on the exchange, when the son would become an employee of his father. Harold Buchhalter was a paid employee of Alexander Eisemann & Company from then until July 2, 1938, his entire duties being to service the accounts brought in and operated by his father. Harold Buchhalter was credited as a business producer for the accounts brought in through his father.

14. In connection with orders to make and the making of wheat futures contracts on the Chicago Board of Trade, Joseph Buchhalter, between January and May 1938, told various customers and prospective customers of Alexander Eisemann & Company that

his plan was a sure thing, that there were always profits in it, and that it could secure a definite income. He gave these customers and prospects literature referring to daily profit checks and regular income depending entirely upon the amount invested in the plan. These statements were within Mr. Buchhalter's knowledge misleading, they tended to and did deceive the persons to whom they were made and given, and they were willfully made and given for the purpose of deceiving such persons.

15. Joseph Buchhalter was a correspondent of Alexander Eisemann and Alexander Eisemann & Company, a member of a contract market, within the meaning of Section 4b of the Commodity Exchange Act, from November 30, 1937, until July 2, 1938.

16. The Board of Trade of the City of Chicago, sometimes herein called the Chicago Board of Trade, was a contract market at all times mentioned herein. Wheat futures contracts on such market may be used for hedging and for determining the price basis of transactions in interstate commerce in wheat, and for delivering wheat sold, shipped, or received in interstate commerce.

17. In December 1937 Joseph Buchhalter conferred with William C. Durant, organizer of many large corporations and former president of General Motors, concerning his plan of trading, telling Mr. Durant of his contract with Alexander Eisemann & Company, and offering Mr. Durant a half interest in the plan if Mr. Durant would interest himself in it. Mr. Durant became ill shortly

thereafter, but in January 1938 had Miss Suzanne E. Weiller, one of his secretaries, investigate the plan as it was then in operation at Alexander Eisemann & Company.

18. At the request of William C. Durant, her employer, Suzanne E. Weiller observed the operation of the plan at Alexander Eisemann & Company for about five weeks, beginning about January 15, 1938. As a part of her investigation, she operated a theoretical account, putting in imaginary orders similar to orders directed by Joseph Buchhalter in the actual accounts. She was favorably impressed, and opened an account for herself. She reported daily to Mr. Durant, except for days when he, due to illness, could not be reached. Her reports were favorable.

19. In the course of a series of conversations had with Joseph Buchhalter in January and February 1938, in connection with the operation of Buchhalter's plan, William C. Durant suggested that a corporation be formed and a seat on the Chicago Board of Trade be obtained. While Mr. Durant was in the hospital, Joseph Buchhalter, Charles Solomon, and Edward M. David attended a conference in the offices of Satterlee & Canfield, with Mr. Randolph Hichs, attorney for Mr. Durant, with regard to formation of such a corporation.

20. Mr. Durant's first conference with his attorney concerning the formation of such a corporation was on January 21, 1938; the charter was drafted on February 10, 1938; and on

March 12, 1938, the corporation, The Buchhalter Plan, Inc., was formed by Randolph Hichs, acting as attorney for William C. Durant, for the purpose of obtaining a seat on the Chicago Board of Trade so that commissions on trades made under the plan could be split with the commission merchants who cleared the trades. Of the corporate stock, 50% went to William C. Durant and 50% to Joseph Buchhalter and persons designated by him. The office of the corporation was 230 Park Avenue, New York, New York. Mr. Durant was not an officer of, but was advisory counsel of and managed the affairs of the corporation.

21. William C. Durant discussed the plan with Alexander Eisemann about the last week of January 1938. Mr. Durant suggested that some changes be made in the form of trading authorization used by Alexander Eisemann & Company before it was used by his, Durant's, friends. In a letter to Mr. Eisemann, dated February 10, 1938, Mr. Durant stated that he had formulated a program regarding the Buchhalter proposition, and that it was his intention to have the business handled through Alexander Eisemann & Company.

22. In February 1938, Joseph Buchhalter wrote out his plan of trading and sealed it in an envelope which was deposited in a cabinet safe in the office of William C. Durant. On the outside of the envelope, the following is typed: "February twenty-fourth, nineteen hundred and thirty-eight. The Buchhalter Plan of Trading is herein contained and sealed and the custody relegated

to Mr. W. C. Durant and Mr. Joseph Buchhalter who alone are to have access to the safe-deposit box where this document reposes." This envelope has not been opened. Mr. Durant never saw its contents, and the plan in its entirety, as conceived by Mr. Buchhalter, was never fully disclosed to him.

