

Commodity Futures Trading Commission  
CEA CASES

**NAME:** SECRETARY OF AGRICULTURE V. HUGH S. GAMBLE AND STEPHEN A. BURKE

**DOCKET NUMBER:** 8

**DATE:** SEPTEMBER 20, 1938

**DOCUMENT TYPE:** DECISION AND ORDER

DEPARTMENT OF AGRICULTURE

Washington, D. C.

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

C. E. A. DOCKET NO. 8

Secretary of Agriculture, Complainant, vs. Hugh S. Gamble and Stephen A. Burke, Respondents.

Findings of Fact, Conclusions and Order.

This proceeding was instituted by the Secretary of Agriculture on August 5, 1938, through the filing of a complaint requiring the respondents Hugh S. Gamble and Stephen A. Burke to show cause why an order should not be entered directing all contract markets to refuse them all trading privileges until further notice of the Secretary of Agriculture.

It is charged in the complaint, among other things, that the respondents between June 1, 1937 and December 31, 1937, at Sioux Falls, South Dakota, acting by and through the means of Burke & Company, a corporation organized under the laws of the State of South Dakota, did engage as futures commission merchants in soliciting and accepting orders for the purchase and sale of commodities for future delivery, involving contracts of sale of such commodities for future delivery on or subject to the rules of the Board of Trade of the City of Chicago, a contract market designated by the Secretary of Agriculture pursuant to the provision of the Commodity Exchange Act, and while so engaged did accept orders from various persons for the purchase and sale of grain and other commodities as defined in the Commodity Exchange Act for future delivery and did receive funds from said persons to margin and guarantee the respective trades and contracts of said persons in such commodities and, at such times and places and while so engaged, the respondents violated the provisions of Section 4 d (2) of the Commodity Exchange Act in failing to account separately for the funds so received, by commingling said funds with the funds of the said Burke & Company and the funds of security customers of said Company, and by

using the funds so received to margin and guarantee the trades and contracts of Hugh S. Gamble, and to extend credit to Hugh S. Gamble, and by failing to deal with money so received as belonging to said customers, but, in fact, using portions of said funds for the purpose of paying the personal obligations of the said Stephen A. Burke.

It is further charged in the complaint that between January 1, 1938 and January 6, 1938, at Sioux Falls, South Dakota, the said Stephen A. Burke and Hugh S. Gamble did engage as futures commission merchants by and through said Burke & Company, after the Company's registration with the Secretary of Agriculture as such futures commission merchant under the Commodity Exchange Act had expired and without having reregistered pursuant to the provisions of said Act, all in violation of Section 4 d (1) of the Commodity Exchange Act.

No answer to the complaint was filed by either of the respondents and they did not appear in person or by attorney at the hearing held pursuant to the Secretary of Agriculture's notice of hearing before a referee at Washington, D. C. on August 17, 1938. At said hearing, proof of service of the complaint on respondents was received. Douglas B. Bagnell, in charge of the Division of Violations and Complaints, Commodity Exchange Administration, United States Department of Agriculture, testified that he examined the books and records of the respondents and thereafter made a report of his investigation; that the allegations contained in the complaint were true as shown by the examination by witness of the respondents' books and records. A duplicate original of Mr. Bagnell's report of investigation was received in evidence as Exhibit 4. It is considered that the proof supports the charges contained in the complaint.

#### FINDINGS OF FACT

The Secretary of Agriculture, having duly considered the evidence, now makes the following findings of fact:

1. The Board of Trade of the City of Chicago was duly designated as a contract market under the Grain Futures Act on May 3, 1923, and it has been a contract market under said act and the Commodity Exchange Act continuously since that date.

2. That between June 1, 1937 and December 31, 1937, at Sioux Falls, South Dakota, the respondents Hugh S. Gamble and Stephen A. Burke, acting by and through the means of Burke & Company, a corporation organized under the laws of the State of South Dakota, said Stephen A. Burke the president and Hugh S. Gamble, vice president of said corporation, did engage as futures commission merchants in soliciting and accepting orders for purchase and sale of commodities for future delivery, involving contracts of sale of such commodities for future delivery on or subject to

the rules of the Board of Trade of the City of Chicago and, while so engaged, did accept orders from various persons for the purchase and sale of grain and other commodities as defined in the Commodity Exchange Act for future delivery and did receive funds from said persons to margin and guarantee the respective trades and contracts of said persons in such commodities and, at such times and places and while so engaged did violate the provisions of Section 4 d (2) of the Commodity Exchange Act as follows:

A. The respondents failed to account separately for the funds so received in that on January 6, 1938, there were due commodity customers funds in excess of \$ 80,000 and funds segregated for the benefit of such customers amounted to only \$ 22,673.51, leaving a shortage of approximately \$ 60,000 in the commodity customers' accounts, and the respondents did in fact commingle those said funds with the funds of the said Burke & Company and the funds of security customers of said Company.

B. The respondents used the funds so received to margin and guarantee the trades and contracts of Hugh S. Gamble and to extend credit to Hugh S. Gamble in a sum in excess of \$ 50,000, which said sum was taken by said Stephen A. Burke and Hugh S. Gamble, acting as aforesaid, out of the funds received by the said Burke & Company from various persons to margin and guarantee the respective trades and contracts of said persons in grain and other commodities as defined in the Commodity Exchange Act.

C. The respondents failed to deal with the money so received as belonging to said customers, but did in fact, on the 9th day of June, 1937, draw and cause to be drawn a certain check numbered 2999, in the amount of \$ 4500, payable to R. J. Weiland, and thereby extracted the said sum of \$ 4500 from a certain account of the said Burke & Company in the First National Bank & Trust Company of Sioux Falls, South Dakota, designated "Customers' Margin Account Number 1", for the purpose of paying the personal obligation of the said Stephen A. Burke.

3. That the respondents Stephen A. Burke and Hugh S. Gamble, acting by and through the means of Burke & Company, a corporation organized under the laws of the State of South Dakota, did engage as futures commission merchants within the meaning of the Commodity Exchange Act after the said Burke & Company's registration with the Secretary of Agriculture as such futures commission merchants under the Commodity Exchange Act had expired and without having re-registered pursuant to the provisions of said act.

CONCLUSIONS

The record shows that respondents Hugh S. Gamble and Stephen A. Burke, while engaged as futures commission merchants, did violate Section 4 d (2) of the Commodity Exchange Act by failing to account separately for customers funds; by commingling customers' funds with the funds of

Burke & Company, and the funds of security Customers and by using the funds of customers to margin and guarantee the trades and extend credit to third persons and that the said respondents also violated Section 4 d (1) of the Commodity Exchange Act by engaging as futures commission merchants while not registered pursuant to the provisions of said act.

ORDER

IT IS HEREBY ORDERED that all contract markets refuse all trading privileges thereon to Hugh S. Gamble and Stephen A. Burke until further notice of the Secretary of Agriculture.

IT IS FURTHER ORDERED that a copy of these findings of fact, conclusions and order be transmitted by registered mail to the respondents and to the secretary of each contract market designated as such by the Secretary of Agriculture pursuant to the provisions of the Commodity Exchange Act.

(SEAL)

IN WITNESS WHEREOF, the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed hereto, in the City of Washington, District of Columbia, this 20th day of September, 1938.

(Signed)

M. L. WILSON

Acting Secretary of Agriculture

**LOAD-DATE:** June 11, 2008

