

Commodity Futures Trading Commission
CEA CASES

NAME: AMERICAN COMMODITY BROKERS, INC., PHYLLIS C. DEMPSTER, AND JOHN WHELAN

CITATION: 31 Agric. Dec. 992

DOCKET NUMBER: 185

DATE: AUGUST 1, 1972

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(No. 14,713)

In re AMERICAN COMMODITY BROKERS, INC., PHYLLIS C. DEMPSTER, and JOHN WHELAN.
CEA Docket No. 185. Decided August 1, 1972.

Futures commission merchant -- Undersegregation of funds -- False financial reports -- Stipulation -- Denial of trading privileges

Respondents American Commodity Brokers, Inc., and Phyllis C. Dempster have consented to the issuance of an order against them to cease and desist from the activities set forth herein and ordering the denial of trading privileges to them as set forth herein. The Decision and Order herein terminates this proceeding as to these two respondents.

Richard W. Davis, Jr., for complainant.

Edwin S. Bean, Detroit, Michigan, for respondents American Commodity Brokers, Inc., and Phyllis C. Dempster.

Harry S. McAlpin, Hearing Examiner.

Decision by Donald A. Campbell, Judicial Officer

DECISION AND ORDER

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. Chap. 1, 1970), instituted by a complaint and notice of hearing issued on September 13, 1971, under section

6(b) and (c) of the said Act (7 U.S.C. 9 and 13b). The respondents are charged with violating sections 4b, 4d, 4f, 4g and 6(b) of the said Act (7 U.S.C. 6b, 6d, 6f, 6g and 9) and sections 1.17, 1.20, 1.32 and 1.35 of the regulations issued thereunder (17 CFR 1.17, 1.20, 1.32 and 1.35).

No hearing has been held in this proceeding as to respondents American Commodity Brokers, Inc. and Phyllis C. Dempster. On July 31, 1972, those two respondents filed a stipulation under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they (1) withdrew the answer previously filed by them, (2) admit the facts hereinafter set forth in paragraphs 1 through 3 of the Findings of Fact, (3) admit, for the purposes of this proceeding and for such purposes only, the remaining facts set forth in the Findings of Fact, and (4) waive hearing on the charges in the complaint, waive the report of the Referee and consent to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondent American Commodity Brokers, Inc., a corporation organized and existing under the laws of the State of Michigan, with offices at 415 South Monroe, Monroe, Michigan, was at all times material herein, a registered futures

commission merchant under the Commodity Exchange Act, engaged in trading in commodities for future delivery for the accounts of customers and holding for such customers sums of money, representing deposits of margin by and trading profits accruing to such customers. At all such times, the respondent corporation was subject to the minimum financial requirements specified in section 1.17 of the regulations under the Commodity Exchange Act (17 CFR 1.17).

2. Respondent Phyllis C. Dempster, an individual whose business address is the same as that of the respondent corporation, is now, and was at all times material herein, president of the respondent corporation and responsible for the management, direction and control of its activities.

3. The transactions in commodities for future delivery, referred to herein, could have been used for hedging transactions in interstate commerce in such commodities or the products or by products thereof, or for determining the price basis of transactions in interstate commerce in such commodities, or for delivering

such commodities sold, shipped or received in interstate commerce.

4. On March 31, 1970, the respondent corporation engaged as a registered futures commission merchant under the Commodity Exchange Act, notwithstanding that at that time it failed to meet the minimum financial requirements prescribed by section 1.17 of the regulations issued by the Secretary of Agriculture under the Act. As of March 31, 1970, the respondent corporation lacked approximately \$ 84,000 of having enough working capital to meet such minimum financial requirements.

5. (a) At the times hereinafter state, the respondent corporation, in the regular course of its business as futures commission merchant, carried accounts of customers who traded in commodity futures on contract markets subject to the provisions of the Commodity Exchange Act and the regulations thereunder. Such accounts, the trading therein, and the handling and disposition of funds in connection therewith, were subject to the provisions of the Act and regulations. At all such times, the respondent corporation had to its credit with banks or other depositories, money in varying amounts, held in segregated accounts and identified as customers' funds representing deposits of margin by and trading profits accruing to such customers.

