

Commodity Futures Trading Commission
CEA CASES

NAME: L. RUDOLF COMPANY, INC., AND WILLIAM SCHAFFER

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DATE: JULY 16, 1953

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(No. 3564)

In re L. RUDOLF COMPANY, INC., AND WILLIAM SCHAFFER. CEA Docket No. 57.
Decided July 16, 1953.

Motion to Dismiss Complaint Granted

Complainant's motion to dismiss complaint granted on the grounds that the evidence adduced at the hearing does not support the charges in the complaint.

Mr. Benj. M. Holstein for Commodity Exchange Authority. *Mr. Sidney V. Smith* of Mechlin, Marshall & Smith, of Washington, D. C., for respondents. *Mr. Maurice L. Albert* of Reiger & Albert, of New York, New York, for New York Mercantile Exchange, *amicus curiae*. *Mr. Will Rogers*, Referee.

Decision by Thomas J. Flavin, Judicial Officer

ORDER OF DISMISSAL

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C., Chapter 1). The complaint charges the respondents with attempting to manipulate and with manipulating the price of "check" eggs in interstate commerce on July 8, 1952,

by means of a series of progressively advancing bids near the close of trading in "check" eggs on the New York Mercantile Exchange.

The respondents filed an answer denying the charges in the complaint. A hearing was held in New York, New York, on June 2 and 3, 1953, before Referee Will Rogers of the Office of Hearing Examiners, United States Department of Agriculture.

Following the hearing, the complainant filed a motion to dismiss. The motion to dismiss states that during the course of the investigation preceding the filing of the complaint, employees of the Commodity Exchange Authority obtained oral statements from several persons which were believed to constitute substantial evidence to support the charge that respondent Schaffer made the bids in issue in order to establish a market price and not for the purpose of obtaining eggs. The motion to dismiss explains that these persons were subpoenaed and testified as complainant's witnesses at the hearing but that their testimony at the hearing was substantially different from, and much weaker than, their oral statements given in the investigation preceding the filing of the complaint. The motion asks for dismissal of the complaint because of insufficient proof in the hearing record that an artificial or manipulated price was intended in the making of the bids in issue.

The respondents filed an answer to the motion consenting to dismissal but submitting that the complainant should admit the charges to be unfounded and that the order of dismissal should contain a statement completely exonerating

the respondents. The New York Mercantile Exchange, which had filed a memorandum as amicus curiae requesting dismissal upon the merits, also filed a document stating that it consented to the dismissal. The referee certified the complainant's motion to the Judicial Officer.

Since the complainant has asked for dismissal of the complaint upon the ground that the evidence adduced at the hearing does not support the charges in the complaint, the motion to dismiss is granted and the complaint is dismissed.

LOAD-DATE: June 8, 2008

