

Commodity Futures Trading Commission
CEA CASES

NAME: FOX DELUXE FOODS, INC., ROLAND N. GERGEN, HAROLD W. FOX, AND BERT E. FOX

DOCKET NUMBER: 74

DATE: JULY 23, 1956

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re: Fox DeLuxe Foods, Inc., Roland N. Gergen, Harold W. Fox, and Bert E. Fox,
Respondents

CEA Docket No. 74

Complaint and Notice of Hearing Under Section 6 (b) of the Commodity Exchange
Act

There is reason to believe that the respondents, Fox DeLuxe Foods, Inc., Roland N. Gergen, Harold W. Fox, and Bert E. Fox, attempted to manipulate and did manipulate the price of a commodity in interstate commerce and for future delivery on or subject to the rules of a board of trade, in violation of the Commodity Exchange Act (7 U.S.C. 1952 ed. §§ 9, 13), and in accordance with the provisions of section 6 (b) of the said act (7 U.S.C. 1952 ed. § 9) this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

Respondent Fox DeLuxe Foods, Inc., an Illinois corporation with offices and a place of business at 1122 Fulton Street, Chicago 7, Illinois, hereinafter called Fox DeLuxe, is now and has been at all

times material to this complaint a wholesale egg and poultry dealer, a clearing member of the Chicago Mercantile Exchange, and a registered futures commission merchant under the Commodity Exchange Act. At all such times the said corporation traded in egg futures on the said Exchange for the accounts of customers and also for its own or house account.

II

Respondent Roland N. Gergen, an individual whose address is 1122 Fulton Street, Chicago 7, Illinois, was the secretary of the respondent corporation at all times during December 1953, and the executive vice president of the respondent corporation at all times during January 1956.

III

Respondent Harold W. Fox, an individual whose address is 7318 Ridge Avenue, Chicago, Illinois, was an agent and employee of the respondent corporation at all times during December 1953, and a vice president of the respondent corporation at all times during January 1955. The said Harold W. Fox is now and was at all times material herein a member of the Chicago Mercantile Exchange and a registered floor broker under the Commodity Exchange Act.

IV

Respondent Bert E. Fox, an individual whose address is 1122 Fulton Street, Chicago 7, Illinois, was at all times material to this complaint a vice president of respondent Fox DeLuxe and a member of the Chicago Mercantile Exchange. The said Bert E. Fox was registered as a floor broker under the Commodity Exchange Act during January 1956 and is now so registered.

V

The transactions hereinafter described were carried out under the direction and supervision and by means of the acts of the said individual respondents in their capacities as officers, agents, or employees of the respondent corporation.

VI

The Chicago Mercantile Exchange is now and has been at all times material to this complaint a duly designated contract market for trading in eggs under the Commodity Exchange Act.

December 1953 Transactions

VII

Between November 30, 1953, and December 23, 1953, respondent Fox DeLuxe, in its capacity as a registered futures commission merchant, carried commodity futures trading accounts for 32 customers

who had open contract positions in the December 1953 egg future on the Chicago Mercantile Exchange. At the close of business November 30, 1953, the respondent corporation had 13 customers who held long open contract positions in such future in the aggregate amount of 77 contracts or carlots. During the next few trading days, the great majority of such customers sold December 1953 egg futures and liquidated or reduced their long positions, and by the close of business December 8, 1953, such long positions had declined to a total of 22 carlots held by five customers. On the short side of the December 1953 egg future, the respondent corporation had, at the close of business November 30, 1953, six customers who held a total of 63 carlots. During the next few trading days, this short position remained substantially unchanged, and at the close of business December 8, 1953, stood at 60 carlots held by five customers. During the said period, respondent Fox DeLuxe did not hold any position in such future for its house account.

VIII

Beginning on or about December 9 and continuing thereafter until shortly before December 23, 1953, a substantial majority of the customers of respondent Fox DeLuxe who had theretofore been selling

December 1953 egg futures and liquidating or reducing their positions, as described in paragraph VII, reversed their operations and purchased substantial quantities of such future through the said firm, reestablishing and increasing their long positions. On December 9, 1953, all short positions of customers in the December 1953 egg future on the books of respondent Fox DeLuxe were closed out by purchases of futures, and purchases for such customers continued during that day and the next few trading days until long positions in the December 1953 egg future had been established for the accounts of all such customers. After December 8, 1953, neither respondent Fox DeLuxe nor any of its customers held a short position in the December 1953 egg future. As the final day for trading in the December 1953 egg future approached, other traders who had not theretofore held any position in such future through respondent Fox DeLuxe during December 1953 purchased substantial quantities of such future and established long positions through the said firm.

