

Commodity Futures Trading Commission  
CEA CASES

**NAME:** SERVICE GRAIN COMPANY AND NORVELL D. SEELE

**CITATION:** 20 Agric. Dec. 836

**DOCKET NUMBER:** 102

**DATE:** AUGUST 29, 1961

**DOCUMENT TYPE:** DECISION AND ORDER

(No. 7302)

*In re* SERVICE GRAIN COMPANY AND NORVELL D. SEELE. CEA Docket No. 102. Decided August 29, 1961.

**Customers' Funds -- Revocation of Registration -- Denial of Trading Privileges -- Consent Order**

The registration of Service Grain Company as a futures commission merchant is revoked, and all contract markets are ordered to refuse trading privileges to both respondents for one year.

*Mr. Benj. M. Holstein*, for Commodity Exchange Authority. Respondents *pro se*.

*Decision by Thomas J. Flavin, Judicial Officer*

**PRELIMINARY STATEMENT**

The respondents in this administrative proceeding are a Missouri corporation registered as a futures commission merchant, and an individual who is the president and manager of the corporation and the owner of 95 percent of its capital stock. The complaint charges the respondents with improper handling of customers' funds and failure to maintain adequate segregation records, in wilful violation of the act and the regulations, and with failure to keep the firm's books and records in the form and manner required by the act and the regulations.

These charges are based upon allegations that the respondent corporation commingled certain of its own trades with transactions of its customers (Complaint, para. V) and failed to maintain any record of such trades (Complaint, para. VI), and that the total amount of customers' funds which it held in segregation was insufficient to pay all credits and equities due to customers, the deficits ranging from approximately \$ 15,000 to approximately \$ 59,000 (Complaint, para. VII). The complaint also alleges that during a part of the period in question respondent corporation did not make any computation of funds in segregation, as required, and that during the remainder of such period such computation was incomplete and inaccurate (Complaint, para. VIII).

No hearing has been held. The respondents have filed a document under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they admit the facts as alleged in the complaint, waive hearing, and consent to entry of the order hereinafter set forth.

**FINDINGS OF FACT**

1. Respondent Service Grain Company is a Missouri corporation with its principal office and place of business at 5100 Oakland Avenue, St. Louis 10, Missouri. The said corporation is now and was at all times material herein a registered futures commission merchant under the Commodity Exchange Act. At all such times up to April 10, 1961, respondent Service Grain Company enjoyed

membership privileges on the Chicago Board of Trade, a duly designated contract market.

2. Respondent Norvell D. Seele, an individual who resides at No. 7 Bellerive Acres, St. Louis 21, Missouri, is now and was at all times material herein the president and manager of respondent Service Grain Company, the owner of 95 percent of its capital stock, and a member of the Chicago Board of Trade.

3. At the times hereinafter stated, respondent Service Grain Company, in the normal course of its business, carried accounts for customers who traded in commodity futures subject to the provisions of the Commodity Exchange Act and regulations. In connection therewith, the said respondent had to its credit with a bank or other depository sums of money in varying amounts, held in segregated account and identified as customers' funds, representing deposits of margin by and trading profits accruing to such customers. During the same periods, respondent Service Grain Company traded in commodity futures on the Chicago Board of Trade for its own or house account.

4. Beginning on or about January 18, 1961, and continuing until April 7, 1961, respondent Service Grain Company executed purchases and sales of commodity futures on the Chicago Board of Trade for its own use and benefit and placed certain of such trades in its customers' accounts carried with clearing members.

5. During the period set forth in paragraph 4, with respect to the transactions for the house account of respondent Service Grain Company therein described, the said respondent failed to prepare and keep a record showing all such transactions, including the date, price, quantity, market, commodity and future.

6. As a result of losses incurred by respondent Service Grain Company in connection with the trades and contracts executed for its own account and the commingling of such trades and contracts with those of its customers as described in paragraph 4, respondent Service Grain Company was under-segregated in the amount of approximately \$ 59,000 at all times between April

10 and April 30, 1961, in the amount of approximately \$ 40,000 on May 1, and in the amount of approximately \$ 15,000 on May 2, 1961, that is, the total amount of customers' funds held in segregation was insufficient, by the aforesaid sums, to pay all credits and equities due to such customers.

7. At all times during the period from January 18, 1961, through March 24, 1961, the computation and record of funds required to be held in segregation, which respondent Service Grain Company was obligated to make as of the close of the market on each business day, as provided by section 1.32 of the regulations (17 CFR 1.32), was incomplete and inaccurate to an extent which made it impossible to determine whether the funds so held were in fact sufficient to pay all credits and equities due to customers. On each business day from March 25 through May 2, 1961, respondent Service Grain Company failed to make any daily computation or permanent record of funds required to be held in segregation.

8. The acts and transactions described in paragraphs 4, 5, 6, and 7 were ordered and directed by or carried out under the supervision and control of respondent Norvell D. Seele in his capacity as president, manager, and principal shareholder of respondent Service Grain Company. **CONCLUSIONS**

The respondents have admitted the facts substantially as alleged in the complaint, and these have been adopted as the findings of fact in this proceeding.

Section 4d(2) of the act (7 U.S.C. 1958 ed., § 6d(2)) requires each futures commission merchant to treat and deal with the funds of a customer "as belonging to such customer" and to account separately for such funds, and prohibits the commingling of such funds with funds of the futures commission merchant, or the use of such funds "to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the

same are held." Sections 1.20, 1.21, and 1.22 of the regulations (17 CFR 1.20, 1.21, 1.22) contain additional detailed requirements with respect to customers' funds. Section 1.32 of the regulations (17 CFR 1.32) requires that each futures commission merchant make a daily computation, based upon his accounting records, of the amount of money which must be in segregated account in order to comply with the provisions of the act.

Section 4g of the act (7 U.S.C. 1958 ed., § 4g) provides for the suspension or revocation of the registration of a futures commission merchant who fails or refuses to keep the books and records pertaining to his transactions or those of his customers in the form and manner required by the Secretary, and section 1.35 of the regulations requires a futures commission merchant to keep "full, complete, and systematic records of all commodity futures transactions . . . made by or through him. . . ."

It appears that the respondent corporation was in an under-segregated condition continuously over a period of some three calendar weeks by reason of losses incurred in connection with its own trading which had been commingled with the trading of its customers, and that the under-segregation was substantial, ranging up to a maximum of \$ 59,000. During this period and for some time prior and subsequent thereto, the respondent corporation had no record showing the details of certain of the trades for its own account, and its segregation record was either nonexistent or incomplete and inaccurate to an extent which made it impossible to determine therefrom the sufficiency of the funds held in segregated account. These acts and omissions were clear violations of the provisions of the act and of the regulations.

The nature of the violations and the extended period over which they occurred justify the conclusion that the violations were wilful, as alleged.

The complainant states that it has carefully considered the proposed order. It is of the opinion that the proposed sanction is sufficient, and that the prompt entry of such an order without further proceedings would serve the public interest and effectuate the purposes of the Commodity Exchange Act. The complainant therefore recommends that the respondents' waiver and consent be accepted and that the proposed order be issued. It is so concluded.

#### **ORDER**

Effective October 1, 1961, the registration of Service Grain Company as a futures commission merchant is revoked.

Effective October 1, 1961, all contract markets shall refuse all trading privileges to Service Grain Company and Norvell D. Seele for a period of one year, such refusal to apply to all trading

done and all positions held by the said Service Grain Company and Norvell D. Seele, or either of them, directly or indirectly.

A copy of this decision and order shall be served on the respondents and on each contract market.

**LOAD-DATE:** June 8, 2008