23. About the last week in February 1938, William C. Durant dictated a statement concerning the plan as he understood it. He had 1,000 copies of this statement printed at the New Era Letter Company, prior to March 10, 1938, in the form of a folder of 8 pages, containing a "Foreword by W. C. Durant" and references to daily profit checks, regular incomes depending entirely upon the amount of the investment, and a license agreement for brokers to operate under the plan. Joseph Buchhalter objected to certain items in the folder, including a criticism of the stock exchange in the foreword and the statement concerning daily checks. Mr. Durant distributed about 20 to 25 of these folders, mostly to personal friends whom he was attempting to interest in the plan.

24. On February 9, 1938, William C. Durant had the New Era Letter Company print about 50 proofs of a trading authorization similar in appearance to the one then in use by Alexander Eisemann & Company. These proofs contained the name of the company, as did the forms in use by the company, but some of the provisions were different, and The Buchhalter Plan, Inc., and the plan itself were specifically mentioned. In having 17 accounts opened with Alexander Eisemann & Company, Mr. Durant had the customers

sign this form instead of that in use by the company. Because of the similarity in appearance of the two forms, the company did not immediately notice that its own forms had not been used, but upon discovery of this fact, the company asked each customer concerned to sign a new and different authorization. Alexander Eisemann & Company did not approve of this form prepared by Mr. Durant.

25. William C. Durant had proofs of other circulars regarding the Buchhalter plan printed by the New Era Letter Company from time to time, some of which omitted the foreword and license provision, but all of which referred to daily profit checks and regular incomes depending upon the amount invested. From the printers Mr. Durant received one thousand copies of one of these.

26. William C. Durant reported to Alexander Eisemann, by letter dated March 15, 1938, that he was negotiating with a group of influential men for the purpose of interesting them in the Buchhalter plan, and that he had appointments with others for the same purpose. Mr. Durant, for that purpose, took Joseph Buchhalter to a number of people to explain the plan. Mr. Durant, in person, by correspondence, and through W. W. Murphy, his secretary, took the matter up with other wealthy and influential persons. In a letter to Mr. Amon G. Carter; Fort Worth, Texas, dated March 11, 1938, a mimeographed copy of which was sent to Mr. Eisemann on March 15, Mr. Durant stated that the plan showed tremendous profits without risk, that Alexander Eisemann & Company unqualifiedly approved it, that he, Durant, was advisory counsel

of and had a five year contract with The Buchhalter Plan, Inc., which held a membership in the Chicago Board of Trade, and that the return on the investment was from 40% to 55%. The people to whom the plan was presented represented interests in New York, England, Canada, Philadelphia, Detroit, and other places.

27. Alexander Eisemann and Alexander Eisemann & Company objected to the use for public distribution of all folders, circulars, and such printed matter, prepared by William C. Durant, which came to their attention, on the basis that such might mislead persons seeing them. Such matter was not distributed by Mr. Eisemann or that company. A memorandum containing outlines of the plan and comments upon it was prepared by a number of persons within the Eisemann company. It was not distributed by the company, but was prepared for the information of employees only, and they were by it instructed that, as the plan was complicated, any customer or prospect with whom it was discussed should be accompanied by his accountant. The company objected when part of the memorandum was quoted in literature prepared by Mr. Durant.

28. William C. Durant brought about 22 accounts to Alexander Eisemann & Company between February 24, 1938, and July 2, 1938. He had the customer in each instance sign the trading authorization for trading under the Buchhalter plan. The customers involved dealt with the company through Mr. Durant. Some of these accounts were solicited by and came in through Mr. Durant's wife, Catherine L. Durant.

29. Joseph Buchhalter did not originate that part of the plan calling for the sending out of frequent or daily checks for profits on closed trades. In February or March 1938, Alexander Eisemann & Company received a request from a secretary of William C. Durant to send out daily checks for any profits on closed trades. The company, fearing that receipt of such checks might lead customers to believe that they represented net profits while actually the account as a whole showed a loss, attached to each such check a notice that it did not mean that there was a liquidating profit in the account. In March 1938 Alexander Eisemann & Company informed Miss Weiller, secretary to Mr. Durant, that no more profit checks would be sent except upon written request of the customer. Mr. Durant then prepared letters for some of his customers, which were signed by the customers, requesting that such checks be sent. On March 29, 1938, Mr. Durant wrote the company regretting that it was unwilling to grant his request to continue sending daily checks.

