

Commodity Futures Trading Commission
CEA CASES

NAME: SECRETARY OF AGRICULTURE V. GUY D. MARIANETTE

DOCKET NUMBER: 14

DATE: JANUARY 10, 1940

DOCUMENT TYPE: DECISION AND ORDER

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

C.E.A. DOCKET NO. 14

Secretary of Agriculture, Complainant, v. Guy D. Marianette, Respondent.

Proceedings, Findings of Fact, Conclusions, and Order.

PROCEEDINGS

On July 15, 1939, complaint was issued by the Acting Secretary of Agriculture, pursuant to the Commodity Exchange Act (7 U.S.C., 1934 ed., and Supp. IV, Secs. 1-17a), alleging that the respondent, Guy D. Marianette, of Billings, Montana, doing business as Midwest Grains Securities, had been registered as a futures commission merchant since July 16, 1937, and had acted as such since January 4, 1937, but had failed to keep records required by the act; had, as correspondent of a member of a contract market, bucketed commodity futures

orders, cheated and defrauded commodity customers, and falsely-reported to customers; had conducted a place of business for commodity futures orders without executing his orders through a member of a contract market; and had confirmed contracts not made through a member of a contract market. The respondent was directed to show cause, if any, why his registration should not be revoked and his trading privileges on contract markets denied, at a hearing to be held in Washington, D. C., on July 26, 1939.

The complaint was served by registered mail on the respondent on July 25, 1939, with a letter from the assistant solicitor advising him that the hearing was postponed to August 4, 1939, and that he might request a hearing elsewhere than in Washington if he desired. By letters dated July 25 and 26, 1939, the respondent stated that although his records may not have been kept accurately, they now were kept properly, and asked for a hearing in Billings. Jack W. Bain, the referee designated by the Secretary, wrote the respondent that the hearing would be held in Billings on a date to be fixed later. Under date of August 8, 1939, the respondent wrote requesting that the hearing be held in Helena, Montana, that no publicity be given it, and that he be given advance notice of the date. On August 17, 1939, the referee wrote the respondent that the hearing would be held in Helena. On October 20, 1939, the respondent was notified by telegram that it would be held November 2, and a letter followed advising him of the place.

The hearing was held before the referee on November 2, 1939, in Room 324, Federal Office Building, Helena, Montana. Charles S. Brothers, Esquire, of Missoula, Montana, Office of the Solicitor, Department of Agriculture, appeared for the Government. The respondent was not represented by counsel, but appeared in person. Two witnesses testified: Clarence D. Cook, of Seattle, Washington,

accountant and auditor for the Commodity Exchange Administration, called by the Government; and Guy D. Marianne, the respondent, for himself.

According to Mr. Cook, on his first visit to Midwest Grains Securities, in October 1938, he found no apparent efforts on the part of the respondent to comply with the requirements of the Commodity Exchange Act. He explained these requirements to Mr. Marianne. On his next visit, in February 1939, he found practically the same condition. In May 1939, he made his third call, and found very little improvement. The report of his examination of the respondent's books and records as of April 30, 1939, introduced in evidence, shows that the records were kept very carelessly. Pages were missing from the commodity ledger. A new ledger had been prepared for 1939. Some customers' orders, as late as December 1938, were not shown by the records to have been executed through Winthrop, Mitchell & Company, others were shown to have been executed at prices different from those entered in the records for customers, and

some trades shown executed by Winthrop, Mitchell & Company did not appear on customers' records. The respondent kept no daily record of amounts in segregation, nor a record of customers' positions at the end of the month.

Mr. Marianne testified that George Kincaid, a former partner, had kept the commodity books, and had not recorded his (Kincaid's) and his family's trades. About June 1937, Kincaid withdrew, after which time Marianne was sole proprietor. Then Joe Murphy, until December 1938, kept the records, in the same way as had Kincaid, not recording his (Murphy's) and his family's trades. The respondent does not know much about the books kept by those two, but has kept adequate records since February 1939. Kincaid and Murphy would offset their own trades against opposite trades of customers, but the respondent did not know that was wrong until told so by Cook. He received no profits from shortages or trades bucketed by Kincaid and Murphy.