(b) During the period between March 5 and April 9, 1970, both inclusive, the respondent corporation was undersegregated, that is, during the period mentioned the total amount of customers' funds held in segregation as above described, was less than the amount necessary to pay all credits and equities due to such customers. As of March 5, March 31 and April 9, 1970, such deficits amounted to approximately \$ 10,000, \$ 18,000 and \$ 20,000, respectively.

(c) During the period from April 10 through August 6, 1970, the respondent corporation failed to make any computation or permanent record, as of the close of the market on each business day, of the amount of money, securities, and property required to be held in segregated account in order to pay all credits and equities due to its customers, as provided in section 1.32 of the regulations (17 CFR 1.32).

6. On May 7, 1970, the respondent corporation submitted to the Commodity Exchange Authority a financial report (Form 1-FR) as of March 31, 1970, certified by respondent Phyllis G.

Dempster. The said respondents made material false statements in such report, in that: (1) they stated the firm had an excess of adjusted working capital in the amount of \$ 22,971.94, when actually it had an insufficiency of adjusted working capital in the amount of approximately \$ 84,000; (2) they stated the firm had current assets of approximately \$ 56,000, when it actually had current

assets of approximately \$ 20,000; and (3) they stated the firm had current liabilities of approximately \$ 22,000, when it actually had current liabilities of approximately \$ 94,000.

7. As of April 21, 1970, the respondent corporation had failed and refused to remit to its customers \$ 2,606.95 due and owing by it to such customers in connection with transactions in commodities for future delivery which the respondent corporation had made for the account and benefit of such customers. During March 1970, the respondent corporation issued checks to four customers in purported payment of \$ 2,518.95 of the aforesaid sum, but such checks were returned by the bank upon which they were drawn because of insufficient funds in the corporate respondent's account.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that the respondents American Commodity Brokers, Inc. and Phyllis C. Dempster, as charged in the complaint, violated sections 4b, 4d, 4f and 4g of the Commodity Exchange Act and sections 1.17, 1.20, 1.32 and 1.35 of the regulations issued thereunder (17 CFR 1.17, 1.20, 1.32 and 1.35).

The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation and the terms of the proposed order and they believe that the entry of such an order without further proceedings would constitute a satisfactory disposition of this case as to the stipulators, serve the public interest and effectuate the purposes of the Commodity Exchange Act. The complainant, therefore, recommends that the stipulation be accepted and the proposed order be issued, terminating this proceeding as to respondents American Commodity Brokers, Inc. and Phyllis C. Dempster.

It is noted that respondents American Commodity Brokers, Inc. and Phyllis C. Dempster were previously charged with failing

to meet minimum financial requirements and that action was terminated by a consent order to cease and desist. (28 Agric. Dec. 813 (28 A.D. 813))

It is concluded that the complainant's recommendation should be adopted.

ORDER

1. Effective on the date of service of this order upon respondent American Commodity Brokers, Inc., it shall cease and desist from the activities set forth below. Effective on the date of service of this order upon respondent Phyllis C. Dempster, she shall cease and desist from causing, aiding, abetting, counseling, commanding or inducing American Commodity Brokers, Inc., or any other futures commission merchant to engage in the activities set forth below.

a. Engaging as futures commission merchant without meeting the minimum financial requirements prescribed by section 1.17 of the regulations issued under the Commodity Exchange Act (17 CFR 1.17).

b. Failing to maintain in segregation sufficient funds to pay all credits and equities due to its customers trading in commodity futures subject to the provisions of the Commodity Exchange Act.

c. Failing to make a computation and permanent record, as of the close of the market on each business day, of the amount of money, securities, and property required to be held in segregated account as provided in section 1.32 of the regulations (17 CFR 1.32).

d. Making material false statements in financial reports submitted to the Commodity Exchange Authority.

e. Failing and refusing to remit to its customers money due and owing by it to such customers in connection with transactions in commodities for future

delivery which the corporation had made for the account and benefit of such customers.

2. Effective on the thirtieth day after the date this order is issued, respondents American Commodity Brokers, Inc. and Phyllis C. Dempster are prohibited from trading in any commodity on any contract market subject to the provisions of the Commodity Exchange Act for five years and all contract markets shall deny trading privileges to such respondents for that period.

Such prohibition and denial shall apply to all trading by such respondents either for their own account or the account of another person, directly or indirectly.

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

LOAD-DATE: June 9, 2008