IX

On December 10, 1953, respondent Fox DeLuxe entered the December 1953 egg futures market with a purchase of 25 carlots for its house account and made additional purchases thereafter, reaching a maximum long position of 46 carlots shortly prior to the termination of

trading in such future. As a result of such purchases and of the purchases for customers' accounts described in paragraph VIII, the long open contract position of respondent Fox DeLuxe in the December 1953 egg future for itself and its customers increased from 22 carlots on December 8, 1953 to 225 carlots on December 21, 1953, or from 2.4 percent to 43.7 percent of the open interest in such future. At the close of business on December 22, 1953, the long open contract position of respondent Fox DeLuxe for itself and its customers was 198 carlots or 53.7 percent of the open interest. At the close of business December 23, 1953, the final day for trading in the December 1953 egg future, respondent Fox DeLuxe held a total of 96 long carlots of such future in its house account and three other accounts which were carried on its books in the names of Earl Barnes, Charles Burbulis, and J. A. Roeser, and such 96 long contracts constituted the entire remaining open interest in such future.

X

On December 8, 1953, there was a total of approximately 42 carlots of shell eggs stored in Chicago warehouses, and by December 23, 1953, the final day for trading in the December egg future, this total had declined to approximately 25 carlots. During the four days prior thereto, the quantity of the December future held by respondent Fox DeLuxe for

its house account was approximately twice as large as total stocks of shell eggs in Chicago warehouses, and the quantity of such future held by the said respondent and its customers during these four days was from seven to nine times as large as such total stocks.

XI

On December 17, 1953, respondent Fox DeLuxe purchased 52 carlots of the December 1953 egg future in blocks or groups which it then distributed among its house account and the Earl Barnes, Charles Burbulis, and J. A. Roeser accounts, previously described. On December 23, 1953, respondent Fox DeLuxe sold 36 carlots of such future in the same manner and distributed them among the same accounts.

XII

Cash eggs are bought and sold on the "spot call" or "spot board" of the Chicago Mercantile Exchange, and the prices paid in such transactions are publicly posted by the said Exchange and disseminated to the trade. The prices of cash eggs bought and sold by private negotiation are not so posted or disseminated. On December 21, 22, and 23, the last three days of trading in the December 1953 egg future, respondent Fox DeLuxe traded actively on the spot call of the Chicago Mercantile Exchange, purchased substantially all the fresh cash eggs of deliverable grade and quality offered on the spot call, posted bids on

the spot board for additional fresh eggs of such grade and quality, and immediately resold such eggs by private negotiation at prices from one to three cents per dozen less than cost plus expenses of resale.

XIII

During the trading session on December 23, 1953, all accounts on the books of respondent Fox DeLuxe other than its house account and the aforementioned Earl Barnes, Charles Burbulis, and J. A. Roeser accounts were closed out of their

long positions in the December 1953 egg future by sales of such future, and after the termination of trading on that day the long open contract position of the respondent corporation in such future was 96 contracts or carlots, held for its house account and the three accounts above described. Thereafter, the said 96 contracts were settled by the delivery of cash eggs. Forty-nine of such ninety-six contracts were settled by the delivery of eggs which had been previously delivered to and received by respondent Fox DeLuxe and then sold by the said respondent to the holders of short contracts who required eggs for delivery purposes. In effecting such sales, respondent Fox DeLuxe demanded and received a uniform fixed price which was in excess of prevailing prices of cash refrigerator eggs of comparable grade and quality. Out of a total of 48 carlots of cash eggs delivered on a

final receiver basis to satisfy December futures contracts, respondent Fox DeLuxe received 47 carlots. On December 31, 1953, respondent Fox DeLuxe held a total of 36 carlots of eggs in Chicago warehouses, and these stocks constituted the entire supply of deliverable eggs in Chicago warehouses on that date.

January 1956 Transactions

XIV

During January 1956, respondent Fox DeLuxe, in its capacity as a registered futures commission merchant, carried commodity futures trading accounts for approximately 115 customers who traded in the January 1956 egg future through the respondent corporation. During this period, respondent Fox DeLuxe also traded in such future for its own or house account, and for the accounts of approximately 11 officers or shareholders of the respondent corporation and members of their families, hereinafter called affiliates or affiliated accounts.

