

Commodity Futures Trading Commission
CEA CASES

NAME: FELDSTEIN PRODUCE COMPANY, FULTON PRODUCTS CORPORATION, ALBERT FELDSTEIN, MEYER GETZ OR MICHAEL GETZ, ARANESS CORPORATION, BECKER BROKERAGE COMPANY, AND WOODSTOCK, INC.

CITATION: 17 Agric. Dec. 713

DOCKET NUMBER: 83

DATE: AUGUST 25, 1958

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AGRICULTURE DECISIONS

BEFORE THE SECRETARY OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

(No. 5569)

In re FELDSTEIN PRODUCE COMPANY, FULTON PRODUCTS CORPORATION, ALBERT FELDSTEIN, MEYER GETZ OR MICHAEL GETZ, ARANESS CORPORATION, BECKER BROKERAGE COMPANY, AND WOODSTOCK, INC. CEA Docket No. 83. Decided August 25, 1958.

Incorrect Records -- Suspension of Registration -- Denial of Trading Privileges -- Consent Order

Respondent Araness Corporation carried futures trades and positions on its books and records and entered into commodity futures transactions in the name of respondent Meyer Getz when it knew that such transactions and positions were owned and controlled by respondent Albert Feldstein. Respondent Araness Corporation consented to the entry of an order suspending its registration as a commission merchant and denying it trading privileges on all contract markets for a specified period.

Mr. Benj. M. Holstein, for Commodity Exchange Authority. *Mr. C. B. Hankel, Jr.*, of Chicago, Illinois, for respondent Araness Corporation.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. 1952 ed., Chapter 1), instituted by a complaint and notice of hearing issued under section 6(b) of

the act (7 U.S.C. 1952 ed., § 9) by the Assistant Secretary of Agriculture on May 9, 1958.

Respondent Araness Corporation is a registered futures commission merchant under the Commodity Exchange Act. It is one of seven respondents in this proceeding. The complaint alleges that during the period October 19, 1956, through June 11, 1957, the said respondent carried egg futures trades and positions on its books and records in the name of Meyer Getz, also a respondent herein, whereas in truth and in fact and as respondent Araness Corporation knew, such trades and positions were owned and controlled by one Albert Feldstein, who is also a respondent. Based upon these allegations, the complaint charges that respondent Araness Corporation knowingly failed to evidence the said transactions and positions by a record in writing showing the true parties thereto, in wilful violation of section 4 of the act and section 1.37 of the

regulations, and knowingly failed to keep books and records pertaining to such transactions in the form and manner required by the Secretary of Agriculture, in wilful violation of section 4(g) of the act and section 1.35 of the regulations.

No hearing has been held with respect to any of the respondents. On July 2, 1958, a consent order was issued against respondent Becker Brokerage Company, concluding the proceeding as against that respondent. On July 22, respondent Araness Corporation withdrew the answer which it had previously filed and submitted a stipulation under section 0.4(b) of the rules of practice, in which it admits the allegations in the complaint, asserts that it was unaware that its handling of the account in question was contrary to the act and the regulations, waives hearing, and consents to the entry of the order hereinafter set forth.

FINDINGS OF FACT

1. Respondent Araness Corporation, a corporation with offices and a place of business at 313 North Carpenter Street, Chicago, Illinois, is now and was at all times material herein a registered futures commission merchant under the Commodity Exchange Act and a clearing member of the Chicago Mercantile Exchange, a duly designated contract market under the Commodity Exchange Act.

2. During the period October 19, 1956, through June 11, 1957, respondent Araness Corporation carried commodity

futures trades and positions on its book and records and entered into commodity futures transactions on the Chicago Mercantile Exchange, in the name of respondent Meyer Getz, with knowledge of the fact that such transactions and positions were owned and controlled by respondent Albert Feldstein.

