

Commodity Futures Trading Commission
CEA CASES

NAME: RODNEY KAMINGA

CITATION: 29 Agric. Dec. 1126

DOCKET NUMBER: 172

DATE: OCTOBER 27, 1970

DOCUMENT TYPE: DECISION AND ORDER

(No. 13,442)

In re RODNEY KAMINGA. CEA Docket No. 172. Decided October 27, 1970.

Reporting requirements -- Denial of trading privileges -- Default

Respondent is ordered to cease and desist from failing to file required reports with the Commodity Exchange Authority and is prohibited from trading on any of the contract markets for a period of 30 days.

Earl L. Saunders for Commodity Exchange Authority.

John G. Liebert, Hearing Examiner.

Decision by Thomas J. Flavin, Judicial Officer

DECISION AND ORDER

In this administrative proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1, 1964 ed., as amended, Supp. IV, 1969), respondent failed to file an answer to the complaint and did not file exceptions to the referee's (hearing examiner's) recommended decision and proposed order.

The hearing examiner's recommended decision and proposed order are adopted as the final decision and order herein. The order shall become effective on the thirtieth day after the date of this order and copies hereof shall be served on each of the parties and on each contract market.

HEARING EXAMINER'S RECOMMENDED DECISION AND ORDER

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1, 1964 ed., as amended, Supp. IV,

1969), hereinafter referred to as the "Act", instituted by a complaint filed on May 14, 1970, by the Assistant Secretary of Agriculture. The complaint alleges that the respondent, who held open contract positions in live beef cattle futures on the Chicago Mercantile Exchange, violated section 4i of the Act by reason of the activities set forth therein.

Copies of the complaint and the Rules of Practice were served on respondent by certified mail on May 15, 1970, and a certified mail receipt acknowledged delivery to respondent on May 18, 1970. Respondent was notified in writing that, in accordance with the applicable Regulations, an answer should be filed within 25 days following receipt of the complaint, and that failure to file an answer denying the specific allegations in the complaint and requesting an oral hearing would constitute admission of such allegations and waiver of an oral hearing.

Respondent did not file an answer within the 25-day period and on motion made by complainant the referee entered an order for continuance on July 29, 1970. Complainant filed suggested findings of fact, conclusions and order on September 3, 1970. In addition, complainant recommended that the referee proceed in accordance with Section 0.9(c) of the Rules of Practice (17 CFR 0.9(c)) which provides as follows:

"(c) *Procedure upon admission of facts.* The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission of facts, the referee, without further investigation or hearing, shall prepare his report, in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint."

Respondent has still failed to file an answer or other responsive pleading in this matter. Accordingly, this Recommended Decision is entered pursuant to Section 0.9(c) of the Rules of Practice and the Proposed Findings of Fact are the material allegations set forth in the complaint.

PROPOSED FINDINGS OF FACT

1. The respondent, Rodney Kaminga, is an individual whose mailing address is P. O. Box 885, Three Forks, Montana 59752.

2. The Chicago Mercantile Exchange is now, and was at all times material to this complaint, a duly designated contract market under the Commodity Exchange Act.

3. On each day from March 24 through April 9, 1970, the respondent held open contract positions in live beef cattle futures on the Chicago Mercantile Exchange of 25 or more contracts in a single future. By reason thereof, the respondent was in reporting status and was required to report to the Commodity Exchange Authority with respect to all transactions executed and all open contract positions held by him, in all live beef cattle futures on all boards of trade during the said period and with respect to all transactions by reason of which the respondent's position was reduced below reporting levels, as provided in section 4i of the Commodity Exchange Act (7 U.S.C. 6i, Supp. IV, 1969), and sections 15.01, 15.02, 15.03, 18.00, 18.01, and 18.03 of the regulations thereunder (17 CFR 15.01, 15.02, 15.03, 18.00, 18.01 and 18.03).

4. On March 24, 25 and 31, 1970, and April 1, 3, 6, 7, 8 and 9, 1970, while the respondent was in reporting status as described in paragraph 3 above, transactions in live beef cattle futures on the Chicago Mercantile Exchange were executed for his account, but the respondent has failed and refused to report to the Commodity Exchange Authority with respect to such transactions, as required under the aforesaid provisions of the Commodity Exchange Act and regulations.

5. On numerous occasions dating as far back as March 18, 1969, and continuing up to January 23, 1970, officials of the Commodity Exchange Authority not only informed the respondent of the reporting requirements under the Commodity Exchange Act and regulations with respect to live beef cattle futures, but also found it necessary to communicate with the respondent in writing directing attention to the respondent's failure to file required reports. On one occasion the respondent wrote a letter to the Administrator of the Commodity Exchange Authority with respect to the filing of such reports. In the circumstances, the respondent was fully aware of his reporting obligations under the aforesaid provisions of the Commodity Exchange Act and regulations and his failure and refusal to file required reports, as described in paragraph 4 above, constituted a knowing and wilful violation of such provisions of the Act and regulations.

PROPOSED CONCLUSIONS

The failure of respondent to file an answer in this matter constitutes waiver of an oral hearing and an admission of the material allegations of fact in the complaint.

By reason of the findings of facts set forth above, it is concluded that respondent failed and refused to file required reports and that such failure is a violation of section 4i of the Commodity Exchange Act and sections 15.01, 15.02, 15.03, 18.00, 18.01 and 18.03 of the regulations issued thereunder.

In view of the flagrant and deliberate nature of these violations, it is concluded that the respondent should be ordered to cease and desist from violations of this nature, and prohibited from trading on all contract markets for a period of 30 days, and that all contract markets should be directed to refuse all trading privileges to respondent for a period of 30 days from the effective date of this order, as recommended by complainant.

PROPOSED ORDER

(a) The respondent, Rodney Kaminga, shall cease and desist from failing to file, in accordance with the Commodity Exchange Act and the regulations thereunder, such reports as he is required to file under such Act and regulations.

(b) The respondent, Rodney Kaminga, is prohibited from trading on or subject to the rules of any contract market for a period of 30 days, and all contract markets shall refuse all trading privileges to the respondent during this period, such prohibition and refusal to apply to all trading done and all positions held by the respondent, directly or indirectly.

The cease and desist provisions of this order, set forth in subparagraph (a) above, shall become effective upon the date of service of this order upon the respondent. The period of the denial of trading privileges to the respondent, specified in subparagraph (b) above, shall become effective on the thirtieth day after the date of entry of this order.

A copy of this Decision and Order shall be served on each of the parties and on each contract market.

LOAD-DATE: June 10, 2008