30. Catherine L. Durant received checks for profits on closed trades in her account for a period of about six weeks, when there was a liquidating loss in her account. She kept these checks not cashed or presented for payment, for the six weeks period. She showed some such checks, and copies of some, to Mrs. Alis R. Feigenspan late in February 1938. Mrs. Durant gave a written statement praising the plan, mentioning frequent checks for profits received by her, but not mentioning open losses, and

referring, for further information, to The Buchhalter Plan, Inc., and the telephone number of a company which she owned. She wrote the following to Alexander Eisemann & Company, under date of March 28, 1938:

"I have not received credit checks for operations of my accounts for the past few days. Will you kindly mail same and continue to send me credit checks until further advised.

"I have talked it over with Mr. Durant and agree with him that an attractive receipt will in most cases answer the purpose as the novelty and advertising value is of no further importance."

On the same date, by letter to Mrs. Durant, the company expressed its objection to use of the checks for advertising purposes and refused to use receipts other than its regular profit and loss statements.

31. On March 28, 1938, Alexander Eisemann & Company wrote William C. Durant, by registered mail, that certain literature and correspondence issued through his office had come to its attention, that it was wholly out of sympathy with this sort of selling methods, and that it would decline to accept any further accounts solicited by such literature and correspondence. Mr. Durant answered by letter dated March 29, 1938, stating that neither Catherine L. Durant nor he had solicited business from other than personal friends, that they would submit no further accounts, and that if

any accounts guaranteed by them were unsatisfactory, he would arrange to have same immediately transferred.

32. Referring to an account under the plan of operation used as an investment, stating that "weekly or monthly income depends entirely upon the amount invested" under the plan, reporting trades showing profits and leaving losses unrealized and unreported, stating that a profit is taken on every one cent fluctuation, referring to "tremendous profits without risk" and 40% to 55% "return upon the investment" constitute false and misleading statements.

33. Between February and July 1938, William C. Durant made each and all of the statements and references set out in the preceding paragraph to various persons in connection with orders to make and the making of wheat futures contracts on the Chicago Board of Trade.

34. From late in January 1938 until July 2, 1938, William C. Durant was, and from about February 24, 1938, until July 2, 1938, Catherine L. Durant was a correspondent of Alexander Eisemann & Company and of Alexander Eisemann, a member of a contract market, within the meaning of Section 4b of the Commodity Exchange Act.

35. When The Buchhalter Plan, Inc., was formed, an effort was made to secure a seat on the Chicago Board of Trade, but the Board of Trade would not permit a seat to be registered in the

name of the corporation. On May 1, 1938, William C. Durant formed H. W. Armstrong & Company, a partnership consisting of H. W. Armstrong and Catherine L. Durant, in which firm Joseph Buchhalter had no interest. At that time application was made to register Mr. Armstrong's membership in the Chicago Board of Trade for the use of the partnership, but the application was not approved. Mr. Armstrong died on May 30, 1938, and his Board of Trade membership was transferred to Clement B. Johnson, who took his place in the partnership. Negotiations to obtain use of the seat for H. W. Armstrong & Company continued, but this was not accomplished until November 14, 1938.

36. William C. Durant was dissatisfied with the lack of cooperation of Alexander Eisemann & Company, particularly with respect to sending out checks, and on July 2, 1938, had all of the accounts with which he was connected

transferred to H. W. Armstrong & Company. Additional accounts were brought in to H. W. Armstrong & Company, some through two men the company had soliciting customers in Pennsylvania, and some from Detroit through W. W. Murphy, whom it had soliciting there. Powers of attorney for the accounts at H. W. Armstrong & Company were to Clement B. Johnson and Robert W. Morris. Mr. Morris directed the trading under these powers, getting advice on general policy and market conditions from Mr. Durant. These accounts were operated, in part, under the Buchhalter plan.

37. At H. W. Armstrong & Company, both the partnership and the corporation, favorable trades were made up and reported and losses kept open, and in many accounts monthly profit checks were sent out while the account showed a liquidating loss. These practices continued during 1938 and the first few months of 1939.

38. H.W. Armstrong & Company, the corporation, was simply a continuation in a different form of H. W. Armstrong & Company, the partnership. The ownership, personnel, and management of the two were the same. Accounts were transferred from the partnership books to the corporation books on November 23 and November 29, 1938.

39. According to the contract between Alexander Eisemann & Company and Joseph Buchhalter, he was to get the accounts and direct trading in them under his powers of attorney, while the company was to carry the accounts as broker. It would not consent to powers of attorney under the plan being made to company partners. Mr. Buchhalter, and also William C. Durant when he later became associated with Mr. Buchhalter, had no interest in and took no part in the management of the company, their connection with it being merely to direct trading in accounts carried by it as broker. The company did a general commission business prior to and after its carrying of Buchhalter plan accounts, and such accounts constituted only a small proportion of its business during the time they were carried. It resisted efforts to have

these accounts handled differently from others, refused to allow the use of its name in promoting the plan, and objected to methods of solicitation used, although Mr. Durant had written that it was merely the broker and not responsible for statements made by those promoting the plan.