On December 4, 1939, a copy of the referee's report, proposed findings of fact and conclusions, and recommended order was served upon the respondent, and a period of twenty days was given for filing exceptions and requesting oral argument before the Secretary. The referee recommended that the respondent's registration as futures commission merchant be revoked and that his trading privileges on contract markets

be denied. The respondent did not request oral argument within the twenty days, but filed a brief in which he alleged that his records had been kept properly since February 1939, that he did not know what was done before 1939, and that he should not be condemned for acts of his predecessors. The evidence adduced at the hearing, however, showed that, while there was some improvement in 1939, there was not full compliance with the requirements of the act, that the respondent was sole owner of the business after June 1937, and that Joe Murphy kept the records until 1939. In keeping the respondent's records, Murphy was his agent, and the act expressly makes him responsible for violations by his agents.

FINDINGS OF FACT

1. The respondent, Guy D. Marianne, was registered with the Secretary of Agriculture as a futures commission merchant under the Commodity Exchange Act from July 16, 1937, until December 31, 1939.

2. Since about June 1937, the respondent, doing business as Midwest Grains Securities, has engaged as a futures commission merchant in Billings, Montana, soliciting and accepting orders for the purchase and sale of wheat for future delivery on and 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 act.

3. During the time mentioned in the preceding paragraph, the respondent failed to keep: (a) a record of the amount of money segregated as belonging to his commodity customers at the end of each business day; (b) a record showing the position of each commodity customer at the end of each month; and (c) other records required to be kept by the act and the rules and regulations thereunder.

4. During that time, the respondent was a correspondent of Winthrop, Mitchell & Company within the meaning of the act, and, in connection with orders for wheat futures contracts on a contract market, which contracts could be used for hedging wheat transactions in interstate commerce, did falsely report to the customers who had given the orders, in some instances reporting executions not made, and, in others, reporting a price different from that at which the order was executed.

5. Among orders falsely reported as executed, as mentioned in the preceding paragraph, were: (a) an order from Douglas Markegard, Billings, Montana, on December 29, 1938, for the sale of 4,000 bushels of Chicago May wheat; (b) an order from Gustave Onkens, Silesia, Montana, on January 4, 1939, for the purchase of 2,000 bushels of Chicago May wheat; and (c) other orders from those and other persons on other dates.

6. Among orders in connection with which false prices were reported, as mentioned in paragraph 4, were: (a) an order from Wade Benton, Powell, Wyoming, on August 29, 1938, for the purchase of 2,000 bushels of Chicago December wheat, was executed at 65 1/2 cents per bushel, but the price reported to the customer was 66 1/4 cents; (b) an order from F. H. Becker, Baker, Montana, on September 14, 1938, for the sale of 1,000 bushels of Chicago May wheat, was executed at 68 3/8 cents per bushel, but the price reported to the customer was 67 3/4 cents; and (c) other orders from these and other persons on various dates, in each of which orders the price reported to the customer was less than the actual price in the case of sales, and more than the actual price in the case of purchases.

7. The registration of the respondent as a futures commission merchant has not heretofore been suspended or revoked, but, under the provisions of the act, it expired on December 31, 1939.

CONCLUSIONS

The record discloses beyond doubt that the required records were not kept, that various orders were bucketed, and that true prices of actual executions were not always reported to the customers, discrepancies being invariably to the detriment of the customers. It is concluded that such violations of the act should result in denial of his trading privileges on contract

markets, but, as his registration has expired, it need not be suspended or revoked.

ORDER

IT IS ORDERED that all contract markets, until further notice of the Secretary of Agriculture, refuse all trading privileges thereon to the respondent, Guy D. Marianne.

IT IS FURTHER ORDERED that a copy hereof be sent by registered mail to Guy D. Marianne and to each contract market, and that this order shall be effective five days after the date hereof.

(SEAL)

Done at Washington, D. C. this 10th day of January, 1940. Witness my hand and the seal of the Department of Agriculture.

(Signed) Grover B. Hill

Assistant Secretary of Agriculture

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NO COPY OF COMPLAINT AVAILABLE

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