

Commodity Futures Trading Commission
CEA CASES

NAME: MELVIN MILLER, AND DOMINICK F. AUCIELLO

CITATION: 27 Agric. Dec. 582

DOCKET NUMBER: 151

DATE: MAY 2, 1968

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(No. 11,791)

In re MELVIN MILLER, and DOMINICK F. AUCIELLO. CEA Docket No. 151. Decided May 2, 1968.

Overselling -- Potato futures -- Suspension of registration -- Stipulation

Respondents consented to the issuance of an order suspending their registrations as floor brokers and directing all contract markets to deny all trading privileges to them for 20 days. Respondents were charged with cheating and defrauding customers of a futures commission merchant in handling orders for transactions in potato futures and causing false reports and false records to be made and deceiving the futures commission merchant.

Earl L. Saunders for Commodity Exchange Authority.

Franklin R. Weissberg, of Colton, Fernbach, Weissberg & Yamen, New York, N.Y., for respondents.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

In this administrative proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), the respondents are charged with violating section 4b of the act (7 U.S.C. 6b). No hearing has been held with respect to this proceeding. The respondents have submitted a stipulation under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they admit, for the purposes of this proceeding, the facts hereinafter set forth, waive hearing on the charges, and consent to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondent Melvin Miller, an individual whose business address is 6 Harrison Street, New York, New York, is now and was at all times material herein a member of the New York Mercantile Exchange and a registered floor broker under the Commodity Exchange Act.

2. Respondent Dominick F. Auciello, an individual whose business address is 6 Harrison Street, New York, New York, is now and was at all times material herein a member of the New York Mercantile Exchange, a registered floor broker under the Commodity Exchange Act and an agent and employee of respondent Melvin Miller and engaged in assisting him in handling orders from futures commission merchants to execute trades on the New York Mercantile Exchange and in the making of the reports of execution with respect to such orders.

3. The futures transactions referred to herein were sales of May 1967 potato futures on the New York Mercantile Exchange, a duly designated contract market under the Commodity Exchange Act and hereinafter referred to as the exchange. Such

sales could have been used for (a) hedging transactions in interstate commerce in potatoes or the products or by-products thereof, or (b) determining the price basis of transactions in interstate commerce in such commodities, or (c) delivering such commodities sold, shipped, or received in interstate commerce. Trading in May 1967 potato futures on the exchange was conducted in units of one contract or carlot consisting, at all times material herein, of 50,000 pounds of Maine-grown Irish potatoes. Trading in such futures ended on May 10, 1967.

4. On May 10, 1967, the respondents received for execution an order to sell 85 carlots of May 1967 potato futures for the accounts of customers of Goodbody & Co., a clearing member of the exchange and a registered futures commission merchant under the Commodity Exchange Act. The respondents executed such order, selling 85 carlots at \$ 2.84 per hundred pounds and reported the execution at that price to Goodbody & Co. Thereafter, on May 10, 1967, the respondents learned that they had oversold in excess of 40 carlots of May 1967 potato futures in the course of executing a number of orders received from various futures commission merchants and that substantial losses had accrued with respect to the oversales. Thereafter, on May 10, 1967, and approximately one and one-half hours after the close of trading on the exchange, the respondents reported or caused to be reported to Goodbody & Co. a "corrected" report of execution with respect to its order of May 10, 1967, to sell 85 carlots of May 1967 potato futures. This "corrected" report had the effect of taking from the accounts of the selling customers 21 sales executed pursuant to such order at a price of \$ 2.84 per hundred pounds and substituting therefor 21 less favorable sales -- 16 sales at \$ 2.80 and 5 sales at \$ 2.81 -- which had not been executed pursuant to such order. The respondents placed the 21 sales taken from the customers' accounts in an account through which the respondents cleared their error trades. Based on the "corrected" report of execution, Goodbody & Co. showed on its records and reported to its customers 16 sales at \$ 2.80 and 5 sales at \$ 2.81, rather than the 21 sales that were actually executed pursuant to the order from Goodbody & Co. to sell 85 carlots.

CONCLUSIONS

The facts admitted by the respondents are *verbatim* the factual allegations of the complaint, and these have been adopted as the Findings of Fact in this proceeding. By reason of these findings,

it is concluded that the respondents willfully violated section 4b of the Commodity Exchange Act (7 U.S.C. 6b), as charged in the complaint.

Complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the proposed stipulation and order, and that they believe the proposed sanctions are adequate and that the prompt entry, without further proceedings, of the order to which the respondents have consented will constitute a satisfactory disposition of this case, serve the public interest, and effectuate the purposes of the Commodity Exchange Act. Complainant recommends, therefore, that the stipulation and waiver submitted by the respondents be accepted and that the proposed order be issued. It is so concluded.

ORDER

Effective on the twentieth day after the date of issuance of this order, the registrations of Melvin Miller and Dominick F. Auciello as floor brokers are suspended for a period of twenty days, and all contract markets shall refuse all trading privileges to them during this period, such refusal to apply to all trading done and all positions held by them, directly or indirectly.

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

LOAD-DATE: June 8, 2008