40. The formation of H. W. Armstrong & Company was a part of the promotion of the Buchhalter plan of trading. The interest of Joseph Buchhalter himself in the plan ended when it was established that The Buchhalter Plan, Incorporated, could not obtain a Board of Trade membership, but William C. Durant organized the Armstrong company for the purpose of handling accounts which had been and were expected to be opened under the plan. Except for the Board of Trade membership, the entire capital of the company was put up by Catherine L. Durant, and she was its treasurer. Mr. Durant managed her affairs under a power of attorney. A secretary of Mr. Durant was secretary of the company. Powers of attorney from customers were made to officials of the company, their names being printed in the forms prepared by the company, and one of these officials directed trading in the accounts, after consultation with Mr. Durant as to general market conditions. The company had men in the field presenting the plan and soliciting accounts. It was an integral part of the plan as it was operated, created for the purpose by Mr. Durant.

41. Sending out frequent checks, daily or monthly, for profits when the account of a customer involved shows a liquidating loss, constitutes falsely reporting to the customer and tends to and does lead the customer to believe that the checks represent net profits, wherein he is deceived. Telling persons of profit checks and showing them such checks, without mentioning liquidating losses, tends to and does deceive such persons.

42. Frequent profit checks were sent out by Alexander Eisemann & Company in February, March, and April, 1938, at the request of William C. Durant, when the accounts involved showed liquidating losses, in connection with orders to make and the making of wheat futures contracts on the Chicago Board of Trade. From July 2, 1938, through March 1939, Mr. Durant, Catherine L. Durant, and Clement B. Johnson, as managing directors of H. W. Armstrong & Company, both partnership and corporation, caused similar checks to be sent out, under similar conditions, in connection with similar contracts, which checks were sent out by the company. In connection with similar orders and contracts, Catherine L. Durant, late in February, 1938, and thereafter, told persons of, and showed them profit checks received by her, but did not mention existing liquidating losses in the accounts involved.

43. From July 2, 1938, through March 1939, Clement B. Johnson was a member of a contract market, and William C. Durant,

Catherine L. Durant, and H. W. Armstrong & Company were agents of a member of a contract market, within the meaning of Section 4b of the Commodity Exchange Act.

44. William C. Durant, Catherine L. Durant, Clement B. Johnson, and H. W. Armstrong & Company, both partnership and corporation, had been advised and knew that their acts, as above set out, were likely to mislead and deceive the customers involved, and they willfully made and distributed the statements and reports for the purpose of misleading and deceiving such customers.

45. The respondents Joseph Buchhalter, William C. Durant, and Alexander Eisemann testified at the hearing. The respondent Catherine L. Durant was present at the hearing, but was not called as a witness. The respondent Clement B. Johnson was not called as a witness and the record does not show whether he was present in person at the hearing.

CONCLUSIONS

From the record in the proceeding, and based upon the foregoing findings, it appears that the respondents knew that their acts, reports, and representations were calculated to mislead and deceive persons in connection with wheat futures transactions, but that of the respondents only Alexander Eisemann and Alexander Eisemann & Company attempted or took steps to prevent such a result, and the others willfully continued their

deceitful acts and representations, contrary to the provisions of the Commodity Exchange Act. It is concluded, therefore, that Alexander Eisemann and Alexander Eisemann & Company should be dismissed from this proceeding, and that contract markets should be directed to refuse trading privileges to H. W. Armstrong & Company, Joseph Buchhalter, Catherine L. Durant, William C. Durant, and Clement B. Johnson. Since the registration of H. W. Armstrong & Company has expired, it need not be revoked.

ORDER

IT IS HEREBY ORDERED that Alexander Eisemann and Alexander Eisemann & Company be, and they are hereby, dismissed from this proceeding.

IT IS FURTHER ORDERED that all contract markets, until further notice by the Secretary of Agriculture, refuse all trading privileges thereon to H. W. Armstrong & Company, Incorporated, Joseph Buchhalter, Catherine L. Durant, William C. Durant, and Clement B. Johnson.

IT IS FURTHER ORDERED that a copy hereof be sent by registered mail to each of the respondents and to each contract market.

(SEAL)

Done at Washington, D. C., this 11th day of March 1940. Witness my hand and the seal of the Department of Agriculture.

(Signed) Grover B. Hill

Assistant Secretary of Agriculture.

LOAD-DATE: June 11, 2008