XV

Prior to December 30, 1955, respondent Fox DeLuxe purchased substantial quantities of January 1956 egg futures on the Chicago Mercantile' Exchange on behalf of its customers, and at the close of business December 30, 1955, the respondent corporation had a long open contract

position in such future of approximately 469 contracts or carlots for the accounts of 65 customers, which position constituted over 28 percent of the open interest. During the same period, respondent Fox DeLuxe made large purchases of such future for its house account and for the affiliated accounts, and at the close of business December 30, 1955, such accounts had long open contract positions in the January 1956 egg future in the aggregate amount of 124 carlots, constituting an additional 7.5 percent of the open interest and giving respondent Fox DeLuxe a total long open contract position for the accounts of itself, its affiliates, and its customers, of approximately 593 carlots or about 36 percent of the open interest in such future. On the same date, the respondent corporation had a total short open contract position in such future of five carlots, held for the accounts of three customers and constituting about 0.3 percent of the open interest.

XVI

During January 1956, respondent Fox DeLuxe continued to purchase January 1956 egg futures for its house account and for the accounts of its affiliates and customers, and the aggregate long position of such accounts increased in quantity and represented a steadily increasing proportion of the open interest. As a result, the long open contract

position of respondent Fox DeLuxe in the January future for all accounts increased from the 593 carlots held on December 30, 1955 to 946 carlots on January 16, 1956, or from about 36 percent to about 63 percent of the open interest. During the last seven days of trading in the future - January 16 through January 24 - the long open contract position of respondent Fox DeLuxe for the house account and the affiliated accounts ranged from about 10 percent to about 27 percent of the open interest, and during each of these seven days, the respondent corporation's long open contract position for all accounts exceeded 59 percent of the open interest. After the close of trading on January 24, 1956, the final trading day, the said respondent held a long open contract position in the January 1956 egg future for the house and affiliated accounts of 110 carlots and a long open contract position for customers' accounts of 290 carlots, or a total long open contract position for all accounts of 400 carlots, which constituted about 99 percent of the remaining open interest of 405 carlots. During January 1956, the respondent corporation had no short position in the January future for the house account or for any of the affiliated accounts, and its maximum aggregate short position for customers' accounts during the month was 26 carlots or about two percent of the open interest, which position was held for the accounts of four customers on January 12, 1956. After the close of trading on January 24, 1956, the said respondent had a total short open contract position for customers' accounts of one carlot.

XVII

On December 30, 1955, there was a total of approximately 98 carlots of shell eggs stored in Chicago warehouses, and this quantity declined steadily thereafter and reached a low point of 61 carlots on January 18, 1956. During the week of January 16, 1956, which was the week prior to the last two days of trading in the January 1956 egg future, the quantity of such future held by respondent Fox DeLuxe for the house and affiliated accounts was approximately two to three times as large as total stocks of shell eggs in Chicago warehouses, and the quantity of such future held by the said respondent for all accounts was approximately 10 to 15 times as large as such total stocks.

XVIII

Between December 30, 1955 and January 3, 1956, the price of fresh eggs in Chicago declined about three cents per dozen. On January 4, 1956, respondent Fox DeLuxe, acting through one Mark Stewart, a floor broker employed by the respondent corporation for that purpose, purchased a substantial quantity of fresh cash eggs on the spot board of the Chicago Mercantile Exchange, and immediately resold such eggs by private negotiation at prices which were less than cost plus expenses of resale.

XIX

After January 4, 1956, the price of fresh eggs in Chicago continued to decline, and by January 16, 1956, had decreased an additional ten cents per dozen. On or about January 18, 1956, respondent Roland N. Gergen, acting for respondent Fox DeLuxe, entered into an arrangement with one Isadore Katz, president of S. K. Produce Company, a firm engaged in the egg breaking business, whereby the said Isadore Katz agreed to purchase fresh eggs of deliverable grade and quality on the spot board of the Chicago Mercantile Exchange in the name of his firm, with a guarantee by respondent Fox DeLuxe that the said S. K. Produce Company would suffer no loss and would, in fact, realize a profit or fee of one-half cent per dozen on all such purchases. Pursuant to such agreement, the said Isadore Katz purchased approximately 12,000 cases - the equivalent of approximately 24 carlots - of fresh eggs of deliverable grade and quality on the spot call of the Chicago Mercantile Exchange on January 19, January 20, and January 23, 1956, at prices in excess of their true market value, such purchases constituting all the fresh eggs of deliverable grade and quality sold on the said spot call of the Exchange during such period. Subsequent thereto,

respondent Fox DeLuxe, in accordance with the agreement described above, paid to the said S. K. Produce Company and the said S. K. Produce Company received and accepted from respondent Fox DeLuxe, the sum of \$ 26,880. At the same time respondent Fox DeLuxe made entries in its books and records showing that the said corporation

had purchased a quantity of liquid eggs from the said S. K. Produce Company and had paid the said sum of \$ 26,880 in connection therewith, and the said S. K. Produce Company made corresponding entries in its books and records showing that the said firm had sold and delivered a quantity of liquid eggs to respondent Fox DeLuxe and had received the said sum in payment therefor. In truth and in fact, no such purchase and sale had taken place, and the said entries were false and were placed in the records in order to conceal the fact that the said payment of \$ 26,880 was made to carry out the above-described agreement between respondent Fox DeLuxe and the said Isadore Katz.