CONCLUSIONS

Section 0.4(b) of the rules of practice under the Commodity Exchange Act (17 CFR 0.4(b)) provides as follows:

"(b) Consent order. At any time after the issuance of the complaint and prior to the hearing in any proceeding, the Secretary, in his discretion, may allow the respondent to consent to an order. In so consenting, the respondent must submit, for filing in the record, a stipulation or statement in which he admits at least those facts necessary to the Secretary's jurisdiction and agrees that an order may be entered against him. Upon a record composed of the complaint and the stipulation or agreement consenting to the order, the Secretary may enter the order consented to by the respondent, which shall have the same force and effect, as an order made after oral hearing."

Respondent Araness Corporation has admitted the facts alleged against it in the complaint and they have been adopted as the findings of fact in this proceeding. Such facts establish the Secretary's jurisdiction.

Under section 4 of the Commodity Exchange Act (7 U.S.C., 1952 ed., § 6), a futures commission merchant is required to maintain a written record showing the true parties to any futures contract which he executes or confirms on a customer's behalf. *In re Irving Weis and Company, et al.*, 7 Agric. Dec. 180 (7 A.D. 180), affirmed, *Irving Weis and Company v. Brannan*, 171 F. 2d 232 (2d Cir. 1948).

Section 1.37 of the regulations under the act (17 CFR 1.37) spells out this requirement with particularity. It provides, in part:

"§ 1.37 *Customer's name, address, and occupation recorded; record of guarantor or controller of account.* Each futures commission merchant and each member of a contract market shall keep a record in permanent form which shall show for each commodity futures account carried by

him the true name and address of the person for whom such account is carried * * *".

Section 1.35 of the regulations, as amended (17 CFR, 195' Supp., 1.35), provides, in part, as follows:

"§ 1.35 *Records of cash commodity and futures transactions -- (a) Futures commission merchants and members of contract markets.* Each futures commission merchant and each member of a contract market shall keep full complete, and systematic records of all commodity futures transactions and cash commodity transactions, made by or through him, on or subject to the rules of a board of trade. * * *".

Section 4(g) of the act (7 U.S.C. 1952 ed., § 6(g)) subjects the registration of a futures commission merchant to suspension or revocation for failure to keep the books and records pertaining to the transactions of customers in "the form and manner required by the Secretary of Agriculture."

When respondent Aranes Corporation carried an account and entered into futures transactions in the name of Meyer Getz with knowledge of the fact that such account and such transactions belonged to and were controlled by Albert Feldstein, it clearly violated the above sections of the act and the regulations. The respondent claims that it was unaware of the illegality of its procedure. This is not a valid defense. The necessary requirements are fully set forth in the act and the regulations, and it was incumbent upon the respondent, as a futures commission merchant authorized to handle transactions for customers, to acquaint itself with these requirements and to observe them. Failure to do so compels the conclusion that these violations were wilful.

The complainant has filed a recommendation which recites that it has carefully considered the stipulation and the terms of the order to which the said respondent proposes to consent. It is the opinion of the complainant that the sanction contained in the proposed order would be adequate, and that the entry of such an order without further proceedings would constitute a satisfactory disposition of this case as against the said respondent, serve the public interest, and effectuate the purposes of the Commodity Exchange Act. The complainant, therefore, recommends that the stipulation and waiver be accepted and that the proposed order be issued. It is so concluded.

ORDER

The registration of respondent Aranes Corporation as a futures commission merchant is hereby suspended for a period of 30 days, effective September 15, 1958, and all contract markets are hereby directed to refuse all trading privileges to the said Aranes Corporation for said period of 30 days, PROVIDED, HOWEVER, that only the first ten (10) days of the said period of suspension of registration and refusal of trading privileges shall become effective as of the said effective date, and that the final twenty (20) days of said period of suspension of registration and refusal of trading privileges shall not become effective unless, after complaint, notice, and hearing in accordance with established procedure, respondent Aranes Corporation should be found to have violated the Commodity Exchange Act within one year from the date of entry of this order, in which event the Secretary of Agriculture may, without further notice to respondent Aranes Corporation, issue a supplemental order making effective forthwith the twenty (20) day remainder of the said period of suspension of registration and refusal of trading privileges.

A copy of this decision and order shall be served upon the said respondent and upon each contract market.

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