

Commodity Futures Trading Commission  
CEA CASES

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

**DOCKET NUMBER:** 185

**DATE:** SEPTEMBER 13, 1971

**DOCUMENT TYPE:** COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: American Commodity Brokers, Inc., Phyllis C. Dempster, and John Whelan,  
Respondents

CEA Docket No. 185

Complaint and Notice of Hearing Under the Commodity Exchange Act

There is reason to believe that the respondents have violated the Commodity Exchange Act (7 U.S.C. 1 et seq.) and the regulations made pursuant thereto, and this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

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 (34 F.R. 599).

II

Respondents Phyllis C. Dempster and John Whelan, individuals, whose business address is the same as that of the respondent corporation, are now, and were at all times material herein, president and vice-president, respectively, of the respondent corporation and responsible for the management, direction and control of its activities.

III

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.

IV

(a) At the times hereinafter stated, 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).

## V

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 C. Dempster. The

said respondents wilfully 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.

## VI

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.

## VII

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.

## VIII

By reason of the facts alleged in this complaint, the respondents have wilfully violated sections 4b, 4d, 4f, 4g and 6(b) of the Commodity Exchange 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).

WHEREFORE, it is hereby ordered that this complaint and notice of hearing be served upon the respondents and this proceeding shall be governed by sections 0.1, 0.2, 0.4(b), 0.5 through 0.22 and 0.28, of the rules of practice under the Commodity Exchange Act (17 CFR 0.1, 0.2, 0.4(b), 0.5 through 0.22, 0.28). The respondents will have twenty (20) days after the receipt of this complaint in which to file with the Hearing Clerk, United States Department of Agriculture, Washington, D. C. 20250, an answer with an original and three copies, fully and completely stating the nature of the defense and admitting or denying, specifically and in detail, each allegation of this complaint. Allegations not answered will be deemed admitted for the purposes of this proceeding. Failure to file an answer will constitute an admission of all the allegations of this complaint and a waiver of hearing. The filing of an answer in which all of the material allegations of fact contained in the complaint are admitted likewise shall constitute a waiver of hearing unless a hearing is

requested. The respondents are hereby notified that unless hearing is waived, a hearing will be held at 10:00 a.m., local time, on October 27, 1971, in Monroe, Michigan, at a place therein to be specified later, before a referee designated to conduct such hearing. At such hearing, the respondents will have the right to appear and show cause, if any there be, why an appropriate order should not be issued in accordance with the Commodity Exchange Act, (1) prohibiting the respondents from trading on or subject to the rules of any contract market, and directing that all contract markets refuse all trading privileges to the respondents for such period of time as may be determined and (2) directing that the respondents shall cease and desist from violating the Act and regulations in the manner alleged herein.

It is ordered that this complaint and notice of hearing be served on the respondents at least twenty (20) days prior to the date set for hearing.

Done at Washington, D. C.

September 13, 1971

[SEE SIGNATURE IN ORIGINAL]

J. Phil Campbell

Under Secretary

**LOAD-DATE:** June 16, 2008

