

Commodity Futures Trading Commission  
CEA CASES

**NAME:** VINCENT W. KOSUGA, SAM S. SIEGEL, AND NATIONAL PRODUCE DISTRIBUTORS, INC.

**CITATION:** 16 Agric. Dec. 665

**DOCKET NUMBER:** 73

**DATE:** JULY 18, 1957

**DOCUMENT TYPE:** ORDER REMANDING PROCEEDING TO REFEREE

**AGRICULTURE DECISIONS**

**BEFORE THE SECRETARY OF AGRICULTURE**

**UNITED STATES DEPARTMENT OF AGRICULTURE**

(No. 5085)

*In re* VINCENT W. KOSUGA, SAM S. SIEGEL, AND NATIONAL PRODUCE DISTRIBUTORS, INC.  
CEA Docket No. 73. Decided July 18, 1957.

**Proceeding Remanded to Referee**

Complainant has made freely available to respondents by virtue of the ruling in *Jencks v. United States*, 353 U.S. 657, transcripts of investigatory statements made by persons prior to their appearance as witnesses for complainant at hearing before referee but has not made available to respondents the statement of one person who did not appear as a witness at the hearing. The complainant had previously refused to make the transcripts available except to the referee for his examination and for disclosure by him to respondents of any material of impeachment value to respondents. Since respondents have gotten what they sought except for a statement not required by law to be made available to them, the proceeding is remanded to the referee for further hearing.

*Mr. Benj. M. Holstein*, for Commodity Exchange Authority. *Mr. Lee A. Freeman*, of Chicago, Illinois, and *Mr. Michael A. Gurda*, of Middletown, New York, for respondent Vincent W. Kosuga. *Mr. Max Chill*, of Chicago, Illinois, for remaining respondents. *Mr. John Curry*, Referee.

*Decision by Thomas J. Flavin, Judicial Officer*

**ORDER REMANDING PROCEEDING TO REFEREE**

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1). The respondents are charged

with attempting to manipulate, and with manipulating, the prices of onions in interstate commerce and for future delivery on or subject to the rules of the Chicago Mercantile Exchange.

Following presentation of the complainant's evidence at a hearing upon the complaint and answers the referee issued a report on May 3, 1957, recommending that the complaint be dismissed and the proceeding terminated. The basis for the recommendation was the complainant's refusal to furnish to the respondents transcripts of sworn testimony given before investigators of the Commodity Exchange Authority. The transcripts in question are those which cover the interrogation of Jack Kelly, LaCerne Dixon, William Gehring, Mike Minardo, Lyle Jordon, Veril Baldwin, and Carl Jarson. All these persons except Carl Jarson also testified at the administrative hearing upon the complaint and answers which was presided over by the referee. In response to a subpoena duces tecum

issued by the referee to the Administrator, Commodity Exchange Authority, the complainant had offered to make the transcripts available to the referee for his examination and for disclosure by him of any materials in the investigatory transcripts which he considered of impeachment value to the respondents. The respondents rejected such proffer and the refusal of the complainant to make the transcripts freely available to the respondents resulted in the referee's report recommending that the complaint be dismissed.

The complainant filed lengthy exceptions to the referee's report on May 23, 1957. The respondents asked for and received permission to file answers to the complainant's exceptions and also requested oral argument thereon. An answer to the complainant's exceptions was received on June 17, 1957, together with a request for oral argument.

On June 26, 1957, the complainant filed a statement referring to the decision of the United States Supreme Court in *Jencks v. United States*, 353 U.S. 657 (1957), in which the Court held that in a criminal case the defendant was entitled to inspect reports in the Government's possession made by Government witnesses concerning matters to which the witnesses later testified at the trial. The statement says: "While we have some question as to whether the ruling in the Jencks case applies to administrative proceedings, a decision on the merits in this proceeding is of paramount importance in the public interest. Accordingly, the Commodity Exchange Authority has requested and obtained from the Secretary of Agriculture authority to furnish to the

respondents or their counsel the transcripts of the sworn statements obtained by the Commodity Exchange Authority from those persons described in the referee's subpoena who were later called as witnesses in this proceeding." The statement continues to recite that the transcripts of the investigatory statements of the persons listed in the subpoena, except Carl Jarson, had been transmitted to counsel for the respondents and the statement requests that the proceeding be remanded to the referee and the matter set down for further hearing. Counsel for the respondents in letters to the Judicial Officer objected to the complainant's request to remand the proceeding.

The referee's recommendation for dismissal is based entirely upon the complainant's refusal to make the investigatory statements freely available to the respondents. The statements have now been made available to the respondents because of the decision of the United States Supreme Court in the *Jencks* case and the proceeding should accordingly be remanded to the referee unless the complainant is also required to make available the results of the examination of Carl Jarson who has not testified as a witness at the hearing and who apparently will not be called as a witness by the complainant since the complainant has completed its presentation of witnesses. Assuming that the ruling in the *Jencks* case applies in an administrative proceeding such as this, the ruling does not cover reports or investigatory examinations of persons who do not testify as witnesses in the proceeding. Jarson's statements made pursuant to an investigatory subpoena even though after the issuance of the complaint were privileged under the regulations of the Department (7 CFR 1.2) and we are not aware of any requirement of law that would compel access to such statements by the respondents.

The respondents seek to urge now reasons for the dismissal of the complaint in addition to the basis of the referee's recommendation. Argument upon these matters at this stage would be premature. In the light of the foregoing, we do not believe oral argument to be necessary now and the proceeding is remanded to the referee for further hearing.

**LOAD-DATE:** June 8, 2008

