

Commodity Futures Trading Commission
CEA CASES

NAME: KERMIT W. QUAINANCE, "Q" COMMODITIES CO., AND EARL B. HOGLUND

DOCKET NUMBER: 176

DATE: SEPTEMBER 13, 1974

DOCUMENT TYPE: INITIAL DECISION

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: Kermit W. Quaintance, "Q" Commodities Co., and Earl B. Hoglund,
Respondents

CEA Docket No. 176

Initial Decision

Preliminary Statement

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1) hereafter referred to as the "Act", instituted by a complaint and notice of hearing issued on July 12, 1971, by the Assistant Secretary of Agriculture. The respondents are charged with violating various sections of the Act and Regulations. *

* Sections 4, 4d(2), 4g, 4i, 6(b), and 9(a) of the Act (7U.S.C. 6, 6d(2), 6g, 6i, 9, 13(a)) and sections 1.20, 1.32, 1.35, 1.37, 17.00, 18.00, and 18.04 of the regulations of the Secretary of Agriculture issued under the said Act (17 C.F.R. 1.20, 1.32, 1.35, 1.37, 17.00, 18.00, 18.04) herein referred to as the "Regulations".

Final disposition of this matter was held in abeyance pending settlement negotiations and final disposition of a criminal indictment in the United States District Court, District of Minnesota,

against the respondents involving some of the acts alleged herein. On May 29, 1973, the Judicial Officer, United States Department of Agriculture, issued a Decision and Order disposing of this case * insofar as it pertained to respondents Kermit W. Quaintance and "Q" Commodities Co. (32 Agric. Dec. 1109 (32 A.D. 1109)).

* Order to cease and desist and five year denial of trading privileges.

Respondent Earl B. Hoglund filed a separate answer on November 2, 1973, in which he admitted the jurisdictional allegations of the complaint, stated that he was without knowledge or information as to the allegations pertaining specifically to the other respondents, and denied the remaining allegations of the complaint.

An oral hearing was held before me in Rochester, Minnesota, on April 2, 1974. Respondent Earl B. Hoglund was represented by Robert W. Patterson, Esquire, Rochester, Minnesota. Richard W. Davis, Jr., Esquire, Office of the General Counsel, United States Department of Agriculture, appeared as counsel for the complainant.

During a prehearing conference immediately preceding the oral hearing, the parties agreed to stipulate to facts generally outlining the nature of the

business problems of the firm of "Q" Commodities Co., one of the respondents in this matter, and to stipulate to the substantive facts alleged in the complaint as to respondent Earl B. Hoglund (Tr. pp. 4-7). This left as the only issue in the case the determination of the sanction to be imposed against respondent Hoglund.

Findings of Fact

1. Respondent, "Q" Commodities Co., a corporation organized and existing under the laws of the state of Minnesota, at all times material to this proceeding, was entitled to membership privileges on the Minneapolis Grain Exchange and the Chicago Board of Trade, both duly designated contract markets under the Act, and was engaged as a registered futures commission merchant under the Act.

2. Respondent Earl B. Hoglund, at all times material to this proceeding, was manager of the branch office of "Q" Commodities Co., located in Rochester, Minnesota.

3. During the period from about May 6, 1968, to about September 12, 1968, respondent Earl B. Hoglund, by the use of checks which he drew against insufficient funds, willfully falsified the financial ledger record of the account of Earl B. Hoglund in the books of "Q" Commodities Co. (required by the Regulations, 17 CFR 1.35). By carrying over the false credit entries thus created into the daily segregation record maintained by "Q" Commodities Co. (required by the Regulations, 17 CFR 1.32), respondent willfully falsified that record. (Stipulation, CX 2)

4. On or about August 15, 1968, respondent Earl B. Hoglund submitted a report on Form CEA-40, "Statement of Reporting Trader" (required by the Regulations, 17 CFR 18.04), which contained false entries in items 5 and 6 in that, contrary to such entries, Kermit W. Quaintance controlled trading and had a financial interest in the account to which the report pertained. (Stipulation, CX2)

5. During 1968, respondents Kermit W. Quaintance and "Q" Commodities Co. pursued a course of business in which commodity futures trades belonging to the firm were identified as having been made on behalf of customers and were assigned to the segregated customer account of the firm. Some of such trades were assigned to the account of respondent Earl B. Hoglund. As a result of this course of business, funds held in segregation for the benefit of customers were used to finance the trades of the firm. Money in segregation belonging to customers of the firm was used to margin contracts and to make up deficits on trades made on behalf of the firm. Customers of the firm, because of these actions, suffered the loss of free credit balances in their accounts in excess of \$ 400,000, and the financial condition of the firm became impaired. (Stipulation, CX1)

Conclusions

By reason of the aforesaid findings of fact, it is concluded that respondent Earl B. Hoglund violated sections 4i and 6(b) of the Act (7 U.S.C. 6i and 9) and section 18.04 of the Regulations (17 CFR 18.04), which sections pertain in general to the submission of reports and the maintenance of records.

It is further concluded that the falsification by respondents of the financial ledger account of respondent Earl B. Hoglund and of the daily segregation record of "Q" Commodities Co. violated sections 4d(2) and 4g of the Act (7 U.S.C. 6d(2) and 6g) and sections 1.32 and 1.35 of the Regulations (7 CFR 1.32 and 1.35). Said sections pertain to the maintenance of accounts and records by futures commission merchants, the care and use of customer funds, segregated accounts, etc.