XX

On December 30, 1955, the price of fresh eggs in Chicago was about eight cents per dozen higher than the price of the January 1956 egg future. This differential was gradually reduced during the first two weeks in January and on January 16, 1956, the future went to a premium in relation to the price of fresh eggs and remained at a premium until the termination of trading in the future on January 24, 1956. By reason thereof, the out-of-storage movement of shell eggs from Chicago warehouses, which had prevailed during most of January, was reversed due to the fact that large quantities of fresh eggs were diverted from normal channels of trade, shipped to Chicago, and placed in storage for delivery on the

January 1956 future. As a result, respondent Fox DeLuxe was the final receiver of 441 carlots of cash eggs out of a total of 446 carlots delivered to settle January futures contracts. Out of the 441 carlots so received by respondent Fox DeLuxe, 389 carlots were fresh eggs.

XXI

The respondents carried out the acts described above for the purpose and with the intent of raising the prices of the December 1953 and January 1956 egg futures and of deliverable refrigerator eggs in Chicago by means of a squeeze, which was intended to be and was in fact brought about by concentrating in the hands of the respondent corporation, its affiliates, and its customers, a quantity of the current egg future sufficient to constitute the major portion of the open interest in such future and to exceed supplies of refrigerator eggs available for delivery in satisfaction thereof. The futures transactions for the house account in December 1953 and for the house and affiliated accounts in January 1956 were made by the respondents for that purpose and with that intent, with knowledge of the trading and positions of the firm's customers, and with the intent and expectation that such customers would be influenced by the respondents' example, suggestions, advice and recommendations, would rely upon the respondents' superior knowledge of trading techniques, and would follow the respondents' lead in the hope of profiting financially, and such customers were in fact so influenced and did in fact

so rely upon the respondents' knowledge and follow the respondents' lead. The cash egg transactions described in paragraphs XII, XVIII, and XIX were entered into and carried out by the respondents, or caused by the respondents to be entered into and carried out, for the purpose and with the intent of aiding the squeeze by supporting the price of fresh eggs and thereby increasing or preventing a decrease in the price of the current future. The acts of the

respondents brought about a squeeze and caused the price of December 1953 and January 1956 egg futures on the Chicago Mercantile Exchange and the price of cash refrigerator eggs in Chicago to be at artificial and manipulated levels during December 1953 and January 1956.

XXII

By reason of the acts described above, the respondents attempted to manipulate and did in fact manipulate the price of eggs in interstate commerce and for future delivery on or subject to the rules of a board of trade, in wilful violation of sections 6 (b) and 9 of the Commodity Exchange Act (7 U.S.C. 1952 ed. §§ 9, 13).

Therefore, the said respondents, Fox DeLuxe Foods, Inc., Roland N. Gergen, Harold W. Fox, and Bert E. Fox, are hereby notified to be and

appear at a hearing, to be held at 10:00 a.m., local time, on the 28th day of August 1956, in Room 1200, Board of Trade Building, 141 West Jackson Boulevard, Chicago, Illinois, before a referee designated to conduct such hearing, and then and there show cause, if any there be, why an order should not be made suspending or revoking the registration of respondent Fox DeLuxe Foods, Inc., as a futures commission merchant and the registrations of respondents Harold W. Fox and Bert E. Fox as floor brokers, and directing that all contract markets refuse all trading privileges to all the respondents for such period of time as may be determined.

The respondents will have twenty (20) days after the receipt of this notice of hearing in which to file with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., an answer with an original and six copies, fully and completely stating the nature of the defense and admitting or denying specifically and in detail each material and relevant allegation of this complaint. Allegations that are not answered will be deemed admitted for the purpose of this proceeding.

It is ordered that this complaint and notice of hearing be served on the respondents by delivery of a true copy thereof by an employee of the Department of Agriculture, or by registered mail, at least twenty (20) days prior to the date set for hearing.

Done at Washington, D. C., this

23 day of July, 1956.

/s/ Earl L. Butz

Earl L. Butz

Assistant Secretary

LOAD-DATE: June 12, 2008

