

Commodity Futures Trading Commission
CEA CASES

NAME: JULIAN M. MARKS, STUART A. NEWMAN, MARSHALL K. SMITH, IRWIN M. EISEN, AND JAMES S. SCHONBERG

CITATION: 20 Agric. Dec. 173

DOCKET NUMBER: 98

DATE: MARCH 16, 1961

DOCUMENT TYPE: DECISION AND ORDER

(No. 7039)

In re JULIAN M. MARKS, STUART A. NEWMAN, MARSHALL K. SMITH, IRWIN M. EISEN, AND JAMES S. SCHONBERG. CEA Docket No. 98. Decided March 16, 1961.

Denial of Trading Privileges -- Consent Order

Respondent James S. Schonberg consented to an order requiring all contract markets to refuse him trading privileges for ten days.

Mr. Benj. M. Holstein, for Commodity Exchange Authority. *Mr. Leo F. Tierney*, of Chicago, Illinois, for respondent James S. Schonberg.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

The complaint in this administrative proceeding under the Commodity Exchange Act charges the respondents with violating various sections of the act and the regulations, growing out of numerous transactions in wheat futures on the Chicago Board of Trade on May 19, 1960. Respondent James S. Schonberg is charged with making a purchase transaction otherwise than by open and competitive methods, in willful violation of section 1.38 of the regulations under the act (17 CFR 1.38). The transaction in question is described in paragraph VIII of the complaint.

No hearing has been held with respect to any of the respondents. On March 8, 1961, respondent Schonberg, by way of answer, filed a stipulation under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which he admits the facts hereinafter set forth, waives hearing on the charges, and consents to the entry of the order contained herein. Respondent Schonberg also represents that there was much confusion in and around the wheat pit before, during, and for a short time after the close on May 19, 1960, which was the final day of trading in the May 1960 future.

FINDINGS OF FACT

1. The Board of Trade of the City of Chicago, hereinafter called the Chicago Board of Trade, is now and was at all times material herein a duly designated contract market under the act.

2. Respondent James S. Schonberg was at all times material herein a member of the Chicago Board of Trade and a representative of the Uhlmann Grain Company, a registered futures commission merchant.

3. On May 19, 1960, respondent James S. Schonberg, in his capacity as a representative of the aforesaid Uhlmann Grain Company, had in his possession an order to buy 25,000 bushels of May 1960 wheat futures on the Chicago Board of Trade for the account of a customer of his principal. Respondent James

S. Schonberg filled the said order after the close of the trading session by means of direct and non-competitive negotiations with respondent Irwin M. Eisen, as a result of which respondent Schonberg purchased 25,000 bushels of May 1960 wheat futures from respondent Eisen at \$ 1.94 per bushel.

CONCLUSIONS

With exceptions not here pertinent, section 1.38 of the regulations (17 CFR 1.38) provides as follows:

"Sec. 1.38 *Execution of transactions -- (a) Competitive execution required; exceptions.* All purchases and sales of any commodity for future delivery on or subject to the rules of a contract market shall be executed openly and competitively as to price by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity"

A transaction made as a result of direct negotiations between seller and purchaser after the trading session has ended is clearly non-competitive and constitutes a willful violation of section 1.38 of the regulations.

The complainant states that it has carefully considered the proposed stipulation and order, and it believes that the proposed sanction would be adequate and that the prompt entry, without further proceedings, of the order to which respondent Schonberg has consented would constitute a satisfactory disposition of this case as against the said respondent, serve the public interest, and effectuate the purposes of the act. The complainant therefore recommends that the stipulation and waiver submitted by respondent Schonberg be accepted and that the proposed order be issued. It is so concluded.

ORDER

Effective 30 days after the entry of this order, all contract markets shall refuse all trading privileges to James S. Schonberg for a period of 10 days, such refusal to apply to all trading done and positions held by the said James S. Schonberg, directly or indirectly.

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

LOAD-DATE: June 8, 2008