As noted earlier in the preliminary statement, there being no serious dispute as to the facts or the violations of the Act and Regulations, the sole question

to be decided here is the sanction to be imposed upon respondent Earl B. Hoglund. Aside from a cease and desist order, complainant recommends a five year denial of trading privileges while respondent recommends a six month denial.

Complainant's recommendation is based on the contention that respondent Hoglund acted in combination and concert with respondents, Kermit W. Quaintance and "Q" Commodities Co. in pursuing the course of business stated in finding of fact 5 which ultimately led to a \$ 400,000 loss of customer credit balances.

Respondent Hoglund on the otherhand appears to take the position that he was unknowingly used by the other respondents and that his role was insignificant in the total operation of "Q" Commodities which resulted in the financial disaster.

We believe the record evidence supports a conclusion which is midway between these two contentions and accordingly we recommend that a three year denial of trading privilege be imposed upon

respondent Hoglund, together with a cease and desist order.

There is insufficient evidence in the record to convince us that respondent Hoglund acted in combination and concert with the other named respondents. For example there is no evidence in the record that respondent Hoglund profited from the activities nor is there evidence that he was totally aware of the activities of the other respondents. While we believe respondent Hoglund's actions to be serious violations of the Act and the Regulations, these violations represented only a small segment of the illegal conduct of his employer whom complainant characterizes as the "principal culprit in this matter."

Additionally respondent Hoglund's abstention from trading since January, 1971 at the direction of his attorney * warrants some consideration in the imposition of a 3 year rather than 5 year sanction.

* An agreement was made in January, 1971, as part of a criminal plea bargain, that respondent Hoglund would consent to the imposition of an administrative sanction prohibiting him from trading in commodity futures for a period of time to be determined. When the complete terms of the proposed consent order were presented to respondent, he objected on the basis that a year had passed since the initial agreement was made, and that he had not traded after January, 1971, because he erroneously believed that the prohibition was already in effect, and claimed that the period of the sanction should be reduced by one year. Since no sanction had been imposed by the Secretary of Agriculture and since complainant was in no way responsible for the erroneous belief of respondent, complainant declined to so reduce the period of the sanction (Tr. pp. 8-11, 107-108).

On the otherhand we believe that respondent Hoglund's violations of the Act were serious offenses perpetrated in careless disregard for the provisions of the Act and Regulations. For example even though respondent expressed his naivete about the meaning of check kiting (Tr. pp. 84-85) a reasonable man would not unwittingly draw a series of checks upon an account with insufficient funds, even at the request of his employer *. Further respondent's rationalization about submitting a false report (CX 4) when confronted with warning language on the form itself, regarding penalties for false reports, is not persuasive of his completely unknowing role in the "Q" Commodities activities.

* Respondent Hoglund testified that the checks were drawn either to make or repay a loan to Quaintance, but he wasn't sure which was the case (Tr. pp. 76, 92-93).

In this regard it is reasonable to assume that if the report filed by respondent Hoglund on August 9, 1968 (Finding of Fact 4) had been truthful, it

might have triggered an immediate audit by the C. E. A. of the "Q" Commodities firm, resulting in a disclosure of mishandling of customers' funds (Finding of Fact 5) several months earlier than was actually the case in December 1968.

We believe that the actions of respondent Hوجلund violated the Act and Regulations and contributed to the unlawful activities of his employer. These violations therefore warrant the sanction imposed herein. This sanction will, we believe, be sufficiently effective to deter future violations by respondent Hوجلund and other potential violators.

Order

1. The respondent Earl B. Hوجلund shall cease and desist from:

a. falsifying records required by regulations of the Secretary of Agriculture under the Commodity Exchange Act; and

b. making false entries in reports required by regulations of the Secretary of Agriculture under the Commodity Exchange Act.

2. The respondent Earl B. Hوجلund is prohibited from trading on or subject to the rules of any contract market for a period of three years and all contract markets shall refuse all trading privileges to the said respondent during this period. Such prohibition and

refusal shall apply to all trading done and positions hold directly by the said respondent, either for his own account or as the agent or representative of any other person or firm, and also to all trading done and positions held indirectly through persons or firms owned or controlled by the said respondent, or otherwise.

3. The cease and desist provisions of this order set forth in paragraph 1, above, shall become effective on the date this decision and order become final. The period of the prohibition of trading and denial of trading privileges to the respondent set forth in paragraph 2, above, shall become effective on the thirtieth day after the date this decision and order become final.

4. Pursuant to the Rules of Practice governing proceedings under the Commodity Exchange Act, this decision and order become final without further procedure thirty-five(35) days after service hereof, unless appealed to the Secretary by a party to the proceeding within thirty(30) days after service, as provided in sections 0.16 and 0.18 of the Rules of Practice (17 C.F.R. 0.16, 0.18).

5. A copy of this decision and order shall be served upon each of the parties and on each contract market.

Done at Washington, D. C.

SEP 13 1974

[SEE SIGNATURE IN ORIGINAL]

John A. Campbell

Administrative Law Judge

LOAD-DATE: June 16, 2008

